

# EUGENE CITY COUNCIL

## AGENDA ITEM SUMMARY



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### Work Session: Cell Towers

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Meeting Date: December 8, 2014  
Department: Planning and Development  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 9  
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#### **ISSUE STATEMENT**

This work session regarding cell towers in Eugene is in response to the City Council's request to review the federal limitations placed on local regulations and the requirements employed by other jurisdictions. This is an informational session and no formal action is required.

#### **BACKGROUND**

The purpose of this work session is to:

1. Review the limitations imposed by the Federal Communications Commission (FCC) related to telecom facilities.
2. Explore telecom code requirements imposed by Lane County and the City of Beaverton and determine if any future updates are necessary.

#### Overview of City Ordinance

In 1997, the City adopted its telecommunications ordinance in response to the federal government's Telecommunication Act (1996). Following its adoption and successful defense to legal challenge, it was considered a model ordinance for other cities.

The City ordinance was developed with the following key objectives:

- Encourage new antennae to be co-located on existing towers, utility poles and buildings rather than constructing new towers
- Where towers are necessary, encourage them to be located away from sensitive areas (e.g. residential land)
- Establish requirements that minimize visual and noise impacts to the community

To accomplish these objectives, the City established a tiered approach which provides reduced application processes as an incentive. For example, proposals that co-locate antenna on existing towers or structures require less application procedures than do new towers in the same zoning district. Conversely, the ordinance discourages new towers in more sensitive locations, such as residential areas, by requiring the most intensive public review process and requirements. In all

cases, towers are required to meet an extensive set of development standards. Review of telecommunication permits shows that the City has been successful in achieving these objectives. Approximately 75 antenna facilities have been co-located on existing towers and structures since the ordinance was adopted in 1997, while only 14 new cell towers have been constructed during that timeframe (Attachment A). Of those new towers, the majority are located on industrial lands, with some additional towers on commercial land. It's worth noting that most of the 14 towers were constructed in the first few years following adoption of the ordinance. Over the last 10 years, only three towers have been constructed.

While no (post ordinance adoption) towers currently exist on residential property, two recent applications have been approved on sites adjacent to residential areas (Oakway Golf Course and Rest Haven Cemetery). Both of these requests went through extensive public processes (including appeals) and were required to meet numerous development, design and screening requirements to mitigate impacts to nearby residents. As of this date, neither has been constructed.

### Federal Law

The Federal Telecommunications Act was enacted in 1996. One element of this act addresses the role of local governments in regulating telecom facilities. In general, the act preserves local government's authority to apply zoning regulations addressing the location, design and construction of cell towers (and other related facilities), but imposes the following limitations.

Local government regulations:

- May not unreasonably discriminate among providers of functionally equivalent services.
- May not prohibit or "have the effect of prohibiting" the provision of personal wireless services.
- May not regulate cell towers or related facilities based on radio frequency (RF) emissions, so long as a provider complies with FCC standards on RF emissions. A local government may not deny a cell tower permit based on RF emission concerns.
- Must base any denial of a cell tower/facility on substantial evidence in a written record and make any denial decision in writing.
- Must act on an application within a "reasonable time" (150 days for new towers).

While these provisions allow local governments a certain amount of discretion in how to regulate telecom facilities, many local jurisdictions across the country continue to face intense scrutiny (including legal challenges) from the telecom industry regarding the adoption and implementation of telecommunication regulations. In fact, as recently as 2012, federal legislation was adopted to limit local government authority regarding modifications of existing wireless towers. The FCC is currently conducting proceedings on rulemaking to implement legislation that could greatly impact local government authority over some aspects of wireless siting decisions. As local governments vigorously lobby to maintain their local authority, it's incumbent upon local governments to be prudent in how they exercise this authority.

### Review of Other Jurisdictions

As requested, staff has evaluated specific provisions from two other jurisdictions:

#### **Lane County**

The telecommunications standards for Lane County include a provision which requires that new

towers be setback at least 1,200 feet from any dwelling or school. The question raised for this work session is whether something similar could be imposed in Eugene. Given the relatively sparse development patterns in the county, significant setbacks such as this may be possible while still maintaining reasonable location options for cell providers. However, in Eugene, the relatively compact level of development makes such standards much more difficult to consider. Eugene staff explored this issue with the council several years ago and concluded that the vast majority of the city would be excluded from consideration, including most commercial areas, and large portions of industrial land (see Attachment B). Even if a significantly smaller setback (600 ft.) were imposed (Attachment C). The map reflects that a similar area of the city would remain excluded. In short, such measures, if applied to Eugene, could raise serious legal risk regarding compliance with the Federal Telecommunication Act.

### **Beaverton**

Staff was also asked if there is anything to learn from Beaverton's code. Staff has reviewed their provisions and would generally conclude that Beaverton's ordinance is quite similar to Eugene's. Like Eugene, Beaverton employs a tiered approach which encourages co-location over new towers, and encourages tower locations in their industrial and commercial zones over residential. Staff has provided a comparison chart (Attachment D) to illustrate some of the key features of both ordinances as it relates to towers in residential areas. Following are a few interesting distinctions:

- Eugene prohibits towers in several zoning districts including its medium and high density residential zones, while it appears towers are allowed in all zones within Beaverton.
- Eugene requires a 2,000-foot separation between towers. Beaverton does not have such a requirement.
- Eugene requires the ancillary equipment to be underground and meet a 45 decibel limit. Beaverton allows the equipment above ground and has no specific noise standards.
- Eugene requires an independent review by a telecom expert to verify the applicant's technical reports. Beaverton does not appear to have a similar requirement.

### Conclusion

Based on the information above, staff offers the following observations:

- 1) Co-location of telecom facilities, rather than new tower construction, continues to be the dominant trend in Eugene.
- 2) The pace of new tower construction is relatively low (one every two or three years).
- 3) Eugene's telecom regulations compare favorably to other Oregon communities discussed above.
- 4) As the federal government considers whether to further restrict local government authority (related to telecom regulations), any future action by cities that are perceived as more restrictive will likely draw significant attention from both the federal government and the telecom industry.

### **COUNCIL OPTIONS**

This matter is before the City Council as a discussion item. No action is required.

**CITY MANAGER'S RECOMMENDATION**

No recommendation is necessary as this is a discussion item.

**SUGGESTED MOTION**

None.

**ATTACHMENTS**

- A. Cell Tower Map
- B. Residential Setback Map: 1,200 ft. buffer
- C. Residential Setback Map: 600 ft. buffer
- D. Code Comparison chart

**FOR MORE INFORMATION**

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