



Planning Commission Staff Report

To: Planning Commission
 From: Planning Staff
 Report Date: October 28, 2016
 Meeting Date: November 1, 2016
 Item: Workshop in Order to Review Draft Telecom Ordinance

General Information

Requested Actions:	Review and discuss the draft telecommunications facilities ordinance.
Included in Staff Report:	<ol style="list-style-type: none"> 1. Overview 2. Relevant comprehensive plan policies 3. Telecommunications Act Municipal Authority Summary 4. Links to relevant legal references regarding telecommunication towers
Attachments:	<ol style="list-style-type: none"> 1. Draft telecommunications facilities ordinance (tracked changes) 2. Draft telecommunications facilities ordinance (clean) 3. Map of existing telecommunications facilities 4. Photos of existing telecommunication facilities 5. July 5th, 2016 and October 18th, 2016 minutes and regarding discussion of telecommunication towers

Overview:

The City has begun to create a new ordinance to address the placement of new telecommunication facilities. Placement of future telecommunications facilities should reflect Sandpoint’s comprehensive plan goals and policies. The attached draft ordinance aims to specifically address minimizing the number of antenna towers throughout the community, encouraging co-location of telecommunication facilities, encouraging the use of existing buildings and light or utility poles, ensuring that telecommunication facilities are located and designed to minimize visual impact on the surroundings,

and ensuring that the City adheres to the rules and regulations in the Telecommunications Act of 1996. Following the continued discussion at the October 18th Planning and Zoning Commission meeting, staff has made various edits to the draft ordinance for review.

At their August 10th meeting, the City Council adopted a six-month moratorium on all permits for telecommunication towers in order for the city to properly address them within land use codes.

Relevant Comprehensive Plan Policies:

- Goal CD-1: Historic Town, Policy A: Ensure that all commercial, single and multi-family development respect the town’s unique historic character, in architecture, density and in site planning.
- Goal H-2: Existing Neighborhoods, Policy B: Create street environments that would be appropriate for historic single-family neighborhoods.
- Goal T-5: Airport, Policy C: Provide for safe air navigation by approving appropriate safeguards to ensure that airport operations are conducted in a safe efficient manner.
- Goal PS-3: Education, Policy A: Consider impacts on the school district when considering land use decisions.
- Goal PS-1: Public Services, Policy C: Arrange land uses and public services systems to make them as efficient as practicable.
- Goal E-4: Downtown Revitalization, Policy G: Encourage preservation of historic buildings.

Municipal Authority to Regulate Telecommunication Facilities per the Telecommunications Act of 1996:

Although municipalities retain the right to adequately address issues relating to the placement, construction, and modification of wireless communication facilities, there are certain limitations. Cities:

- cannot adopt regulations based on RF emissions or that which is the prevue of the FCC
- cannot unreasonably discriminate among providers of functionally equivalent services,
- cannot regulate those providers in a manner that prohibits or has the effect of prohibiting the provision of telecommunications services or personal wireless services,
- must act on applications within a reasonable time, and
- must document denial of an application in writing supported by “substantial evidence”

Links to relevant legal references

Information Memo from the League of Minnesota Cities:

<http://lmc.org/media/document/1/celltowerssmallcelltechanddas.pdf?inline=true>

Fed. Dist. Court in KS Finds City Did Not Violate the Telecommunication Act in Denying Cell Tower Permit:

<https://lawoftheland.wordpress.com/2016/08/25/fed-dist-court-in-ks-finds-city-did-not-violate-the-telecommunication-act-in-denying-cell-tower-permit/>

Fed. Dist. Court in PA Finds Township Did Not Violate TCA in Wireless Communication Tower Denial:

<https://lawoftheland.wordpress.com/2016/05/29/fed-dist-court-in-pa-finds-township-did-not-violate-tca-in-wireless-communication-tower-denial/>

Fed. Dist. Court in OH Finds no Discovery was Permissible to Support Board's Defense that Substantial Evidence Supported Its Decision to Deny a Zoning Permit to Construct a Telecommunications Tower:

<https://lawoftheland.wordpress.com/2015/11/26/fed-dist-court-in-oh-finds-no-discovery-was-permissible-to-support-boards-defense-that-substantial-evidence-supported-its-decision-to-deny-a-zoning-permit-to-construct-a-telecommunications-tower/>

Fed. Dist. Court in MA Reverses ZBA's Denial of Permits for Wireless Communications Tower:

<https://lawoftheland.wordpress.com/2015/07/20/fed-dist-court-in-ma-reverses-zbas-denial-of-permits-for-wireless-communications-tower/>

NC Appeals Court Holds "Monopine" Cell Tower Meets Local Definition of Concealed Wireless Facility:

<https://lawoftheland.wordpress.com/2015/03/10/nc-appeals-court-holds-monopine-cell-tower-meets-local-definition-of-concealed-wireless-facility/>

Fed. Dist. Court in NY Orders Granting of Permits for Wireless Communications Tower Finding Gap In Service and No Other Suitable Location Available:

<https://lawoftheland.wordpress.com/2015/02/23/fed-dist-court-in-ny-orders-granting-of-permits-for-wireless-communications-tower-finding-gap-in-service-and-no-other-suitable-location-available/>