



City of Laramie

Planning Division
P.O. Box C
Laramie, WY 82073

Planning: (307) 721-5207

Fax: (307) 721-5248

LARAMIE PLANNING COMMISSION

September 28, 2020

STAFF REPORT

FILE: TA-19-02: Small Wireless Facilities Updates LMC 15.14.130

REQUEST: An amendment to Chapter 15.14.130 – Wireless Communication Towers and updating code related for Small Wireless Facilities.

APPLICANT: City of Laramie

PURPOSE: An amendment that will change multiple sections of the existing LMC related to Wireless Communication Towers and add new language related to Small Wireless Facilities.

PREPARED BY: Derek T. Teini, Planning Manager

STAFF RECOMMENDATION:

Move to recommend that the City Council **approve** an amendment to LMC 15.14.130 related to small wireless facilities, based on findings of fact and conclusions of law.

APPLICABLE CODE SECTION(S):

Text Amendments must be reviewed by the Planning Commission and City Council. Planning Commission action is forwarded to the City Council as a recommendation.

- Laramie Municipal Code Title 15, Unified Development Code
- Wyoming State Statutes Title 15 Cities and Towns, Article 5 Planning
- Wyoming State Statutes Title 15 Cities and Towns, Article 6 Zoning
- Laramie Comprehensive Plan
- Thrive Laramie: A Community and Economic Development Action Strategy for the Next 10 Years

BACKGROUND AND SUMMARY:

Small Cell facilities are an emerging technology in the wireless networking world. In the past, the industry relied on larger towers with an extended range. Now the industry is transitioning to a technology that allows for high transmission speeds but as a lower range and without the towers. Because of the reduced range, more wireless antennas (i.e. more equipment) are needed to provide the coverage and speeds desired. In addition, more antennas are needed to be able to provide service around buildings and other impediments that cannot be transmitted through. This technology is especially critical to the deployment of 5G technology, which is essential to economic and cellular service growth for the region and communities.

Unlike in the past where one tower may cover a large area, many wireless small cell facilities are needed to add capacity to the same geographic area, and many times are located within public rights-of-ways due to the location of roads covering most of the community. Access to fiber optics and a power supply is also needed.

Additionally, other infrastructure such as light poles, utility poles, street signs and traffic signals are convenient collocation sites for these antennas. Because of the high likelihood and requirement to allow these facilities within rights-of-ways, communities need to consider the potential impacts that the deployments may create. Although some small cell facilities can blend into the surroundings (picture to the right), not all do (picture below) and many are unsightly and could create negative impacts not only to the visual surrounding of the community but also raise related issues such as noise, light or access to other essential infrastructure.



In September of 2018 the Federal Communications Commission issued an Order in relation to small cell deployments within local governments.

ROW. This ruling explains that a state or local government cannot prohibit or effectively prohibit the deployment of personal wireless service facilities. State and local governments can charge fees that are no greater than a reasonable

approximation of objectively reasonable costs for processing applications and for managing deployments in the rights-of-way. The Order identifies specific fee levels for small wireless facility deployments that presumably comply with the relevant standard; and provides guidance on when certain state and local non-fee requirements that are allowed under the Act—such as aesthetic and undergrounding requirements—may constitute an effective prohibition of service.

The most notable parts of this FCC order include limiting annual compensation for a small wireless facility in the right-of-way to \$270.00 a year, a \$500 application fee for the first 5 sites and \$100 for each additional site; with the exception that a new pole installation is \$1000.00 and requiring small wireless facility installations to be approved within 60 days for existing poles and 90 days for new pole installations. Also, localities are limited in how much they can charge to lease these facilities that are often located within rights-of-way. Localities are still able to levy higher fees however if they conduct a cost study (not done in association with this project or contract).

It is recommended that municipalities quickly move to enact zoning, installation parameters and any other regulations revolving around small cell wireless installations. Developing pre-approved design and aesthetic requirements could be particularly beneficial in processing applications faster and defending legal challenges. The FCC order doesn't prohibit localities from outlining their own aesthetic requirements, provided they are "reasonable" and published in advance.



In order to draft this technical code update, the City hired River Oaks Communications Corporation (Bob Duchon-VP) to provide an ordinance that could be tailored to Laramie's specific needs and existing code. River Oaks Communications has extensive knowledge in the area of small cell-wireless codes and has conducted similar work in surrounding communities such as Cheyenne, Cody, Pinedale and Casper, template ordinances for Nebraska and New Mexico cities and consulting work in 38 other states. River Oaks has also produced a draft model ordinance for WAM, which could be used by varying size communities to put in a basic level of regulatory control if desired.

The ordinance being considered with this text amendment amends the portions of the existing LMC 15.14.130 which deals with Wireless Communication Towers, as well as adds additional sections of code to the end of LMC 15.14.130 to specifically address Small Wireless Facilities. In the existing sections of LMC 15.14.130 a summary of the changes include:

- Basic editorial items and clean-up.
- Terminology changes throughout the existing sections of code to be move current with commonly used terms.
- Removal of a reference to the "Electronic Industries Association" which no longer exists.
- A Change to the setback requirement for towers going from 75% to 100% to ensure that no tower falls on an adjacent property.
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In addition to the changes to the existing sections of code, new sections are being added to the end of the existing LMC 15.14.130. A summary of the changes that will be found in sections 15.14.130.M – 15.14.130.EE include:

- A purpose and definitions section is added related to Small Wireless Facilities.
- Standards related to access and installation within rights-of-way is provided. Additions include how they are allowed, responsibilities, maintenance requirements, permitting and collocations.
- When this section of code is applicable and what facilities are exempt from the provisions of this section of code. Key exemptions include, tv dishes, ham radio, emergency installations due to a state of emergency, local internet providers and their equipment and fixed wireless broadband services.
- Where the facilities are allowed (all zoning districts).
- Noise study requirements if in or within 200 feet of a residential zoning district.
- Design requirements related to aspects such as color, lighting, landscaping, site development standards, stealth designs and screening standards.
- Public notice requirements if new or replacement poles are installed, or if a Variance or appeals request is made.
- Prohibition of signs on the poles or installations.
- Visual impact considerations for residential and downtown zoning districts.
- Standards for building mounted facilities.
- Height requirements for mounted arrays on existing structures. (15 feet above the structure; if more is needed a Conditional Use Permit is required that includes more standards for review.)
- Requirements for associated equipment needed in association with the antenna or array.

- Safety requirements such as traffic control, required locates, street closure permits and right-of-way obstruction permits.
- Additional Variance standards when a Variance is requested.
- Ability for the City to have an independent technical review if needed, especially in the event a Conditional Use Permit is requested.
- Inspection standards.

To be clear, the proposed ordinance does not prohibit the installation of these facilities, nor is that the desire of the ordinance. The ordinance will protect the community from visual clutter and help aid it in the review of applications, and the covering of costs related to permit requests that will be received. The technology associated with small wireless facilities is essential infrastructure and will be needed for future economic growth within the community.

Finally, River Oaks Communications as part of their contract has developed a Master License Agreement to be used between wireless companies and the City of Laramie, a tolling agreement that allows for time extensions to the FCC “shot clocks” and a “shot clock” document that can be used by staff as a guide for properly following federal timing requirements. .

Relationship to Planning Document and Laramie Municipal Code

The Laramie Comprehensive Plan, Thrive Laramie: A Community and Economic Development Action Strategy for the Next 10 Years and Laramie Municipal Code provide guidance related to the amendments being proposed. The Comprehensive Plan supports codes and regulation that protect the visual character of the community as an essential element related to quality of life as well as within key areas such as the Downtown Commercial Zoning Districts or community gateways. Using the support found in the Comprehensive Plan, the City has already adopted regulations that follow this guidance and can be found in the current regulatory language found in 15.14.130. This section addresses similar requirements for other wireless facilities such as height, location, and color amongst other items. Finally, the Thrive Laramie: A Community and Economic Development Action Strategy for the Next 10 Years notes that broadband technology and access to high-speed connectivity is key to community growth and economic development. Although this ordinance places permissible regulatory measures on these facilities, the proposed ordinance does not prohibit the installation of these facilities, nor is that the desire of the ordinance. The ordinance will protect the community from visual clutter and help aid it in the review of applications, and the covering of costs related to permit requests that will be received. The technology associated with small wireless facilities is essential infrastructure and will be needed for future economic growth within the community and why an avenue for approval through this ordinance is so important.

PUBLIC COMMENTS:

The City and our consultant, River Oaks Communications, has conducted outreach throughout the development of the new regulations with local, regional and national providers. During the development of the regulations, a draft of the regulations was provided to providers for comments. We received many comments, some of which were incorporated into the draft, while other, which may have not been in the best interest of the City, were not included. Following revisions to the draft, another draft was sent out for review and comments under a similar review process. Anyone who has participated in the process was given this opportunity.

This amendment was legally advertised in the *Laramie Boomerang* on September 12, 2020. Staff has received no phone calls or comments outside of the public outreach process we conducted for this Text Amendment. Attached is a letter of support for the Text Amendments.

FINDINGS OF FACT:

The amendment is found to be in accordance with substantive and procedural requirements and necessities in City of Laramie Code, and the Comprehensive Plan.

CONCLUSIONS OF LAW:

The amendment is proceeding in accordance with applicable law.

ALTERNATIVES:

1. Approve the Code Text Amendment based on findings of fact and conclusions of law (**Staff recommendation**);
2. Approve the Code Text Amendment based upon modifications recommended by the Planning Commission based on findings of fact and conclusions of law;
3. Deny the Code Text Amendment based on findings of fact;
4. Postpone the Code Text Amendment until issues identified during the meeting can be resolved.

RECOMMENDED MOTION:

Move to recommend that the City Council **approve** an amendment to LMC 15.14.130 related to small wireless facilities, based on findings of fact and conclusions of law.

ATTACHMENTS:

1. Draft City Council Ordinance (25 pages)
2. Letter of Support Visionary Communications, Inc. (1 page)