

COUNCIL ACTION FORM

SUBJECT: **RIGHT-OF-WAY DESIGN POLICY FOR
WIRELESS INFRASTRUCTURE**

BACKGROUND:

The operation of wireless communication facilities are licensed and regulated by the Federal Communications Commission (FCC). The principal law regarding regulation of personal wireless services is the Telecommunications Act of 1996, which among others things, sets forth the policy of the federal government to promote deployment of personal wireless services. Additionally, the State of Iowa has adopted state regulations related to the installation of new facilities and co-location of facilities that limit local permitting discretion. In response the State changes, the City of Ames adopted new wireless facility zoning standards in the Spring of 2018 and Public Works established new application procedures for right-of-way review in January 2019.

Additional action is needed to address the recent decision by the FCC related to the review and approval process for “Small Cell” installations. Small Cell facilities are a defined facility type by the FCC and by Iowa, although the definitions differ slightly. These facilities are typically placed upon existing city structures (e.g. utility poles, street lights, buildings, etc.) and include antennae components as well as equipment and fiber connections that support the wireless communication.

The FCC adopted a new report and order in September 2018 addressing the application requirements based upon the 1996 Telecommunications Act as they apply to Small Cell facilities and also provided a declaratory ruling about how the permitting process of local government does or does not conform to requirements of the Telecommunications Act. These decisions are currently under appeal in Federal District Court. While under appeal, the requirements are in place since no stay to their implementation was granted by the courts.

The most direct concern of these FCC actions is the restriction of City review of new Small Cell facility permits to be in accordance with standards that must be in place before the application is filed with the City and these standards must be reasonable and objective, including standards for aesthetics.

The deadline for having local standards is April 15, 2019. Currently the City does not clearly define aesthetic issues for new facilities being compatible to our standards. For example, applying street light specifications for paint, style, or concealment of equipment are not directly specified and have been addressed on an ad hoc basis. To comply with the FCC ruling, these expectations need to be defined in advance of the review.

Staff is recommending the creation of basic expectations for wireless facilities that they are placed or attached to infrastructure in the right-of-way in a manner consistent with our desire to have uniform and compatible appearance of infrastructure. **At this time staff recommends the Council adopt a policy for Public Works to apply design standards to the review of wireless facilities.** This will augment the current authority provided for management of the right-of-way found in Chapter 22A of the Ames Municipal Code.

Public Works would then be authorized to define standards related to the following design issues and other issues necessary to maintain aesthetic consistency with our City standards and specifications as follows:

1. Limit the color of the wireless facilities to match existing facility colors/materials or be painted muted colors. Specifically prohibit use of colors or logos to distinguish or brand the equipment to a specific wireless provider/carrier.
2. A small wireless facility shall reasonably match the aesthetics of an existing utility pole or wireless support structure in the area that incorporates decorative elements.
3. Require concealment of wire/fiber/cable connections to the ground and to other wireless facilities.
4. Protection of street trees during the construction and long term operation of the facilities.
5. Include requirements to contain small cell facilities within a compatibly designed shroud in residential and commercial areas.

ALTERNATIVES:

1. The City Council can adopt a resolution that it is the policy of City of Ames to apply aesthetic standards to the placement of wireless infrastructure within the right-of-way and authorize the Public Works Director to prepare and update specific design standards or guidelines for the review and approval of right-of-way permits authorized by Chapter 22A of the Ames Municipal Code.

2. The City Council can decline to adopt a policy regarding wireless facilities in the right-of-way.

3. The City Council can request additional information from staff and defer action on this item.

CITY MANAGER'S RECOMMENDED ACTION:

Although future changes to Chapter 22A may be warranted to address overall permitting process for these types of facilities, staff believes that at this time it is prudent to adopt a policy supporting aesthetic review of facilities in the right-of-way. Adopting this policy will authorize the Public Works Director to create and update the standards as needed while allowing for the City to operate consistent with the recent FCC decisions.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1 to adopt a new policy for the management of the right-of-way.