

ORDINANCE NO. 650

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending the City of Lakewood Land Use and Development Code, Title 18A, establishing revised telecommunications regulations and establishing an effective date.

WHEREAS, in October 2014, the Federal Communications Commission (FCC) adopted a "Report and Order" that takes steps to increase broadband deployment; and

WHEREAS, in January 2015, a Final Wireless Infrastructure Order issued by the FCC was published in the Federal Register that includes new mandatory requirements for how local governments, including the City of Lakewood; and

WHEREAS, this Order is intended to promote the deployment of wireless infrastructure to support wireless communications by eliminating what the FCC considers "unnecessary reviews" by jurisdictions that have authority to act on applications for such uses; and

WHEREAS, this Order curtails or eliminates some review procedures that the FCC has deemed not necessary for small-size facilities collocating on existing structures that are in compliance with local zoning requirements and concealment measures; and

WHEREAS, the City of Lakewood's insurance carrier, Washington Cities Insurance Association (WCIA) has strongly encouraged the City of Lakewood to amend its current wireless telecommunications ordinance; and

WHEREAS, the City of Lakewood has initiated a Land Use and Development Code text amendment; and

WHEREAS, pursuant to the provisions of the State Environmental Policy Act (SEPA), together with related state and local implementation guidelines, including Titles 14 and 14A of the Lakewood Municipal Code, the provisions of this Ordinance have been found to not constitute a project under SEPA, municipal code amendments that involve no changes to the physical environment; and

WHEREAS, on September 21, 2016, the Lakewood Planning Commission conducted a Public Hearing on the proposed changes to the City of Lakewood's telecommunications regulations; and

WHEREAS, following the Public Hearing, the Lakewood Planning Commission forwarded a set of recommendations to the Lakewood City Council via Planning Commission Resolution No. 2016-03; and

WHEREAS, the Lakewood City Council has reviewed materials relevant to public input, and staff, and Planning Commission recommendations; and

WHEREAS, the Lakewood City Council has considered the recommendations of the Lakewood Planning Commission; and

WHEREAS, the Lakewood City Council has considered the required findings in LMC 18A.02.415; and

WHEREAS, the municipal code text amendments are in conformity with the public convenience, general welfare, and good zoning practice, in that they would further implement land use policies, eliminate existing inconsistencies in the municipal code and in general, adherence to good planning practices.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1: Chapter 18A.85 Lakewood Municipal Code, is hereby created as follows:

Chapter 18A.85
Eligible Facilities Modification Code (Wireless Telecommunications)

18A.85.010	Purpose.
18A.85.020	Definitions
18A.85.030	Application Review

18A.85.010 Purpose.

This Chapter implements Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”), as interpreted by the Federal Communications Commission’s (“FCC” or “Commission”) Acceleration of Broadband Deployment Report & Order, which requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station.

18A.85.020 DEFINITIONS

For the purposes of this Chapter, the terms used have the following meanings:

a. *Base Station*. A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation:

i. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

ii. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks).

iii. Any structure other than a tower that, at the time the relevant application is filed with City under this section, supports or houses equipment described in paragraphs (a)(i)-(a)(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support. The term does not include any structure that, at the time the relevant application is filed with City under this section, does not support or house equipment described in (a)(i)-(ii) of this section.

b. *Collocation*. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

c. *Eligible Facilities Request*. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

- i. Collocation of new transmission equipment;
- ii. Removal of transmission equipment; or
- iii. Replacement of transmission equipment.

d. *Eligible support structure*. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with City under this section.

e. *Existing*. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this section.

f. *Site*. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

g. *Substantial Change*. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- i. For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from

the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

ii. For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

iii. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

iv. It entails any excavation or deployment outside the current site;

v. It would defeat the concealment elements of the eligible support structure; or

vi. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs (g)(i)-(g)(iv) of this section.⁶

h. *Transmission Equipment.* Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

i. *Tower.* Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

8.85.030 APPLICATION REVIEW

a. *Application.* City shall prepare and make publicly available an application form which shall be limited to the information necessary for City to consider whether an application is an Eligible Facilities Request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.

b. Type of Review. Upon receipt of an application for an Eligible Facilities Request pursuant to this Chapter, the City shall review such application to determine whether the application so qualifies.

c. Timeframe for Review. Within 60 days of the date on which an applicant submits an application seeking approval under this Chapter, City shall approve the application unless it determines that the application is not covered by this Chapter.

d. Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement by City and the applicant, or in cases where it is determined that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

i. To toll the timeframe for incompleteness, City must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application.

ii. The timeframe for review begins running again when the applicant makes a supplemental submission in response to jurisdiction's notice of incompleteness.

iii. Following a supplemental submission, City will notify the applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in paragraph (d) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

e. Interaction with Section 332(c)(7). If City determines that the applicant's request is not covered by Section 6409(a) as delineated under this Chapter, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of City's decision that the application is not a covered request. To the extent such information is necessary, City may request additional information from the applicant to evaluate the application under Section 332(c)(7)10, pursuant to the limitations applicable to other Section 332(c)(7) reviews.

f. Failure to Act. In the event City fails to approve or deny a request seeking approval under this Chapter within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

g. Remedies. Applicants and City may bring claims related to Section 6409(a) to any court of competent jurisdiction.

Section 2. Severability. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 3. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after final passage.

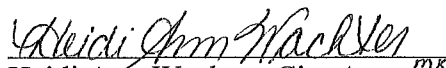
ADOPTED by the City Council of the City of Lakewood this 7th day of November, 2016.


Don Anderson, Mayor

Attest:


Alice M. Bush, MMC, City Clerk

Approved as to Form


Heidi-Ann Wachter, City Attorney