



City Council Meeting Schedule February 2017

February 7, 2017
Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

February 14, 2017
Tuesday, 6:30 p.m.

WORKSHOP MEETING - CANCELLED (Due to lack of quorum)

February 21, 2017
Tuesday, 6:00 p.m.

WORKSHOP MEETING
1. Model Franchise Ordinance
2. Temporary Emergency Housing

Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

February 28, 2017
Tuesday, 6:30 p.m.

WORKSHOP MEETING - CANCELLED

Banquet to Honor the 2016 Kennewick Man and Woman of the Year (Three Rivers Convention Center)

To assure disabled persons the opportunity to participate in or benefit from City services, please provide twenty-four (24) hour advance notice for additional arrangements to reasonably accommodate special needs.

Please be advised that all Kennewick City Council Meetings are Audio Taped

February 2017
Updated 02/10/17

Council Workshop Coversheet



Agenda Item Number	1.	Meeting Date	02/21/2017
Agenda Item Type	Presentation		
Subject	Small Cell Facilities Franchise Ordinance		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Attorney		

Info Only	☐
Policy Review	☐
Policy DevMnt	☒
Other	☐

Summary

The purpose of this presentation is to educate Council on small cell facilities, the future impact on the City, and discuss the next steps. Small cell facilities will be challenging for the City to accommodate. Instead of placing large cell sites primarily on private property or hidden in fake vent pipes on rooftops of buildings; wireless carriers are going to pursue sites in the "public right of way," (city streets and sidewalks). Small cell facilities can mean antennas and equipment on or next to either existing wooden utility poles; city-owned light poles; or installing brand new poles just for wireless in the right of way. While small cells offer less coverage/capacity than a large scale rooftop cell site on private property, installing small cells in the public right of way is often cheaper than leasing private property, provides a tool for carriers to provide mobile data faster/closer to customers in both dense urban areas and low-density residential neighborhoods, and is comparatively subject to less discretion by the City due to state law governing the right of way. City staff has been in discussions with Mobilitie, a neutral host carrier who is proposing to put six small cell facilities in the right of way in Kennewick. In the interest of being consistent with other cities and compliant with state and federal law, the City has joined a consortium of cities in Washington who have prepared a model ordinance to accommodate the future deployment of small cell facilities in the right of way. City staff will be coming back to Council at future meetings with several proposed code amendments related to the model ordinance.

Through

Bonnie Lanning
Feb 15, 14:00:55 GMT-0800 2017

Attachments: Presentation

Dept Head Approval

Lisa Beaton
Feb 15, 15:01:54 GMT-0800 2017

City Mgr Approval

Marie Mosley
Feb 17, 09:31:11 GMT-0800 2017

Small Cell Facilities in the City Right of Way

Review of Federal and State Law

City Franchising Authority

Next Steps

"Small Cells"

Without collaborative City input:

**"Small Cell" at
4471 Moraga Ave
Oakland**

*(bulky boxes, tacky
bundles of wiring below
unpainted antennas and
noisy cooling fans)**



**With collaborative City input:
Verizon at 1367 Jones Street
in San Francisco**

*(unobtrusive and noiseless)
320 built; another 200 expected for other carriers*



City Council Workshop
February 21, 2017

Small Cell Facilities in City Right of Way – Why Now?

- The demand for wireless broadband to accommodate new “smartphones,” digital tablets, laptops and other devices has been exploding.
 - 84% of today’s shoppers use their smartphone to help shop in-store;
 - More than 80% of voice calls originate indoors;
 - 30 million MB of data are used every five minutes through media streaming;
 - 56% of mobile data is video (Cisco VNI Mobile, 2016).
- Number of wireless U.S. subscriber connections has increased between 2007 and 2013 from 233.0 million to 331.6 million (a 42% increase). (CTIA).

Data Explosion has led to Facilities Explosion

- In 2012 Verizon Wireless reported to the FCC that it planned to increase its cell sites by 53% (from 42,600 to 65,000) just to accommodate its current needs. (FCC 2012 Wireless Competition Report).
- As of 2014 AT&T Wireless planned to deploy over 40,000 new small cell sites. (CTIA).
- According to CTIA in 2012 annual wireless revenues had increased 183% in the past 11 years from \$65.3 billion in 2001 to \$184 billion in 2012.

Definition of Small Cell Facility:

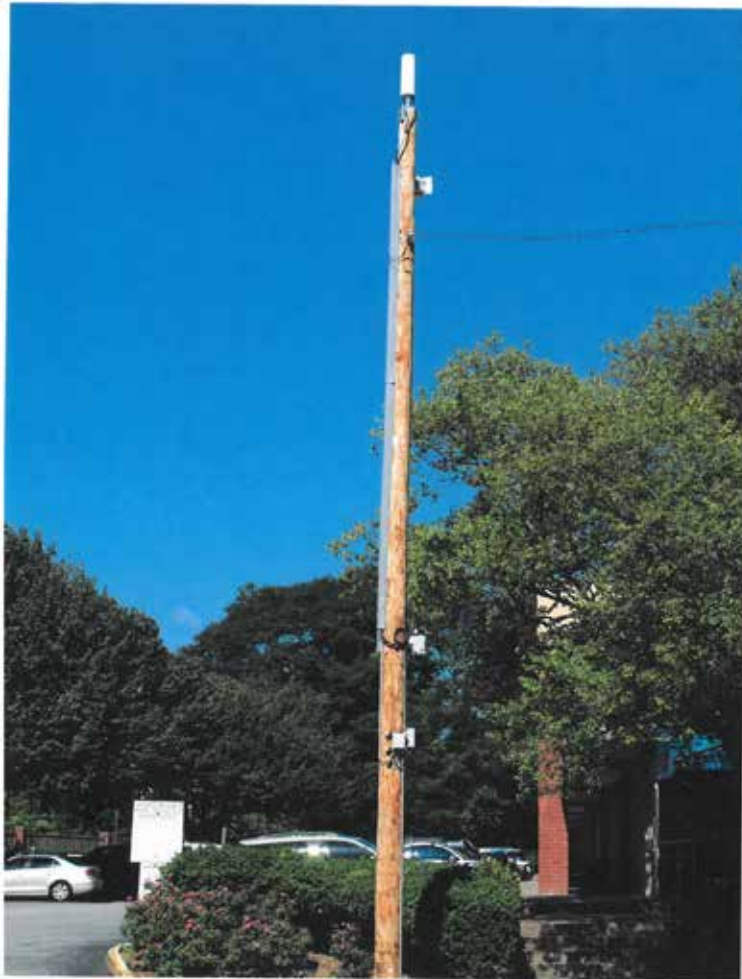
RCW 80.36.375

- (d) “Small cell facility” means a personal wireless services facility that meets both of the following qualifications:
- (i) Each antenna is located inside an antenna enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and
- (ii) Primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume: Electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

Small Cell Facilities



Small Cell Facilities



Small Cell Facilities

Clearwire Microcell Application

- Clearwire deployment is similar to what is required for a 'small cell' on a power pole
- Typically, 'small cell' antennas would be smaller and battery back-up may be optional



Fiber
Pedestal

Battery
Box

Power
H-frame

Radio
Unit

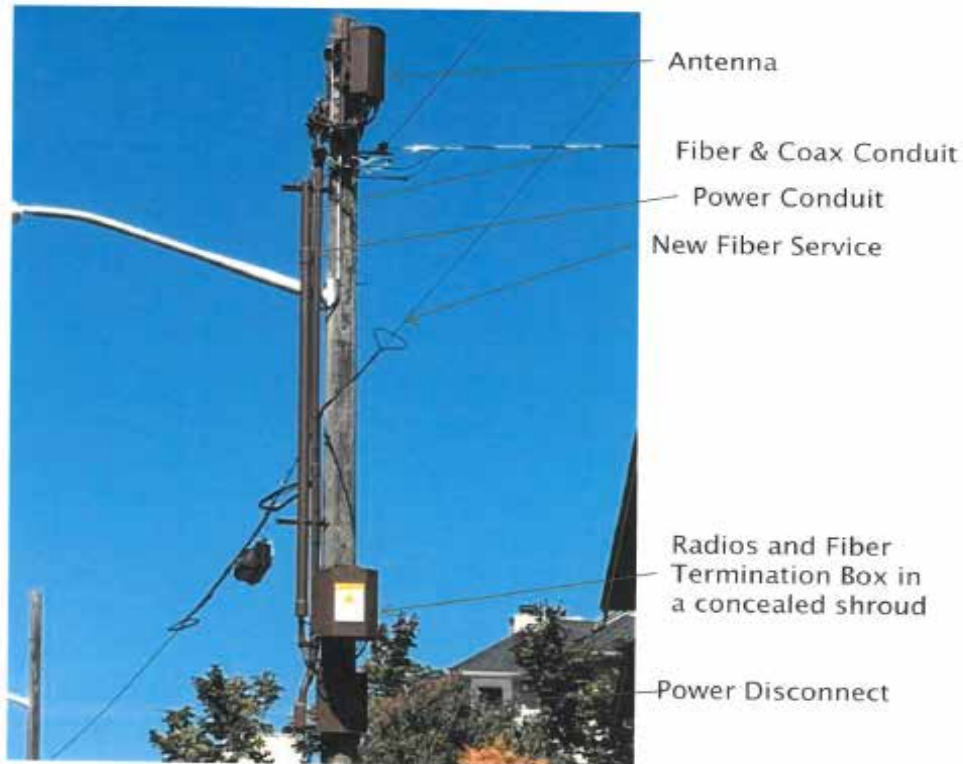


Clearwire
Antennas



Small Cell Facilities

Small Cell - Is more than a Small Antenna Box



Small Cell Facilities



Federal Legal Authority for Wireless Facility Management by City

- The Telecommunications Act of 1996 states that local governments cannot “prohibit or have the effect of prohibiting wireless facilities,” but also preserves local zoning authority over the “placement, construction, and modification of wireless facilities.”

Federal Legal Authority for Wireless Facility Management by City

- Certain Limitations:
 - May not unreasonably discriminate against providers of “functionally equivalent services.”
 - Must act on request for approval within reasonable period of time after the request is filed.
 - Any denial of a request for wireless installation must be in writing and supported by substantial evidence.
 - City may not regulate wireless services based upon environmental effects of radio frequency emissions.

Recent Changes in Federal Wireless Facilities Law

- Federal Communications Commission (FCC) Issues “Shot Clock” Ruling in 2009 to define “reasonable period of time” for making decision on wireless applications:
 - 150 day approval/denial period for new facilities;
 - 90 day approval/denial period for collocation facilities;
 - Local governments cannot reject wireless application “solely” because another carrier or carriers serve the area.
- On May 20, 2013, U.S. Supreme Court upheld the FCC’s “Shot Clock” ruling in the case of *City of Arlington, Virginia v. FCC*, No. 11-1545.

Small Cell Facilities and State Law

- RCW 35.99 and RCW 35.21.860 allows cities to require service providers to obtain a franchise agreement to use the City's right of way.
- A service provider is defined to include a company or corporation providing telecommunication's service to the general public.
- Cities are prohibited from imposing franchise fees, but can recover the administrative costs connected with the franchise agreement and issuance of any permits.
- Cities have 120 days from the date a complete application is filed to take action on the application, plus a reasonable amount of time for City Council action.

Small Cell Facilities in the Right of Way – Pending Legislation

- Identical bills introduced in the House and Senate that would preempt city authority to manage the rights of way HB 1921 and SB 5711.
 - Access to rights of way – bill language could be interpreted as giving a right to providers to install or replacement poles throughout cities in areas that are closely regulated and protected like open space, parks, residential districts, historic districts, or locations that have been previously undergrounded at taxpayer expense.
 - Access to city-owned poles, light standards or other facilities.
 - Access to city-owned property outside the right of way.
 - Permitting and siting process and costs.

Small Cell Facilities in the Right of Way – Next Steps

- Adoption of Model Ordinance for deployment of small cell facilities in the right of way.
- Adoption of definitions in zoning code consistent with model ordinance.
- Adoption of appropriate “shot clock” code provisions.
- Implementation of Model Ordinance with standardized application form and collection of administrative fee.



Council Workshop Coversheet



Agenda Item Number	2.	Meeting Date	02/21/2017
Agenda Item Type	Presentation		
Subject	Temporary Emergency Housing		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Attorney		

Info Only	☐
Policy Review	☐
Policy DevMnt	☒
Other	☐

Summary

Cities and towns may regulate camping and other related activities within their jurisdiction through the exercise of their general police powers; however, Washington law has specifically restricted a municipality's ability to regulate the hosting of temporary encampments for the homeless on property owned or controlled by religious organizations. RCW 35.21.915 was adopted in 2010 in part, in response to the Washington Supreme Court decision of City of Woodinville v. Northshore United Church of Christ, where the court found that the imposition of a moratorium on tent cities upon a religious institution was unconstitutional. As a result, the City may not prohibit a religious organization from hosting a temporary homeless encampment. Absent a code provision in place providing a uniform permit process for this type of land use, the City is forced to be reactive rather than proactive and is limited to enforcing public health and safety regulations on a piecemeal basis. The purpose of this workshop item is to discuss the state statute and the WCIA model ordinance regulating homeless encampments. Assuming Council is in support of adopting this model ordinance, staff will modify it to be consistent with the City's zoning code provisions and then schedule it for Planning Commission review and public hearing.

Through

Bonnie Lanning
Feb 15, 15:53:03 GMT-0800 2017

Dept Head Approval

Lisa Beaton
Feb 15, 16:03:11 GMT-0800 2017

City Mgr Approval

Marie Mosley
Feb 17, 09:40:28 GMT-0800 2017

Attachments:

Presentation
Sample Ordinance

City Council Workshop
February 21, 2017

Temporary Emergency Housing

Temporary Encampments for
the homeless RCW 35.21.915
Proposed model ordinance
from WCIA

Temporary Emergency Housing – RCW 35.21.915

- › **Temporary Encampments for homeless – hosting by religious organizations;**
- › **RCW 35.21.915(1)** A religious organization may host temporary encampments for the homeless on property owned or controlled by the religious organization whether within buildings located on the property or elsewhere on the property outside of buildings.

Temporary Emergency Housing- RCW 35.21.915

(2) A city or town may not enact an ordinance or regulation or take any other action that:

(a) Imposes conditions other than those necessary to protect public health and safety and that do not substantially burden the decisions or actions of a religious organization regarding the location of housing or shelter for homeless persons on property owned by the religious organization;

(b) Requires a religious organization to obtain insurance pertaining to the liability of a municipality with respect to homeless persons housed on property owned by a religious organization or otherwise requires the religious organization to indemnify the municipality against such liability; or

(c) Imposes permit fees in excess of the actual costs associated with the review and approval of the required permit applications.

Temporary Emergency Housing – RCW 35.21.915

(3) For the purposes of this section, “religious organization” means the federally protected practice of a recognized religious assembly, school, or institution that owns or controls real property.

(4) An appointed or elected public official, public employee, or public agency as defined in [RCW 4.24.470](#) is immune from civil liability for (a) damages arising from the permitting decisions for a temporary encampment for the homeless as provided in this section and (b) any conduct or unlawful activity that may occur as a result of the temporary encampment for the homeless as provided in this section.

Proposed Model Ordinance from WCIA- Why Now?



Proposed Model Ordinance from WCIA – Why Now?



WCIA Model Ordinance

- › Members may provide for the siting of temporary encampments for homeless on property owned or controlled by religious organizations by use of a conditional use or temporary use permitting application process.

WCIA Model Ordinance

- › Process may include, but is not limited to the following elements:
 - › Require encampment to be sited on property owned or controlled by religious organization – applicant should be a religious facility or other community based organization as a sponsor or managing agency;
 - › Establish zoning setbacks in relationship to abutting property lines containing residential uses.

WCIA Model Ordinance

- › Establish maximum number of residents allowed within homeless encampment;
- › Establish parking requirements;
- › Prohibit minor children (or unaccompanied children from staying in the encampment;
- › Require the managing agency establish code of conduct for residents of the encampment and description of how it will be enforced;
- › Prohibit alcohol and other intoxicant use in the encampment.

WCIA Model Ordinance

- › Prohibit weapons in the encampment;
- › Require that managing agency ensure compliance with Washington State and City codes concerning, but not limited to, potable water connections, handling of human waste, refuse disposal, electricity and use of fire retardant materials.

WCIA Model Ordinance

- › Require that managing agency take all reasonable steps to obtain verifiable identification from prospective residents and use identification to obtain sex offender and warrant checks from appropriate agency;
- › Establish the duration of the encampment.

Questions?



ADM.39.01
SAMPLE TEMPORARY HOMELESS ENCAMPMENT ORDINANCE
Issued: 02/16

ORDINANCE NO. _____

AN ORDINANCE of the City of [Member], Washington, relating to Temporary Homeless Encampments; amending Chapter XX of the [Member] Municipal Code.

WHEREAS, in 2010, the legislature codified RCW 35.21.915, which, among other things, prevents cities from enacting ordinances or regulations or taking any other action that imposes conditions other than those necessary to protect public health and safety and that do not substantially burden the decisions or actions of a religious organization;

WHEREAS, the City desires to enact this Ordinance to set forth the requirements for issuance of a temporary use permit to an applicant wishing to host a homeless encampment;

WHEREAS, the standards and requirements set forth in this Ordinance are the minimum necessary to protect the public health and safety and do not substantially burden the decisions or actions of a religious organization regarding the location of housing or shelter for homeless persons on property owned by the religious organization;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF [MEMBER], WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section XXXXX of the [Member] Municipal Code is amended to add “Temporary Homeless Encampment” to the permitted uses table as shown in Exhibit XXXX.

Section 2. Section XXXXX of the [Member] Municipal Code, Use Specific Standards, is amended to add the following subsection:

Temporary Homeless Encampment

An application for a homeless encampment will be reviewed and decided upon by the Director of Planning and Community Development (hereafter “Director”) and must meet the following standards.

- a. An application for a Temporary Homeless Encampment permit [must include a local church as a sponsor or managing agency.] or [is only allowed on property in conjunction with a Religious Facility.] [An application for a homeless encampment must include a Religious Facility or other community-based organization as a sponsor or managing agency.] or [Must include an organization recognized by the Internal Revenue Service as exempt from federal income taxes as a religious organization.]

- b. The applicant shall submit an irrevocable, signed, and notarized statement granting the City permission to summarily abate the temporary use and all physical evidence of that use if it is not removed by the applicant within the period specified as part of the permit, and agreeing to reimburse the City for any expenses incurred by the City in abating the temporary use.
- c. The encampment shall meet all setbacks for the zoning districts described in Section XXXX of the [Member] Municipal Code. The encampment shall be located a minimum of 20 feet from the property line of abutting properties containing residential uses.
- d. The Director may require a sight-obscuring fence around the perimeter of the homeless encampment unless it is determined that there is sufficient vegetation, topographic variation, or other site conditions such that fencing would not be needed.
- e. Exterior lighting for the homeless encampment must meet the requirements of the [Member] Municipal Code Section XXXX.
- f. The maximum number of residents within a homeless encampment is XXX.
- g. Parking for XX vehicles shall be provided.
- h. The applicants shall submit a transportation plan which shall include provision of transit services. The homeless encampment shall be located within one-half (1/2) mile of transit.
- i. No [children under the age of 18] [unaccompanied children] are allowed in the homeless encampment. If a child under the age of 18 attempts to stay at the homeless encampment, the managing agency shall immediately contact Child Protective Services.
- j. No animals shall be permitted in the encampments except for service animals.
- k. The applicant shall submit a code of conduct for the encampment and describe how it is to be enforced by the managing agency. The code shall contain the following at a minimum:
 - i. No drugs or alcohol
 - ii. No weapons
 - iii. No violence
 - iv. No open flames
 - v. No loitering in the surrounding neighborhood
 - vi. Quiet hours
- l. The managing agency shall ensure compliance with Washington State and City codes concerning, but not limited to, drinking water connections, human waste, solid waste disposal, electrical systems, and fire-resistant materials. The City shall coordinate review of the Temporary Homeless Encampment permit with the [County Name] Health District and [Member] Fire Department to check compliance with the standards for homeless encampments.

- m. The managing agency shall take all reasonable and legal steps to obtain verifiable identification from prospective encampment residents and use the identification to obtain sex offender and warrant checks from the appropriate agency. All requirements by the City of [Member] Police Department related to identified sex offenders or prospective residents with warrants shall be met.
- n. The managing agency shall permit daily inspections by the City and/or Health Department to check compliance with the standards for homeless encampments.
- o. Homeless encampments may be approved for a time period not to exceed XXX days.
- p. There is no administrative appeal of the Director's decision for a temporary use permit. The action of the City in granting or denying an application under this chapter may be reviewed pursuant to the standards set forth in RCW 36.70C.130 in the [County Name] Superior Court. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision of the City. For more information on the judicial process for land use decisions see Chapter 36.70C RCW.

Section 3. Section XXXX of the [Member] Municipal Code is amended to add the following definitions:

Temporary Homeless Encampment

“Temporary Homeless Encampment” means a group of homeless persons temporarily residing out of doors on a site with services provided by a sponsor and supervised by a managing agency.

Managing Agency

“Managing Agency” means an organization that has the capacity to organize and manage a homeless encampment. A “managing agency” may be the same entity as the sponsor.

Sponsor

“Sponsor” means an entity that has an agreement with the managing agency to provide basic services and support for the residents of a homeless encampment and liaison with the surrounding community and joins with the managing agency in an application for a temporary use permit. A “sponsor” may be the same entity as the managing agency.

Section 4. This ordinance shall take effect and be in force XX-XX-XXXX following the end of the State Environmental Policy Act (SEPA) appeal period.



City Council Meeting Schedule March 2017

March 7, 2017
Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

March 14, 2017
Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Diversity Commission Update
 - a. Inclusive Cities Resolution
2. Benton-Franklin Council of Governments
3. Committee Updates
4. Comprehensive Plan Amendment Update – Housing/Utilities Elements

March 21, 2017
Tuesday, 6:30 p.m.

REGULAR COUNCIL MEETING

March 28, 2017
Tuesday, 6:30 p.m.

WORKSHOP MEETING

1. Code Amendments
2. Tourism & Economic Development Update
3. Comprehensive Plan Amendment Update – Capital Facilities/Transportation Elements

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March 2017
Updated 2/14/17