

Interpretation No.: WCF-05

**SANTA CRUZ COUNTY PLANNING DEPARTMENT
ADMINISTRATIVE PRACTICE GUIDELINE**

Interpretation No.: **WCF-05 (Wireless Communication Facilities – Application processing pursuant to federal and state law)**
Effective Date: 08/25/16
Originally Issued: 08/25/16
Revised:

Issue of Concern

Certain provisions of the County’s Wireless Communications Facility (WCF) Ordinance require guidance and clarification so that the ordinance is administered consistently with recent changes in Federal and state rulings and legislation, namely the FCC’s “shot clock”, Section 332(c)(7) of the Communications Act of 1934 and Sec. 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”) at the federal level, and AB 57 at the state level

**Applicable Regulatory Section(s)
§13.10.660-668**

PROPOSED ADMINISTRATIVE PRACTICE GUIDELINE:

**Applications Subject to Spectrum Act
(60-Day “Shot Clock”)**

All proposals for modifications to existing WCFs that qualify as “eligible facilities” under the Spectrum Act (i.e., collocation, removal or replacement of new transmission equipment on existing cell towers and/or base stations), that do not constitute a “substantial change in the physical dimensions” of the subject WCF (see below) shall be processed as Level 3 Minor Variations to the original WCF permit(s) to the extent allowed by the County Code, and the County shall approve such applications, potentially with reasonable modifications/conditions of approval, within 60-days of submittal of an application. The 60-day “shot clock” starts the date the application is received by staff, stops when notice is provided that the application is incomplete, and starts again upon resubmittal by applicant of all required completeness items.

A “substantial change in the physical dimensions” of an existing WCF (i.e., a wireless tower* or base station**) is an increase that results in:

- More than 10% increase in height, or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater. For other eligible base stations/support structures (e.g., roof-mounts, microcells or any WCFs in rights-of-way, etc.), increases the height of the structure by more than 10% or more than 10 feet, whichever is greater.

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- Installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets. For towers in the public rights-of-way and eligible base stations/support structures (e.g., roof-mounts), installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure.
- New antenna(s) or appurtenance(s) that protrude more than 20-feet horizontally from the edge of tower, or more than the width of the tower structure at the level of the appurtenance, whichever is greater. For other eligible base stations/support structures (e.g., roof-mounts, microcells, etc.), if it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 feet.
- Excavation needed outside current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. For other eligible base stations/support structures (e.g., roof-mounts, microcells, etc.) this is further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.
- Any modification that would "defeat the concealment elements" of the wireless tower or eligible base station/support structure.
- Any modification that does not comply with previously approved conditions of approval - other than those conditions related to height, width, equipment cabinets, excavation/deployment, or concealment elements- associated with the siting approval of the construction or modification of the eligible support structure or base station equipment.

* A "tower" according to the FCC definition is 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. The term "tower", and the size criteria/dimension thresholds given above, do not apply to utility poles that are solely or primarily used for purposes other than supporting FCC-licensed antennas.

** A "base station" according to the FCC definition is 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 or any equipment associated with a tower. A "base station" may include a utility pole that currently enables FCC-licensed or authorized wireless communications between user equipment and a communications network.

A tower or base station is "existing" 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

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built, but was lawfully constructed. A tower or base station that was not built, modified or maintained correctly, which violates conditions of approval of any permit or approval therefore, or which violates County Code shall not be considered “existing.”

Shot Clock and AB 57

The FCC established a nationwide standard for a “reasonable period of time” to process wireless applications for zoning approval (building permit process is separate). The FCC originally established two time periods: 90-days for action upon a collocation request (including existing WCF upgrades/ modifications) and 150-days for action upon a new siting application. Pursuant to Section 6409(a) of the Spectrum Act the FCC established a third, 60-day, timeline for “eligible facility requests” that do not include a “substantial change in the physical dimensions” of an existing wireless tower or base station (discussed above). The time runs from the date of application submittal. The shot-clock is temporarily stopped, or “tolled”, if an application is deemed incomplete (in writing) within the first 30-days after submittal, and it starts up again upon resubmittal of completeness items by the applicant. The County then has 10-days to determine if the resubmittal is sufficient. If no further completeness determination is made by the County within 10-days the application is “deemed complete”, and the shot clock continues running.

Under AB 57, a state law which went into effect on Jan. 1, 2016, if the County fails to act upon a WCF application within the FCC shot clock time limits, or does not obtain a written “tolling agreement” from the applicant extending the shot clock time limit, the application is “deemed approved”.

Proposals for “major collocations” (or any “substantial change in the physical dimensions” of an existing wireless tower or base station, as defined above) or new WCFs shall still be processed as Level 5 Commercial Development Permits, and can be denied in a manner consistent with County Code. “Shot clock” time limits apply only to zoning approval stage, not building permit processing stage.

WCF Projects That Qualify as Building Permit-Only

While the 60-day, 90-day and 150-day processing timelines do not apply to the Building Permit process, applicants of WCF proposals should be informed that they can apply for concurrent Building Permit processing to expedite their final approval, with the understanding that the applicant accepts the risk that the zoning permit process may result in the need to make changes to the initial Building Permit submittal.

Antenna or equipment “swap-outs” that involve in-kind replacement of old antennas or other equipment for new antennas/equipment of approximately the same size, and additions of other minor equipment that would out of view or otherwise visually inconspicuous, are exempt from discretionary review and may be approved with a Building Permit-only, provided a new cumulative radio-frequency (RF) emissions calculation/estimate report, taking the new

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antenna(s)/equipment into account, presenting the proposed new RF levels as a percentage of the FCC's RF emission limits, and existing/proposed condition photo-simulations, are submitted with the Building Permit application materials.

County Code Sections Affected

All applicable subsections of the WCF Ordinance (Sec. 13.660-668) will be affected by the 150-day shot clock standard for processing **new** WCFs, the 90-day shot clock standard for major modifications/collocations, and the 60-day shot clock for "eligible facility requests" (i.e., most collocations/modifications, removal or replacement of transmission equipment on **existing** cell towers and/or base stations) that fall below the "substantial change" thresholds.

Subsection 13.10.660(D)(21) – Definition for "Major Modification to Visual Impact" will be interpreted so that only WCF upgrades/additions that constitute a "substantial change in the physical dimensions", as defined above, are to be considered a "Major Modification to Visual Impact" and thus subject to Level 5 review with a public hearing. Collocation/modification proposals that fall below the "substantial change" thresholds (i.e., "eligible facility requests") will be subject to a Level 3 Minor Variation to the existing WCF permit that shall be approved (subject to reasonable modifications/conditions of approval).

Subsections 13.10.661(C)(3), 13.10.661(G), 13.10.663(A)(2), and 13.10.663(B)(12) dealing with collocations will be interpreted to comply with the requirements of Spectrum Act and the FCC "shot clock". The 9-antenna/3-equipment cabinet limit for collocations will no longer be in effect if the collocation/modification does not exceed the "substantial change" criteria thresholds.

Reason

Certain provisions of the County's Wireless Communications Facilities (WCF) Ordinance require guidance and clarification so that the ordinance is administered in compliance with recent changes in Federal and state rulings and legislation, namely the FCC's "shot clock", Section 332(c)(7) of the Communications Act of 1934, Sec. 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") and AB 57. This Administrative Practices Guideline ensures that County procedures comply with these regulations.


Kathy M. Previsich, Planning Director


Date