



**CITY OF SAINT PAUL**  
*Christopher B. Coleman, Mayor*

*25 West Fourth Street  
Saint Paul, MN 55102*

*Telephone: 651-266-6700  
Facsimile: 651-228-3220*

DATE: January 20, 2015

TO: Comprehensive Planning Committee

FROM: Bill Dermody, City Planner

RE: Cellular Telephone Antenna Zoning Study: Potential amendments prompted by the FCC Final Rules

---

## **ISSUE**

The Federal Communications Commission (FCC) published its Final Rules on Wireless Infrastructure on January 8, 2015. The Final Rules allow certain automatic size increases not contemplated by the City's regulations, as well as establishing parameters for review. Zoning Code amendments via a new zoning study may be advisable in order to manage the regulatory changes contained in the Final Rules.

## **BACKGROUND**

The FCC occasionally adopts rules and regulations that interpret and implement federal law. FCC rules take precedence over local regulation such as the City's Zoning Code. The recently released Final Rules address several wireless infrastructure issues: interpretation of terms in the *Spectrum Act* regarding wireless facility collocations, reevaluation of FCC's previous 2009 *Declaratory Ruling* "shot clock" provision regarding processing timelines, exemptions from National Environmental Protection Act (NEPA) and National Historic Preservation Act (NHPA) reviews for small cell sites, and exemptions from environmental notification for temporary towers. The *Spectrum Act* interpretation is of greatest significance to zoning regulations. The background section below addresses the FCC's *Spectrum Act* interpretation, its updated "shot clock" interpretation, and the potential effect on the City's Zoning Code.

### **Spectrum Act Interpretation**

The *Spectrum Act* is a small section within the 102-page *Middle Class Tax Relief and Job Creation Act of 2012*, as follows:

#### **SEC. 6409. WIRELESS FACILITIES DEPLOYMENT.**

##### **(a) FACILITY MODIFICATIONS.—**

(1) IN GENERAL.—Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) ELIGIBLE FACILITIES REQUEST.—For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves—

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

Among other aims, the FCC desired to determine the meanings of “existing wireless tower or base station” and “substantially change the physical dimensions.” The Final Rules determined that an “existing wireless tower or base station” includes not only towers built expressly to support wireless facilities, but also other structures (such as commercial or residential buildings, or utility poles) that support wireless facilities. The Final Rules also determined that a modification that “substantially changes the physical dimensions” is generally one that does any of the following:

- (1) increases the height of a tower outside the public rights-of-way by more than 10% or 20 feet, whichever is greater, or protrudes from the edge of said tower by more than 20 feet (20 feet height increase is measured from top of existing antennas to bottom of new antennas; Note: current technology generally consists of 6- or 8-foot tall antennas);
- (2) increases a base station’s (building’s or utility pole’s) height by more than 10% or 10 feet, whichever is greater, or protrudes from the edge of said structure by more than 6 feet (height increase measured from height of base station, presumably to top of new antennas);
- (3) defeats the existing concealment elements of a tower or base station (e.g. church steeple enclosure or painting to match the building); or
- (4) does not comply with conditions of the facility’s prior approvals, besides those restricting height or size.

Local government approval of such eligible facilities requests can be conditioned only on compliance with building codes and other standards reasonably related to health and safety. Aesthetics cannot be taken into account, except with regard to maintaining existing concealment elements.

Notably, the *Spectrum Act* does not apply to local governments acting in their proprietary capacities, meaning that the City retains its usual discretion to allow or reject wireless facilities on City-owned land such as rights-of-way or parks.

#### **“Shot Clock” Provision: Effect on City Reviews**

In 2009, the FCC declared that local governments have 150 days to process applications for new wireless facilities and 90 days to process collocations, unless an extension is mutually agreed to. The Final Rules have shortened the review time period for collocations that are covered by the *Spectrum Act* to 60 days. Additionally, the Final Rules specify that such application that is not reviewed within 60 days is automatically “deemed granted.” The 60-day review period is intended only to allow a local government to determine whether the application is an “eligible facility.” Though the Final Rules do not specify that *Spectrum Act*-eligible facilities be reviewed administratively, the limited scope of review and the short timeline essentially require administrative reviews.

### **Effect on Zoning Code**

The Zoning Code contains several regulations affected by the Final Rules and their allowance for “automatic” future collocations.

First, Sec. 65.310(a) requires a conditional use permit for cellular antennas on a residential structure less than 60 feet high, but none of the evaluation criteria account for the new reality that allowing one set of antennas in a particular setting on the structure could automatically allow for future antennas to be placed in different settings on the same structure. One solution for this issue is to simply state that conditional use permit reviews shall take into account not only the subject application’s request, but also any potential future “automatic” collocations.

Additionally, in its conditional use permit review the City could consider adding specific conditions to address placement on a structure (e.g. set back at least 10’ from the front façade parapet), concealment requirements (e.g. painted to match the rooftop equipment canopy), or other issues of theoretical concern for collocations, even if they are not presented by the subject application.

Second, Sec. 65.310(d)(3) refers to antennas “blend(ing) into the surrounding environment” with paint color or camouflaging treatments, which is similar to the “concealment” language used in the Final Rules. Inserting the term “concealment” would make clear the intent of applicability for the Final Rules’ requirement of future collocations to maintain concealment elements.

Finally, there are four (4) Zoning Code clauses that involve cellular antenna height, addressed individually below:

- Sec. 65.310(b) allows antennas in residential, traditional neighborhood, and OS—B3 and B5 districts to extend no more than 15 feet above the structure to which it is attached, and no more than 40 feet above such structure in the B4 district. The Final Rules would not allow automatic collocations exceeding these height regulations, except on structures greater than 150 feet in height. No amendment of this language is recommended.
- Sec. 65.310(d)(1) generally restricts new freestanding towers in residential, traditional neighborhood, and business districts to 75 feet in height, or 100 feet if they are designed to carry two (2) antennas. (The height limits can be exceeded if the applicant demonstrates that the surrounding topography, structures, or vegetation make the limits impractical.) The Final Rules would allow for a tower designed to carry two (2) antennas that is currently built to 100 feet to be further extended by about 28 feet (20-foot separation + 8-foot high antennas), provided that it does not need replacement for structural reasons. Clearly, the Zoning Code intends for 100 feet to be an absolute height limit, unless there are site-specific impracticalities. One solution for this issue is to eliminate the explicit allowance for antennas designed to carry multiple antennas to exceed 75 feet, knowing that the Final Rules allow a similar height increase (approximately 28 feet).
- Sec. 65.310(d)(2) requires antennas on freestanding poles in residential, traditional neighborhood, and business districts to be set back by the antenna height + 10 feet from the nearest residential structure. Since the Final Rules allow such poles to be increased in height by approximately 28 feet, it may be appropriate to increase the setback from residential structures accordingly.

- Sec. 65.310(e) limits antennas on freestanding poles in industrial districts to 150 feet in height and requires setbacks from the nearest residential structure of the antenna height + 10 feet. Since the Final Rules allow such poles to be increased in height by approximately 28 feet, it may be appropriate to decrease the allowed height and increase the setback from residential structures accordingly.

## **ANALYSIS**

The Comprehensive Plan refers to the importance of ensuring investments in local and regional infrastructure supportive of economic development, as well as the importance of promoting aesthetics and development standards. There are also two clauses of the Comprehensive Plan's Land Use Chapter with more specific guidance: Strategy 2.23 calls for site plan review standards in the I1, I2, and I3 districts that enhance the aesthetic quality of the district, and Strategy 3.7 calls for using the Zoning Code to make development compatible with the existing and planned character of a neighborhood or other area of the city.

## **STAFF RECOMMENDATION**

Staff recommends that the CPC recommend that the Planning Commission initiate a zoning study and release the study and proposed amendments for public review on January 30, 2015 and schedule a public hearing for March 13, 2015.

## **Attachments**

1. Proposed Zoning Code Amendments
2. FCC Final Rules