

City of Wichita  
City Council Meeting  
March 5, 2019

**TO:** Mayor and City Council

**SUBJECT:** DER2018-00016: Updates to the Wireless Communication Master Plan and the Unified Zoning Code Regulations of Wireless Communication Facilities (All Districts)

**INITIATED BY:** Metropolitan Area Planning Department *DM*

**AGENDA:** Planning (New Business)

---

**Recommendation:** Approve the Wireless Communication Master Plan and associated Unified Zoning Code amendments.

**Background:** In 2016, the State of Kansas enacted K.S.A. 66-2019 establishing numerous State mandates regarding how local units of government can regulate wireless communication facilities. The statute prohibited the following Wichita-Sedgwick County policies established by the Wireless Communication Master Plan:

- 1) Requiring applicants to document that no collocation opportunity is available prior to permitting construction of a new wireless communication facility.
- 2) Requiring applicants to demonstrate that a wireless communication facility addresses a wireless service provider need, rather than being constructed as a speculative facility.
- 3) Evaluating the merits of an application based on collocation opportunities.
- 4) Requiring small cell facilities in lieu of macro facilities in visually/environmentally sensitive locations.
- 5) Requiring applicants to agree to permit collocation on their facility by other service providers as a condition of approval.

Additionally, the statute deems an application for a wireless communication facility approved if the application is not acted upon within 150 days for a new facility or 60-90 days (depending on type) for a collocation application. Finally, the statute requires equal treatment of wireless communication facilities with utility installations when applying to locate in right-of-way but establishes a right-of-way fee cap on local governments that is significantly lower than the fee charged utilities.

In response to the statute, the Wichita-Sedgwick County Metropolitan Area Planning Commission (MAPC) approved an amendment of the Wireless Communication Master Plan (WCMP) and associated amendments of the Wichita-Sedgwick County of the Unified Zoning Code (UZC) in September 2016. The Sedgwick County Board of County Commissioners adopted the UZC amendments but not the WCMP amendment in December 2016. The Wichita City Council tabled both the WCMP and UZC amendments in December 2016 with the stated intention of seeking changes to the statute. No changes to the statute have been approved.

In October 2018, the Federal Communications Commission (FCC) issued Declaratory Ruling 18-133 that became effective January 14, 2019. The ruling establishes additional mandates regarding how local units of government can regulate wireless communication facilities as follows:

- 1) Requiring small wireless facilities up to a certain height and size to be permitted in the right-of-way and establishing "presumptively reasonable" fees that local governments can charge for the use of right-of-way.

*50-937*  
*50-938*

- 2) Requiring that local aesthetic requirements be reasonable, non-discriminatory, objective, and published no later than April 14, 2019.
- 3) Limiting the time to review of an application for small wireless facility for completeness to 10 days and establishing a procedure for written notification of application deficiencies.
- 4) Requiring that a single application be accepted for multiple locations.
- 5) Clarifying that the required review times are for all local permits not just zoning.

**Analysis:** The attached Wireless Communication Master Plan, January 2019, was adopted by a 13-0 vote on January 24, 2019, by the MAPC as an amendment of the Wireless Communication Master Plan adopted in March 2011, in order to comply with changes to Kansas law and the FCC ruling. The policies of the Wireless Communication Master Plan are implemented through the regulations of the Wichita-Sedgwick Unified Zoning Code. On January 24, 2019, the MAPC voted (13-0) to recommend the attached amendments to the Wichita-Sedgwick County Unified Zoning Code.

**Financial Considerations:** Approval will not create any financial obligations for the City.

**Legal Considerations:** The ordinances approving the Wireless Communication Master Plan, January 2019, and adopting the associated amendments to the Wichita-Sedgwick Unified Zoning Code have been reviewed by the Law Department and approved as to form.

**Recommendations/Actions:** It is recommended that the City Council adopt the findings of the MAPC; approve the Wireless Communication Master Plan, January 2019, adopt the associated amendments to the Wichita-Sedgwick County Unified Zoning Code; place the ordinances on first reading; authorize the necessary signatures; and instruct the City Clerk to publish the ordinances after approval on second reading.

**Attachments:** Wireless Communication Master Plan, January 2019  
Amendments to the Wichita-Sedgwick County Unified Zoning Code  
Ordinance for Wireless Communication Master Plan  
Ordinance for Unified Zoning Code  
MAPC Minutes

## **Wireless Communication Master Plan**

Prepared by:

Wichita-Sedgwick County Metropolitan Area Planning Department

With the assistance of:

City of Wichita Engineering Division

City of Wichita Law Department

Sedgwick County Public Works

Sedgwick County Counselor's Office

December 2019

Wireless Communication Master Plan – January 2019

**Table of Contents**

---

I.	Background .....	1
II.	Wireless Communication Deployment.....	4
III.	Location/Design Guidelines .....	6
	A. Location/Height Guidelines .....	6
	B. Design Guidelines .....	9
	C. Right-of-Way.....	11
	D. Submittal Requirements.....	13
	Appendix A: Definitions.....	15
	Appendix B: Adopting Documents.....	18

## I. Background

---

In 1999, the City of Wichita and Sedgwick County determined that they needed a clearer framework to review proposals for wireless communication facilities. An extensive planning process was initiated that included outreach to the community and wireless communication industry representatives. Community workshops and a wireless industry roundtable were held. Wireless industry representatives were surveyed and meetings were held with individual industry representatives. After a joint workshop with the Wichita City Council, Sedgwick County Commission and Metropolitan Area Planning Commission (MAPC) to review a draft plan, a city-county staff task force was assigned to meet further with the various stakeholders and prepare revisions to the draft plan. The city-county task force held numerous meetings with stakeholders from December 1999 through July 2000. In July 2000, the MAPC adopted the Wireless Communication Master Plan ("the Plan") as an element of the Wichita-Sedgwick County Comprehensive Plan. The Plan was subsequently approved by the Wichita City Council and the Sedgwick County Commission in August 2000.

Implementing revisions to the Wichita-Sedgwick County Unified Zoning Code (UZC) were approved at the same time. The UZC revisions were based on the Plan's recommendations to limit the overall number of wireless communication facilities by promoting collocation of multiple providers' antennas at a single facility. The UZC revisions also addressed visual obtrusiveness by restricting the tallest towers to heavy commercial and industrial areas, requiring setbacks from low-density residential areas, and promoting the use of monopole rather than lattice-type towers. Over the next ten years, over 100 new wireless communication facilities were built in the community, most of them monopole towers located in commercial areas that supported multiple providers' antennas.

In March 2011, the Plan was updated to reflect modifications made in 2008 to the UZC pertaining to the heights and zoning districts in which Administrative Permits could be granted, as well the limitation of Administrative Permits within the city limits to certain designated properties. The March 2011 update also included revisions that clarified when it is acceptable to use a lattice-type tower and when it is acceptable to use a monopole.

In 2016, the Kansas Legislature adopted K.S.A. 66-2019, which declared the regulation of wireless communication facilities to be a state-wide interest and directed the approach of cities and counties to regulate wireless communication facilities. The statute includes the following prohibitions that were established practices of the City of Wichita and Sedgwick County:

## Wireless Communication Master Plan – January 2019

- 1) Requiring applicants to document that no collocation opportunity is available prior to permitting construction of a new wireless communication facility.
- 2) Requiring applicants to demonstrate that a wireless communication facility addresses a wireless service provider need rather than being constructed as a speculative facility.
- 3) Evaluating the merits of an application based on collocation opportunities.
- 4) Requiring small cell facilities in lieu of macro facilities in visually/ environmentally sensitive locations.
- 5) Requiring applicants to agree to permit collocation on their facility by other service providers as a condition of approval.

Additionally, the statute deems an application for a wireless communication facility approved if the application is not acted upon within 150 days for a new facility or 60-90 days (depending on type) for a collocation application. The statute also requires that small cell facilities or distributed antennae systems located in an interior structure or upon the site of any campus, stadium, or athletic facility be permitted by right. Finally, the statute requires equal treatment of wireless communication facilities with utility installations when applying to locate in right-of-way but establishes a right-of-way fee cap on local governments that is lower than the fee charged utilities.

In October 2018, the Federal Communications Commission (FCC) issued a Declaratory Ruling that establishes additional mandates regarding how local units of government can regulate wireless communication facilities as follows:

- 1) Requiring small wireless facilities up to a certain height and size to be permitted in the right-of-way and establishing “presumptively reasonable” fees that local governments can charge for the use of right-of-way.
- 2) Requiring that local aesthetic requirements be reasonable, non-discriminatory, objective, and published.
- 3) Limiting the time to review of an application for small wireless facility for completeness to 10 days and establishing a procedure for written notification of application deficiencies.
- 4) Requiring that a single application be accepted for multiple locations.

## Wireless Communication Master Plan – January 2019

The Draft December 2018 update of the Wireless Communication Master Plan addresses the state and federal mandated approach to reviewing proposals for wireless communication facilities. The updated Plan also has corresponding implementing revisions to the UZC.

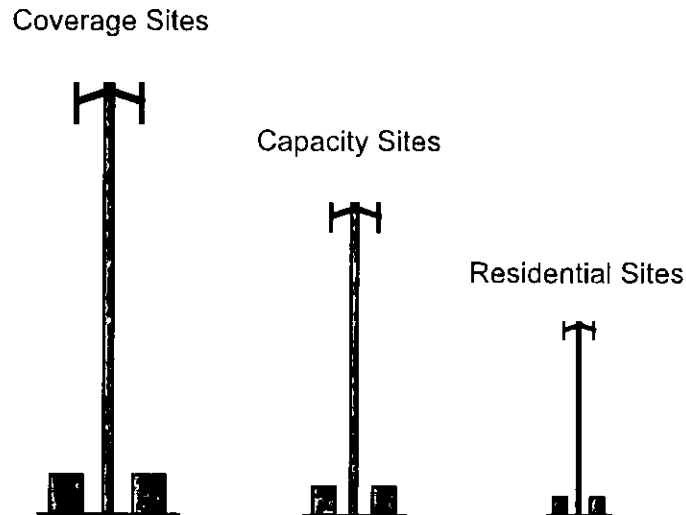
## II. Wireless Communication Deployment

---

Wireless communication has evolved from a niche business catering to corporate executives in the early 1990s to a ubiquitous communication tool used by almost everyone less than 25 years later. As the business has evolved, the number of wireless communication facilities in Wichita and Sedgwick County has grown from a few dozen in the early 1990s to several hundred today. By the year 2035, there may well be thousands of wireless communication facilities. Wireless communication facilities have deployed in three phases:

- Coverage. The initial phase occurred primarily between mid-1990s and mid-2000s when carriers tried to spread their signal throughout the community in an attempt to reach new subscribers.
- Capacity. Following the coverage phase, new capacity sites were built between the coverage sites to address areas where a high number of users are located.
- Residential. The current phase of the business plan involves the replacement of most wired phones in customers' homes with wireless devices that are used more for text and data than for voice communication.

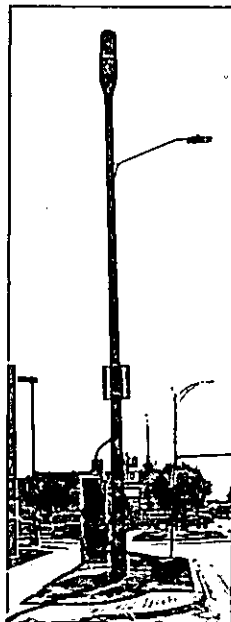
The last phase of deployment brings wireless communication facilities into residential areas where they are restricted to shorter facilities, as illustrated below.



## Wireless Communication Master Plan – January 2019

The impact of the phases of wireless communication deployment in Wichita and Sedgwick County are:

- **Coverage.** Most areas of Wichita and Sedgwick County presently have coverage. The construction of additional wireless communication facilities to provide coverage will be limited in the future and are mostly like to occur in rural areas.
- **Capacity.** As areas of the community grow in population, the demand on the wireless communication systems will exceed the capacity of the coverage sites and providers will need new sites in developing areas to add capacity. These sites mostly can be accommodated in commercial areas and along major roadways.
- **Residential.** As the use of wireless devices in homes continues to increase, it is likely that there will have to be many more sites for each provider located immediately within residential areas. These mostly likely deployment of these sites will be small cell facilities and distributed antenna systems located in street right-of-way, as illustrated below.



The challenge of planning for wireless communication facilities is the same as that for many other land uses: balancing marketplace demands with public expectations for an orderly and attractive environment. This Plan anticipates and guides future wireless communication deployment with guidelines and policies that should be applied in the review of proposed new wireless communication facilities.

### **III. Location/Design Guidelines**

---

This chapter contains guidelines for location, siting and design of new wireless communication facilities. The term “guidelines” is used in recognition that deviations from these guidelines can be considered on a case-by-case basis, if consistent with the general spirit and intent of this Plan.

The intent of the Location/Design Guidelines is to balance marketplace demands for deployment of wireless communication facilities with the community’s desire for an orderly and attractive environment. In general, tall wireless communication facilities should be limited to heavy commercial and industrial areas and should decrease in height as the intensity of development decreases, with the shortest facilities being located in residential areas. Additionally, facilities should be located and designed in a manner that minimizes visual obtrusiveness and negative aesthetic impacts on surrounding properties.

#### **A. Location/Height Guidelines**

1. The following wireless communication facilities should be permitted by right in any zoning district, subject to the issuance of a building permit, if they conform to the Location/Design Guidelines in this chapter. Note that right-of-way is not zoned and has separate permitting requirements described below in Section C.
  - a. New facilities that are concealed in or mounted on top of or the side of existing buildings (excluding single-family and duplex residences) and other structures, including collocation and support structures up to 20 feet above the building or the maximum height permitted by a building permit or an Administrative Permit in the underlying zoning district, whichever is greater.
  - b. Modification and/or replacement of support structures that are not significantly more visible or intrusive, including collocation and cumulative height extensions of up to 25 percent above the original structure height.
  - c. Modification and/or replacement of wireless communication facilities, including collocation and cumulative height extensions of up to 25 percent above the original structure height that comply with the compatibility height standards of the Unified Zoning Code.
  - d. New or modified lattice towers no larger than 18 inches wide on any side up to 80 feet in height measured from grade.
  - e. Small cell facilities or distributed antennae systems located in an interior structure or upon the site of any campus, stadium, or athletic facility.

## Wireless Communication Master Plan – January 2019

If the Zoning Administrator determines that the wireless communication facility does not conform to the Location/Design Guidelines, the building permit should be denied. Denied building permits may be appealed by applying for an Administrative Permit or a Conditional Use. An Administrative Permit should be approved subject to conditions that maintain conformance with the Location/Design Guidelines. Wireless communication facilities that do not conform to the Location/Design Guidelines may be approved for a Conditional Use on a case-by-case basis as circumstances warrant.

2. The following wireless communication facilities should be approved by Administrative Permit in any zoning district, with the concurrence of the Director of Planning and the Zoning Administrator, if they conform to the Location/Design Guidelines in this chapter and, for zoning lots located within the City, are designated on the “Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map”. Note that right-of-way is not zoned and has separate permitting requirements described below in Section C.
  - a. New disguised ground-mounted facilities up to 85 feet in height.
  - b. New undisguised ground-mounted facilities up to 65 feet in the SF-10, SF-5, TF-3, MF-18, MF-29, B, U, and MH zoning Districts that comply with the compatibility height standards of the Unified Zoning Code.
  - c. New undisguised ground-mounted facilities up to 85 feet in height in the NO, GO, and NR zoning districts that comply with the compatibility height standards of the Unified Zoning Code.
  - d. New undisguised ground-mounted facilities up to 120 feet in the RR, SF-20, LC, OW, and GC zoning Districts that comply with the compatibility height standards of the Unified Zoning Code.
  - e. New ground-mounted facilities up to 150 feet in height in the IP, CBD, LI, GI, and AFB zoning districts that comply with the compatibility height standards of the Unified Zoning Code.
3. Wireless communication facilities that exceed the maximum height for an Administrative Permit should be reviewed through the Conditional Use process. Conditional Use approvals typically should be subject to conditions that maintain conformance with the Location/Design Guidelines in this chapter; however, wireless communication facilities that do not conform to the Location/Design Guidelines may be approved for a Conditional Use on a case-by-case basis as circumstances warrant. Note that right-of-way is not zoned and has separate permitting requirements described below in Section C.

## Wireless Communication Master Plan – January 2019

4. There should be no nighttime lighting of or on wireless communication facilities except for aircraft warning lights or similar emergency warning lights required by applicable governmental agencies. Flashing white obstruction lights should not be permitted for nighttime operation. Lighting for security purposes should be permitted at the base of wireless communication facilities. Temporary lighting for nighttime repairs should be permitted.
5. No signs should be allowed on a wireless communication facility other than those required by applicable governmental agencies.
6. The owner should be responsible for the removal of unused facilities, including the uppermost 20% of support structures that are unused (except where removal of the uppermost 20% would require the removal of a lower portion of the support structure that is in use, in which case the required removal will be raised to the next highest portion of the support structure not in use), within 60 days if the wireless communication facility, or portion thereof, has been unused for 12 consecutive months. If such a facility or portion of a facility is not removed by the owner, then the City or County may employ all legal measures, including, if necessary, obtaining authorization from a court of competent jurisdiction, to remove it, and after removal may place a lien on the subject property for all direct and indirect costs incurred in its dismantling and disposal, including court costs and reasonable attorney fees. Under this paragraph, “owner” includes both the owner of the real property and the owner of the wireless communication facility, whether such ownership is divided or in the same person.
7. All wireless communication facilities should comply with all federal, state, and local rules and regulations.

Wireless communication providers are particularly encouraged to seek the following new locations for new facilities:

1. Mounted on top or the side of multistory buildings and other structures, appropriately concealed, screened, disguised or camouflaged.
2. On existing utility poles in street right-of-way and on parking lot and athletic field/stadium light standards.
3. On existing support structures, including those constructed for school district microwave antennas and private dispatch systems.
4. In wooded areas.

## Wireless Communication Master Plan - January 2019

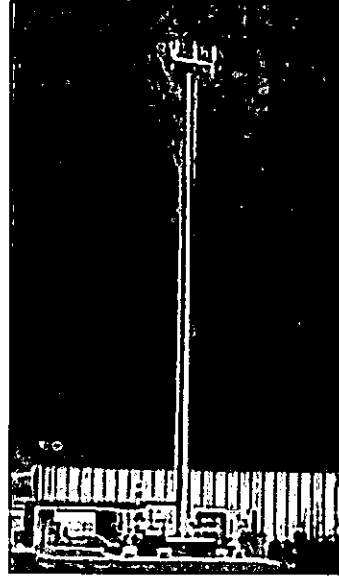
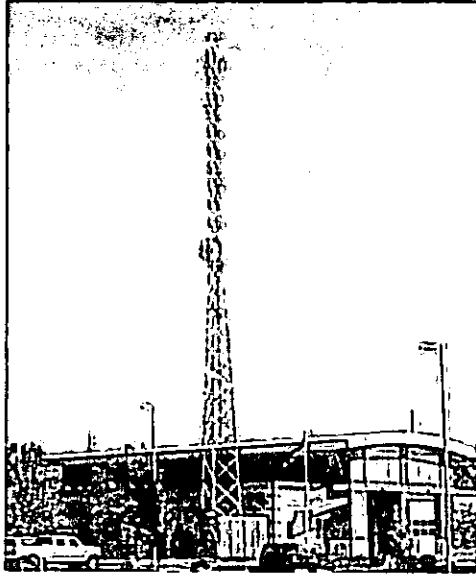
5. At certain City and County-owned properties, where the size and nature of the use does not interfere with other functions and allows for compatible siting; these may include multistory buildings, water towers, large park areas, sewer treatment plant sites, maintenance yards, and public airports.
6. The City and County should also work with public and private agencies such as KDOT, KTA, and Westar, to encourage the use of highway light standards, sign structures, and electrical support structures for new wireless communication facilities.

### **B. Design Guidelines**

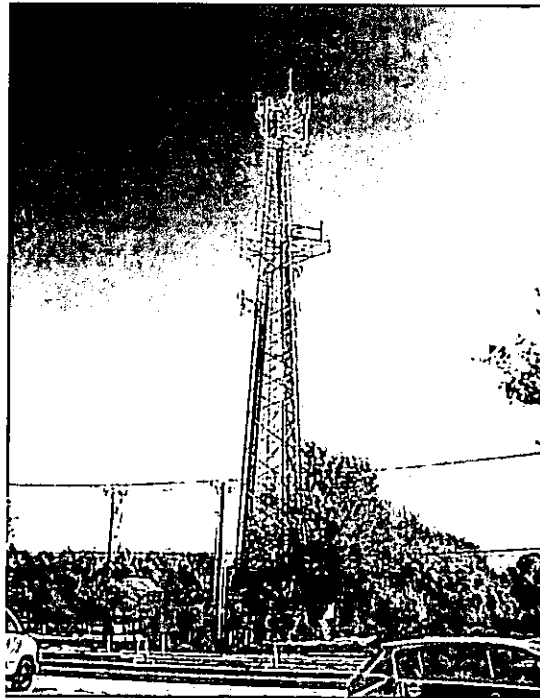
As a general rule, the less visible and obtrusive a proposed wireless communication facility is, the more acceptable it will be to the community. The visibility of facilities can be minimized by techniques such as concealment, disguise, camouflage, and sensitive design and siting. Specific guidelines include:

1. Preserving the pre-existing character of the area as much as possible.
2. Minimizing the height, mass or proportion of the facility to minimize conflict with the character of its proposed surroundings.
3. Minimizing the silhouette presented by new support structures and antenna arrays. Lattice-type support structures are generally appropriate in areas outside the "Urban Growth Areas" identified in the Wichita-Sedgwick County Comprehensive Plan. Lattice-type support structures inside the Urban Growth Area boundaries generally should be limited to installations that have antennas mounted flush to the support structure with cables attached to the main support arms rather than the girders. When an antenna array that protrudes from the wireless communication facility is used on a support structure inside the Urban Growth Area boundaries, the support structure generally should be a monopole. The figure below illustrates the types of support structures that are "encouraged" and "discouraged" by this section.

Encouraged



Discouraged



## Wireless Communication Master Plan – January 2019

4. Using colors, textures and materials that blend in with the existing environment and minimize reflection; under some circumstances, surfaces should be painted, or otherwise treated, to match or complement existing background structures or utility poles, as appropriate.
5. Concealing facilities within potential space in or on existing structures, or disguised to look like another type of facility, like a flagpole, clock tower, or church steeple.
6. Placing facilities in areas where trees and/or buildings obscure some or all the facility from view, and installing new plantings/screening around the site where visible from major streets or residential areas.
7. Placing facilities on existing walls, flush-mounted, or on roofs buildings (excluding single-family and duplex) and structures, up to 20 feet above the existing structure, as opposed to building new ground-mounted support structures. Facilities on rooftops generally should be set back from roof edges or screened from view.
8. Screening equipment shelters and cabinets through landscaping, walls and/or fencing, as appropriate to the surroundings. In most cases, ground-level equipment should respect the setbacks for accessory uses in the applicable zoning district and be enclosed by 6-8 foot high security fencing, of a material compatible with its surroundings. Equipment should be encouraged indoors if space is available nearby. Burying equipment in an underground vault, to keep most of the equipment out of sight, may be necessary in right-of-way and in some other visually/environmentally sensitive locations, such as tourist attractions, historic landmarks/districts, museum district, river corridor, and other locations of civic importance or architectural significance. Ground level shelters/equipment, appropriately screened and generally landscaped with trees and/or shrubs, should be permitted on lots adjacent to right-of-way, to facilitate the use or reconstruction of utility poles in those right-of-way.
9. Permitting lighting on facilities only if required by federal regulations.

### **C. Right-of-Way**

City and County right-of-way is an encouraged location for wireless communication facilities, particularly for small cell facilities and distributed antenna systems. Locating wireless communication facilities in the right-of-way requires an agreement with the City or County, as applicable. Such agreements should include an ongoing rental fee, as allowed by law, to ensure that private

property owners are not at a competitive disadvantage to the public sector in regards to renting land for the location of wireless communication facilities. However, state law requires that any rental fee for right-of-way must be competitively neutral with fees charged to other users of the right-of-way such utility companies and federal rules establish a maximum rental fee that is “presumptively reasonable” and should be considered competitively neutral.

In addition to the design guidelines described in Section B above, wireless communication facilities should also meet the following additional design guidelines when located in the right-of-way:

**1. Adjoining Property Owners**

To the extent practical, the design and location should be changed to mitigate an adjoining property owner’s reasonable and objective concerns and to increase consistency with the guidelines of this Plan.

**2. Location**

Unless reusing an existing pole, facilities should be located adjacent to common lot lines or reserve/open space areas and not in front of buildings.

**3. Wiring – Underground or Aerially**

Facility wiring should be installed underground and within the support structure or within conduit immediately attached to the support structure. Facility wiring should not cross over, under, or through private property unless permitted by easement.

**4. Antennas and Equipment**

Antennas and equipment should be concealed by a cover or enclosure matching or coordinating with the color of the support structure or the color existing equipment enclosures in the immediate vicinity. Equipment enclosures should be sized and placed in a manner that minimizes visual obtrusiveness, including clustering near other utility boxes and screening by landscaping if appropriate for the location. Installing equipment underground is particularly encouraged.

**5. Public Safety**

Place facilities in locations that are outside of the clear zone and do not cause a sight obstruction for the traveling public and/or obstruct pedestrian safety.

**6. Right-of-Way/Utility Accommodations**

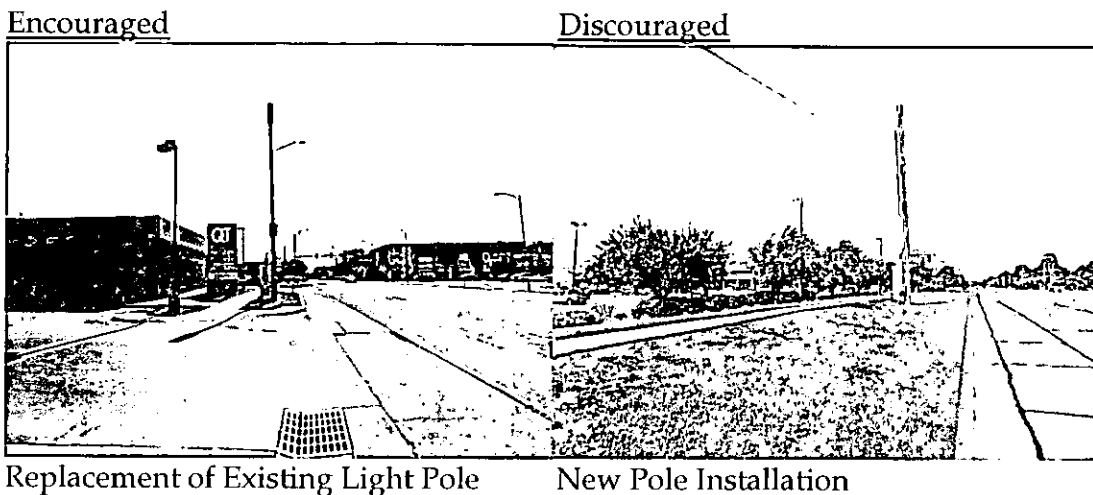
Place facilities in locations that do not hinder existing or planned uses of the right-of-way such as utilities, drainage, street lights, sidewalks, driveways, turn lanes, etc.

**7. Facility Height**

The height of facilities should not be more than 10% taller than the height of existing structures in the right-of-way that are located within one block of the proposed facility unless a greater height is authorized by the applicable City or County Engineer, or designee, in which case facilities at a height of 50 feet or less are particularly encouraged.

**8. Poles**

Replacing or utilizing existing utility poles is encouraged and installing new support structures solely for the wireless communication facility is discouraged. The figure below illustrates the types of support structures that are "encouraged" and "discouraged" by this guideline. In any case, pole diameter should not exceed that of existing poles in the right-of-way located within one block of the proposed facility.



**D. Submittal Requirements**

Review of proposals for wireless communication facilities will be greatly aided by using a set of standardized submittal requirements. This Plan suggests the following submittal requirements:

## Wireless Communication Master Plan – January 2019

1. A scaled vicinity plan, dimensioned and identifying existing buildings, trees, and other features within 200 feet of the wireless communication facility in the City of Wichita or within 1,000 feet of the wireless communication facility in the unincorporated area of Sedgwick County.
2. A one-inch-equals-20 feet site plan, dimensioned, identifying the location of all facility elements.
3. Typical elevations of all facility elements, dimensioned.
4. Specification of exterior materials and colors of all facility elements.
5. Landscape/screening plan, with all materials and sizes specified.
6. Appearance of proposed facility shown in site context by photo-simulation.

When a wireless communication facility requires zoning approval, an application for a building permit should be submitted concurrently unless a tolling agreement is submitted that suspends the review “shot clock” during the time period between approval of the zoning application and submittal of the building permit application.

## Appendix A: Definitions

---

**Applicant.** Any person or entity that is engaged in the business of providing wireless services or the wireless infrastructure required for wireless services and that submits an application.

**Application.** A request submitted by an applicant for: (A) the construction of a new wireless support structure or new wireless facility; (B) the substantial modification of a wireless support structure or wireless facility; or (C) collocation of a wireless facility or replacement of a wireless facility.

**Collocation.** Mounting or installation of wireless facilities on a building, structure, wireless support structure, tower, utility pole, base station or existing structure for the purposes of transmitting or receiving radio frequency signals for communication purposes.

**Distributed Antenna System.** A network that distributes radio frequency signals and consisting of: (A) Remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmission and reception; (B) a high capacity signal transport medium that is connected to a central communications hub site; and (C) radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic area or structure.

**Lattice Tower.** A type of support structure that consists of an open network of braces forming a tower that is usually triangular or square in cross section.

**Modification and/or Replacement.** Modification of a support structure or wireless communication facility of comparable proportions and of comparable height or such other height that would not constitute a substantial modification in order to support wireless facilities or to accommodate collocation and includes replacement of any pre-existing wireless communication facility or support structure.

**Monopole.** A type of support structure that consists of a vertical pole fixed into the ground and/or attached to a foundation.

**Right-of-Way.** The area of real property in which the City or County has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. "Right-of-way" does not include any state, federal or interstate highway right-of-way, which generally includes the area that runs contiguous to, parallel with,

## Wireless Communication Master Plan – January 2019

and is generally equidistant from the center of that portion of the highway improved, designed or ordinarily used for public travel.

**Small Cell Facility.** A wireless communication facility that meets both of the following qualifications: (A) Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements is no more than three cubic feet; and (B) primary equipment enclosures that are no larger than 28 cubic feet in volume, or facilities comprised of such higher limits as the federal communications commission has excluded from review pursuant to 54 U.S.C. § 306108. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

**Substantial Modification.** Modification of a wireless communication facility or support structure that will substantially change the physical dimensions under the objective standard for substantial change, established by the federal communications commission pursuant to 47 C.F.R. 1.40001.

**Support Structure.** A freestanding structure, such as a monopole, guyed or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities, and any structure that is currently supporting or designed to support the attachment of wireless facilities, including, but not limited to, towers, buildings and water towers.

**Utility Pole.** A structure owned or operated by a public utility as defined in K.S.A. 66-104, and amendments thereto, a municipality as defined in K.S.A. 75-6102, and amendments thereto, or an electric cooperative as defined in K.S.A. 2015 Supp. 17-4652, and amendments thereto, that is designed specifically for and used to carry lines, cables or wires for telecommunications, cable, electricity or to provide lighting.

**Wireless Communication.** Personal wireless services and personal wireless service facilities as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through a wireless communication facility or any fixed or mobile wireless services provided using a wireless communication facility.

**Wireless Communication Facility.** Equipment at a fixed location that enables wireless communications between user equipment and a communications

## Wireless Communication Master Plan - January 2019

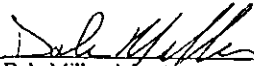
network, including, but not limited to: (A) a support structure consisting of a freestanding support structure, such as a monopole, guyed, or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities; (B) a base station that supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics; (C) equipment associated with wireless services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and/or (D) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

**Appendix B: Adopting Documents**

---

**CERTIFICATION OF ADOPTION OF THE  
WIRELESS COMMUNICATION MASTER PLAN, JANUARY 2019  
AS AN ELEMENT OF THE  
WICHITA-SEDGWICK COUNTY COMPREHENSIVE PLAN**

I, Dale Miller, Director of the Metropolitan Area Planning Department, and Secretary for the Metropolitan Area Planning Commission, hereby certify that the attached *Wireless Communication Master Plan, January 2019* is a true and correct copy adopted by the Metropolitan Area Planning Commission on January 24, 2019, as an element of the Wichita-Sedgwick County Comprehensive Plan.

  
Dale Miller, Director  
Metropolitan Area Planning Department

# Wireless Communication Master Plan - January 2019

## RESOLUTION

### WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION

WHEREAS, pursuant to the authority granted by the statutes of the State of Kansas, in K.S.A. 12-747 et seq., the Wichita-Sedgwick County Metropolitan Area Planning Commission developed a Comprehensive Plan, entitled Community Investments Plan that was adopted by the City of Wichita on December 8, 2015, and Sedgwick County on January 20, 2016; and

WHEREAS, the Comprehensive Plan may be amended as needed to ensure it reflects timely and relevant information and the needs of the community; and

WHEREAS, the Metropolitan Area Planning Commission did initiate an update of the Wireless Communication Master Plan to reflect changes to Kansas State Law enacted by K.S.A. 66-2019 and to reflect changes to Federal regulations contained in a Federal Communication Commission Declaratory Ruling that requires local units of governments to publish aesthetic requirements no later than April 14, 2019; and

WHEREAS, before the adoption of a Comprehensive Plan amendment, the Wichita-Sedgwick County Metropolitan Area Planning Commission is required by K.S.A. 12-747 et seq. to hold a public hearing; and

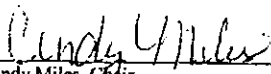
WHEREAS, the Wichita-Sedgwick County Metropolitan Area Planning Commission did give notice by publication in the official County and City newspapers on January 2, 2019, and January 3, 2019, respectively, of a public hearing on said Plan; and

WHEREAS, the Wichita-Sedgwick County Metropolitan Area Planning Commission, on January 24, 2019, did hold a public hearing at which a quorum was present, and did hear all comments and testimony relating to said area plan;

NOW, BE IT THEREFORE RESOLVED, the Wichita-Sedgwick County Metropolitan Area Planning Commission hereby adopts the Wireless Communication Master Plan, January 2018, as an official amendment to the Wichita-Sedgwick County Comprehensive Plan; and


BE IT FURTHER RESOLVED, that notice of this action be transmitted to the City Council of the City of Wichita and to the Sedgwick County Board of County Commissioners for their consideration and approval.

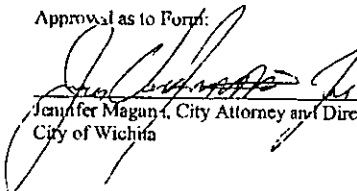
ADOPTED at Wichita, Kansas, this 24<sup>th</sup> day of January 2019.

  
Cindy Miles, Chair  
Wichita-Sedgwick County  
Metropolitan Area Planning Commission

Attest:

Approval as to Form:

  
Dale Miller, Secretary  
Wichita-Sedgwick County  
Metropolitan Area Planning Commission

  
Jennifer Magan, City Attorney and Director of Law  
City of Wichita

**Amendments to the Wichita-Sedgwick County of the Unified Zoning Code  
Required by K.S.A. 66-2019 & FCC Declaratory Ruling**

**Section II-B.14.p. and Section II-B.14.q.**

- p. Wireless Communication** means ~~wireless services covered by the Location/Design Guidelines of the Wireless Communication Master Plan. It includes the following terms as defined in the Wireless Communication Master Plan as adopted by the Governing Bodies: broadcast systems, cellular, commercial mobile radio services, common carrier wireless access exchange services, enhanced specialized mobile radio, functionally equivalent services, personal communication services, paging, personal wireless services, public service and emergency systems, specialized mobile radio, tower builder, unlicensed wireless services and wireless cable system. It does not include amateur radio or private dispatch system as defined in the Wireless Communication Master Plan as adopted by the Governing Bodies~~ personal wireless services and personal wireless service facilities as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through a Wireless Communication Facility or any fixed or mobile wireless services provided using a Wireless Communication Facility.
- q. Wireless Communication Facility** means ~~facilities covered by the Location/Design Guidelines of the Wireless Communication Master Plan. It includes the following terms as defined in the Wireless Communication Master Plan as adopted by the Governing Bodies: antenna, antenna array, equipment shelter, guyed tower, lattice tower, location, monopole, site, support structure and tower.~~ a Lot containing equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to: (A) a wireless support structure consisting of a freestanding support structure, such as a monopole, guyed, or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities; (B) a base station that supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics; (C) equipment associated with wireless services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and/or (D) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

**Section III-D.6.**

- 6. Supplementary Use Regulations.** No permit shall be issued for any Development or Use of land unless the activity is in compliance with all applicable supplementary use regulations specified in this section, or unless the supplementary use regulations have been modified or waived by the Governing Body pursuant to the Development Review Procedures contained in Article V. The supplementary use regulations of this section are not applicable to Lots in the AFB Air Force Base

District. In the case of conflict with zoning District property Development standards or other regulations of this Code, the more restrictive requirement shall apply, unless otherwise specifically provided.

**Section III-D.6.g.**

**g. Wireless Communication Facilities Facility.** Whether allowed by right, subject to a Building Permit, by Administrative Permit, by CUP adjustment/amendment, by P-O adjustment/amendment or by Conditional Use approval, a Wireless Communication Facilities Facility shall be subject to the following provisions.

**(1)** ~~All~~ A Wireless Communication ~~Facilities Facility~~ shall be evaluated in terms of ~~their~~ conformance to the guidelines in the "Wireless Communication Master Plan" as adopted by the Governing Body, and applications for such facilities shall include information for review as required in that Plan.

**(2)** ~~The~~ A following Wireless Communication ~~Facilities are~~ Facility is permitted by right in any zoning District, subject to the issuance of a Building Permit, if ~~they conform~~ it conforms to the Location/Design Guidelines in ~~this chapter~~ that Plan:

**(a)** ~~new facilities facility that are~~ is concealed in or mounted on top of or the side of existing buildings (excluding single-family and duplex residences) and other Structures, including support structures up to 20 feet above the Building or the maximum height permitted by a Building Permit or an Administrative Permit in the underlying zoning District, whichever is greater;

**(b)** modification and/or replacement of support structures (light poles, flag poles, electrical poles, private dispatch towers, etc.) that are not significantly more visible or intrusive, including cumulative height extensions of up to 25 percent above the original Structure height;

**(c)** modification and/or replacement of a Wireless Communication ~~Facilities Facility~~, including cumulative height extensions of up to 25 percent above the original structure height that comply with the compatibility height standards as outlined in Sec. IV-C.5;

**(d)** new or modified lattice towers no larger than 18 inches wide on any side up to 80 feet in height measured from grade.

**(d)(e)** small cell facility or distributed antennae system located in an interior Structure or upon the site of any campus, stadium, or athletic facility.

If the Zoning Administrator determines that the Wireless Communication Facility does not conform to the Location/Design Guidelines, the Building ~~p~~Permit shall be denied. Denied Building Permits may be appealed by applying for an Administrative Permit or a Conditional Use. An Administrative Permit shall be approved subject to conditions that

maintain conformance with the Location/Design Guidelines. A Wireless Communication Facilities—Facility that does not conform to the Location/Design Guidelines may be approved for a Conditional Use on a case-by-case basis as circumstances warrant.

**(3)** ~~The following~~ A Wireless Communication Facilities—Facility shall be approved by Administrative Permit in any zoning District, under the procedures in Sec. VI-G.9 and Sec. VI-H.5, if ~~they conform~~ conforms to the Location/Design Guidelines in the "Wireless Communication Master Plan" and, for zoning Lots located within the City, ~~are~~ is designated on the "Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map" of Sec. I- L.:

- (a)** new disguised ground-mounted facilities up to 85 feet in height;
- (b)** new undisguised ground-mounted facilities up to 65 feet in the SF- 10, SF-5, TF-3, MF-18, MF-29, B and MH zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.d;
- (c)** new undisguised ground-mounted facilities up to 85 feet in the NO, GO and NR zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.d;
- (d)** new ground-mounted facilities up to 120 feet in height in the RR, SF- 20, U, LC, OW, and GC zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.d; or
- (e)** New ground-mounted facilities up to 150 feet in height in the IP, CBD, LI and GI zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.d.

If the property on which the facility is located is within a CUP or P-O, the Administrative Permit shall also be considered as an application for an adjustment of the CUP or P-O as outlined in Sec. V-E.14, excluding the requirement of V-E.14.a, or Sec. V-C.14, excluding the requirement of V-C.14.a., as applicable.

- (4)** ~~All~~ A Wireless Communication Facilities—Facility that does not meet the requirements of Sec. III-D.6.g(2) or Sec. III-D.6.g(3) shall be reviewed through the Conditional Use process as outlined in Sec. V-D or, if the property on which the facility is located is within a CUP or P-O, as an amendment to the CUP or P-O as outlined in Sec. V-E.13. or Sec. V-C.13, as applicable.
- (5)** There shall be no nighttime lighting of or on a Wireless Communication Facilities—Facility except for aircraft warning lights or similar emergency

warning lights required by applicable governmental agencies. Flashing white obstruction lights shall not be permitted for nighttime operation. Lighting for security purposes shall be permitted at the base of wireless communication facilities. Temporary lighting for nighttime repairs shall be permitted.

- ~~(6)~~ No signs shall be allowed on ~~an antenna support structure~~ a Wireless Communication Facility other than those required by applicable governmental agencies.
- ~~(7)~~ At the time of requesting a Conditional Use, a CUP amendment, a P-O amendment, an Administrative Permit, or a Building Permit for a new ground mounted Wireless Communication Facility, as applicable, the applicant shall demonstrate to the satisfaction of the approving authority that: (a) there is no available space on existing or approved wireless communication facilities or other structures that can be utilized to meet the communication needs (an existing site will be considered "available space" only if the site is technically feasible with a ready, willing, and able landlord); and (b) there is no other economically and technically feasible opportunity to modify or rebuild an existing structure on which the communication equipment may be located. The technical feasibility of existing, modified or rebuilt structures may be reviewed by consultants to the Planning Department.
- ~~(8)~~ At the time of requesting a Conditional Use, a CUP amendment, a P-O amendment, an Administrative Permit, or a Building Permit for a Wireless Communication Facility, as applicable, the owner of a proposed new undisguised ground mounted Wireless Communication Facility, and the Owner of the land, if not the same, shall agree in writing that (a) the support structure is designed, and the ground area is adequate or will be made adequate, to accommodate at least one other carrier, if more than 80 feet in height, and at least two other carriers, if more than 100 feet in height; (b) reasonable accommodations will be made to lease space on the facility to other carriers so as to avoid having a proliferation of support structures that are not fully utilized; and (c) the owner(s) shall make available in the future the opportunity for another party to pay the cost to modify or rebuild the Structure to support additional communication equipment where economically and technically feasible. Lattice towers no larger than 18 inches on any side shall be excluded from the co-location requirements of subsection (a) of this paragraph.
- ~~(9)~~(7) Unused facilities, including the uppermost 20 percent of support structures that are unused (except where removal of the uppermost 20 percent would require the removal of a lower portion the support structure that is in use, in which case the required removal will be raised to the next highest portion of the support structure not in use), shall be removed by the owner within 60 days if the Wireless Communication Facility, or portion thereof, has been unused for 12 consecutive months. If such a facility or portion of a facility is not removed by the owner, then the City or County may employ all legal measures, including, if necessary, obtaining authorization from a court of competent jurisdiction, to remove it, and after removal may place a lien on the subject property for all direct

and indirect costs incurred in its dismantling and disposal, including court costs and reasonable attorney fees. Under this paragraph, "owner" shall include both the Owner of the real property and the owner of the Wireless Communication Facility, whether such ownership is divided or in the same person.

~~(10)~~**(8)** All Wireless Communication Facilities shall comply with all federal, state, and local rules and regulations.

**Section VI-B.7. (new)**

**7. Zoning Adjustments.** The Governing Body shall have the authority to approve, approve with conditions or modifications, or deny zoning adjustments when requested in association with an application to amend the Official Zoning Map, an application for Community Unit Plan approval, or an application for Conditional Use approval.

**Section VI-C.7. (new)**

**7. Zoning Adjustments.** The Planning Commission shall have the authority to approve, approve with conditions or modifications, or deny zoning adjustments when requested in association an application for Conditional Use approval or for amendment to a Community Unit Plan and shall have the authority to recommend to the Governing Body approval, approval with conditions, or denial of a zoning adjustment when requested in association with an application to amend the Official Zoning Map or amend a Planned Unit Development or Protective Overlay.

**Section VI-G.9.**

**9. Administrative Permits.** The Planning Director, with the concurrence of the Zoning Administrator, shall have the authority to approve, approve with conditions or modifications, or deny applications for a ~~Wireless Communication Facilities-Facility~~ pursuant to Sec. III-D.6.g. The Planning Director's decision on such an application may be appealed by filing an application for a Conditional Use.

**Section VI-H.5.**

**5. Administrative Permits.** The Zoning Administrator shall have the authority to review and recommend to the Planning Director approval, approval with conditions or modifications, or denial of applications for ~~wireless communication facilities~~ a Wireless Communication Facility pursuant to Sec. III-D.6.g. An Administrative permits-Permit ~~for a~~ Wireless Communication Facilities-Facility may be granted by the Planning Director only with the concurrence of the Zoning Administrator.

(OCA 150004) PUBLISHED IN THE WICHITA EAGLE ON March 22, 2019

ORDINANCE NO. 50-937

AN ORDINANCE ADOPTING THE WIRELESS COMMUNICATION MASTER PLAN, JANUARY 2019, AS AN AMENDMENT OF THE COMMUNITY INVESTMENTS PLAN 2015-2035, THE WICHITA-SEDGWICK COUNTY COMPREHENSIVE PLAN.

WHEREAS, pursuant to the authority granted by the statutes of the State of Kansas, in K.S.A. 12-747 *et seq.*, on November 19, 2015, the Wichita-Sedgwick County Metropolitan Area Planning Commission adopted the Community Investments Plan, 2015-2035, The Wichita-Sedgwick County Comprehensive Plan, that was subsequently approved by the City of Wichita on December 18, 2016, and the Sedgwick County Board of Commissioners on January 20, 2016; and

WHEREAS, the Comprehensive Plan may be amended from time to time to ensure it reflects timely and relevant information and the needs of the community; and

WHEREAS, on December 20, 2018, the Wichita-Sedgwick County Metropolitan Area Planning Commission, initiated the development of a new Wireless Communication Master Plan to address mandates by the State of Kansas contained in K.S.A. 66-2019 and mandates by the U.S. Federal Communication Commission contained in Declaratory Ruling 18-133; and

WHEREAS, before the adoption of any Comprehensive Plan or amendment thereto, the Wichita-Sedgwick County Metropolitan Area Planning Commission is required by K.S.A. 12-747 *et seq.* to hold a public hearing; and

WHEREAS, the Wichita-Sedgwick County Metropolitan Area Planning Commission gave notice by publication in the official City newspaper on January 3, 2019, of a public hearing to consider the adoption of a the Wireless Communication Master Plan as an amendment of the Comprehensive Plan; and

WHEREAS, the Wichita-Sedgwick County Metropolitan Area Planning Commission, on January 24, 2019, held a public hearing at which a quorum was present, and heard all comments and testimony relating to said Wireless Communication Master Plan;

WHEREAS, the Wichita-Sedgwick County Metropolitan Area Planning Commission, on January 24, 2019, approved a Resolution adopting the Wireless Communication Master, January 2019, as an amendment of the Community Investments Plan, 2015-2035, The Wichita-Sedgwick County Comprehensive Plan, which Resolution has been submitted to the Wichita City Council for consideration.

NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The City of Wichita hereby approves the Wireless Communication Master, January 2019, as an amendment of the Community Investments Plan, 2015-2035, The Wichita-Sedgwick County Comprehensive Plan.

SECTION 2. Notice of this action shall be transmitted to the Sedgwick County Board of County Commissioners and to all other taxing subdivisions in the planning area that request a copy of the plan.

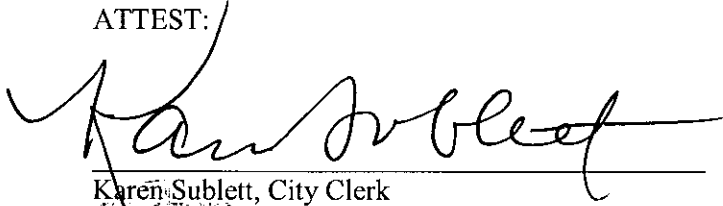
SECTION 3. This Ordinance shall take effect and be in force from and after this adoption by the Governing Body and publication in the official City newspaper.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date

March 19, 2019

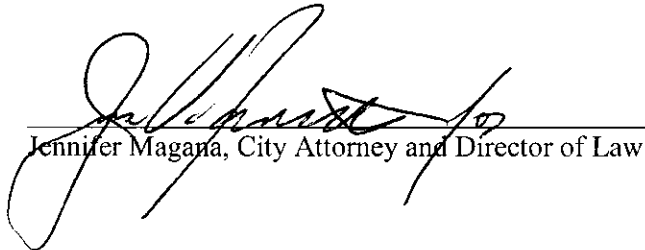
  
Jeff Longwell, Mayor

ATTEST:

  
\_\_\_\_\_  
Karen Sublett, City Clerk

(SEAL)

Approved as to form:

  
\_\_\_\_\_  
Jennifer Magana, City Attorney and Director of Law

(OCA 150004) Published in the Wichita Eagle on March 22, 2019

ORDINANCE NO. 50-938

AN ORDINANCE AMENDING SECTIONS II-B.14.P., II-B.14.Q., III-D.6., III-D.6.G., VI-G.9., AND VI-H.5. OF THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE (SEPTEMBER 25, 2009 EDITION), AS ADOPTED BY REFERENCE IN CITY OF WICHITA CODE SEC. 28.04.010 BY ORDINANCE NO. 48-451 AND CREATING SECTIONS VI-B.7. AND VI-C.7. OF THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, PERTAINING TO THE REGULATION OF WIRELESS COMMUNICATION FACILITIES.

WHEREAS, under the authority of K.S.A. 12-741, *et seq.*, the City of Wichita desires to adopt amendments to the Wichita-Sedgwick County Unified Zoning Code pertaining to the regulation of wireless communication facilities; and

WHEREAS, the Wichita-Sedgwick County Metropolitan Area Planning Commission made a recommendation regarding the amendments on January 24, 2019, after notice and hearing as provided by law under the authority granted by K.S.A. 12-741, *et seq.*;

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA:

SECTION 1. Section II-B.14.p. of the Wichita-Sedgwick County Unified Zoning Code (September 25, 2009 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 48-451, is hereby amended to read as follows:

- p. ~~Wireless Communication~~ means personal wireless services and personal wireless service facilities as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through a Wireless Communication Facility or any fixed or mobile wireless services provided using a Wireless Communication Facility.

SECTION 2. Section II-B.14.q. of the Wichita-Sedgwick County Unified Zoning Code (September 25, 2009 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 48-451, is hereby amended to read as follows:

- q. **Wireless Communication Facility** means a Lot containing equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to: (A) a wireless support structure consisting of a freestanding support structure, such as a monopole, guyed, or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities; (B) a base station that supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics; (C) equipment associated with wireless services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and/or (D) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

SECTION 3. Section III-D.6. of the Wichita-Sedgwick County Unified Zoning Code (September 25, 2009 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 48-451, is hereby amended to read as follows:

- 6. Supplementary Use Regulations.** No permit shall be issued for any Development or Use of land unless the activity is in compliance with all applicable supplementary use regulations specified in this section, or unless the supplementary use regulations have been modified or waived by the Governing Body pursuant to the Development Review Procedures contained in Article V. The supplementary use regulations of this section are not applicable to Lots in the AFB Air Force Base District. In the case of conflict with zoning District property Development standards or other regulations of this Code, the more restrictive requirement shall apply, unless otherwise specifically provided.

SECTION 4. Section III-D.6.g. of the Wichita-Sedgwick County Unified Zoning Code (September 25, 2009 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 48-451, is hereby amended to read as follows:

- g. Wireless Communication Facility.** Whether allowed by right, subject to a Building Permit, by Administrative Permit, by CUP adjustment/amendment, by P-O adjustment/amendment or by Conditional Use approval, a Wireless Communication Facility shall be subject to the following provisions.
- (1)** A Wireless Communication Facility shall be evaluated in terms of conformance to the guidelines in the "Wireless Communication Master Plan" as adopted by the Governing Body, and applications for such facilities shall include information for review as required in that Plan.
  - (2)** A following Wireless Communication Facility is permitted by right in any zoning District, subject to the issuance of a Building Permit, if it conforms to the Location/Design Guidelines in that Plan:
    - (a)** new facility that is concealed in or mounted on top of or the side of existing buildings (excluding single-family and duplex residences) and other Structures, including support structures up to 20 feet above the Building or the maximum height permitted by a Building Permit or an Administrative Permit in the underlying zoning District, whichever is greater;
    - (b)** modification and/or replacement of support structures (light poles, flag poles, electrical poles, private dispatch towers, etc.) that are not significantly more visible or intrusive, including cumulative height extensions of up to 25 percent above the original Structure height;
    - (c)** modification and/or replacement of a Wireless Communication Facility, including cumulative height extensions of up to 25 percent above the original structure height that comply with the compatibility height standards as outlined in Sec. IV-C.5;
    - (d)** new or modified lattice towers no larger than 18 inches wide on any side up to 80 feet in height measured from grade.
    - (e)** small cell facility or distributed antennae system located in an interior Structure or upon the site of any campus, stadium, or athletic facility.

If the Zoning Administrator determines that the Wireless Communication Facility does not conform to the Location/Design Guidelines, the Building Permit shall be denied. Denied Building Permits may be appealed by applying for an Administrative Permit or a Conditional Use. An Administrative Permit shall be approved subject to conditions that maintain conformance with the Location/Design Guidelines. A Wireless Communication Facility that does not conform to the Location/Design Guidelines may be approved for a Conditional Use on a case-by-case basis as circumstances warrant.

- (3)** A Wireless Communication Facility shall be approved by Administrative Permit in any zoning District, under the procedures in Sec. VI-G.9 and Sec. VI-H.5, if it conforms to the Location/Design Guidelines in the "Wireless Communication Master Plan" and, for zoning Lots located within the City, is designated on the "Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map" of Sec. I- L.:
- (a)** new disguised ground-mounted facilities up to 85 feet in height;
  - (b)** new undisguised ground-mounted facilities up to 65 feet in the SF- 10, SF-5, TF-3, MF-18, MF-29, B and MH zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.;
  - (c)** new undisguised ground-mounted facilities up to 85 feet in the NO, GO and NR zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.;
  - (d)** new ground-mounted facilities up to 120 feet in height in the RR, SF- 20, U , LC, OW, and GC zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.; or
  - (e)** New ground-mounted facilities up to 150 feet in height in the IP, CBD, LI and GI zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.

If the property on which the facility is located is within a CUP or P-O, the Administrative Permit shall also be considered as an application for an adjustment of the CUP or P-O as outlined in Sec. V-E.14, excluding the requirement of V-E.14.a, or Sec. V-C.14, excluding the requirement of V-C.14.a., as applicable.

- (4)** A Wireless Communication Facility that does not meet the requirements of Sec. III-D.6.g(2) or Sec. III-D.6.g(3) shall be reviewed through the Conditional Use process as outlined in Sec. V-D or, if the property on which the facility is located is within a CUP or P-O, as an amendment to the CUP or P-O as outlined in Sec. V-E.13. or Sec. V-C.13, as applicable.
- (5)** There shall be no nighttime lighting of or on a Wireless Communication Facility except for aircraft warning lights or similar emergency warning lights required by applicable governmental agencies. Flashing white obstruction lights shall not be permitted for nighttime operation. Lighting for security purposes shall be permitted at the base of wireless communication facilities. Temporary lighting for nighttime repairs shall be permitted.
- (6)** No signs shall be allowed on a Wireless Communication Facility other than those required by applicable governmental agencies.
- (7)** Unused facilities, including the uppermost 20 percent of support structures that are unused (except where removal of the uppermost 20 percent would require the removal of a lower portion the support structure that is in use, in which case the required removal will be raised to the next highest portion of the support structure not in use), shall be removed by the owner within 60 days if the Wireless Communication Facility, or portion thereof, has been unused for 12 consecutive months. If such a facility or portion of a facility is not

removed by the owner, then the City or County may employ all legal measures, including, if necessary, obtaining authorization from a court of competent jurisdiction, to remove it, and after removal may place a lien on the subject property for all direct and indirect costs incurred in its dismantling and disposal, including court costs and reasonable attorney fees. Under this paragraph, "owner" shall include both the Owner of the real property and the owner of the Wireless Communication Facility, whether such ownership is divided or in the same person.

- (8) All Wireless Communication Facilities shall comply with all federal, state, and local rules and regulations.

SECTION 5. Section VI.G.9. of the Wichita-Sedgwick County Unified Zoning Code (September 25, 2009 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 48-451, is hereby amended to read as follows:

- 9. **Administrative Permits.** The Planning Director, with the concurrence of the Zoning Administrator, shall have the authority to approve, approve with conditions or modifications, or deny applications for a Wireless Communication Facility pursuant to Sec. III-D.6.g. The Planning Director's decision on such an application may be appealed by filing an application for a Conditional Use.

SECTION 6. Section VI.H.5. of the Wichita-Sedgwick County Unified Zoning Code (September 25, 2009 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 48-451, is hereby amended to read as follows:

- 5. **Administrative Permits.** The Zoning Administrator shall have the authority to review and recommend to the Planning Director approval, approval with conditions or modifications, or denial of applications for a Wireless Communication Facility pursuant to Sec. III-D.6.g. An Administrative Permit for a Wireless Communication Facility may be granted by the Planning Director only with the concurrence of the Zoning Administrator.

SECTION 7. Section VI-B.7. of the Wichita-Sedgwick County Unified Zoning Code is hereby created to read as follows:

Article VI, Section VI-B.7.:

- 7. **Zoning Adjustments.** The Governing Body shall have the authority to approve, approve with conditions or modifications, or deny zoning adjustments when requested in association with an application to amend the Official Zoning Map, an application for Community Unit Plan approval, or an application for Conditional Use approval.

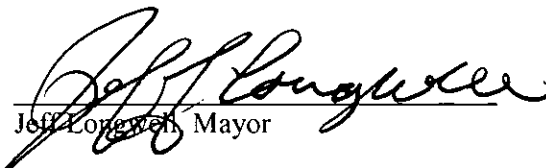
SECTION 8. Section VI-C.7. of the Wichita-Sedgwick County Unified Zoning Code is hereby created to read as follows:

- 7. **Zoning Adjustments.** The Planning Commission shall have the authority to approve, approve with conditions or modifications, or deny zoning adjustments when requested in association an application for Conditional Use approval or for amendment to a Community Unit Plan and shall have the authority to recommend to the Governing Body approval, approval with conditions, or denial of a zoning adjustment when requested in association with an application to amend the Official Zoning Map or amend a Planned Unit Development or Protective Overlay.

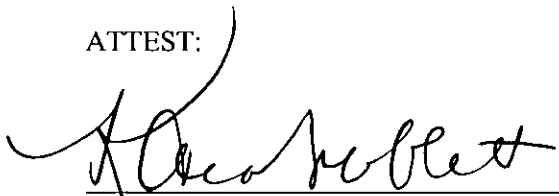
SECTION 9. This ordinance shall be included in the Code of the City of Wichita and shall be effective upon its adoption and publication once in the official City newspaper.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date

\_\_\_\_\_.

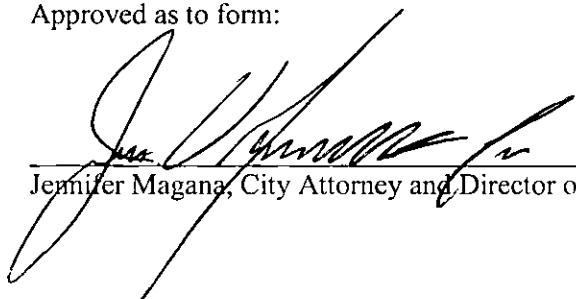
  
\_\_\_\_\_  
Jeff Longwell, Mayor

ATTEST:

  
\_\_\_\_\_  
Karen Sublett, City Clerk



Approved as to form:

  
\_\_\_\_\_  
Jennifer Magana, City Attorney and Director of Law

## **EXCERPT MINUTES OF JANUARY 24, 2019, WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION MEETING**

**Case No. DER2018-00016:** Amendments to the Wireless Communication Master Plan.

**Background:** In 2016, the State of Kansas enacted K.S.A. 66-2019 establishing numerous State mandates regarding how local units of government can regulate wireless communication facilities. The statute prohibited the following Wichita-Sedgwick County policies established by the Wireless Communication Master Plan:

- 1) Requiring applicants to document that no collocation opportunity is available prior to permitting construction of a new wireless communication facility.
- 2) Requiring applicants to demonstrate that a wireless communication facility addresses a wireless service provider need rather than being constructed as a speculative facility.
- 3) Evaluating the merits of an application based on collocation opportunities.
- 4) Requiring small cell facilities in lieu of macro facilities in visually/ environmentally sensitive locations.
- 5) Requiring applicants to agree to permit collocation on their facility by other service providers as a condition of approval.

Additionally, the statute deems an application for a wireless communication facility approved if the application is not acted upon within 150 days for a new facility or 60-90 days (depending on type) for a collocation application. Finally, the statute requires equal treatment of wireless communication facilities with utility installations when applying to locate in right-of-way but establishes a right-of-way fee cap on local governments that is significantly lower than the fee charged utilities.

In response to the statute, the Wichita-Sedgwick County Metropolitan Area Planning Commission (MAPC) approved an amendment of the Wireless Communication Master Plan (WCMP) and associated amendments of the Wichita-Sedgwick County of the Unified Zoning Code (UZC) in September 2016. The Sedgwick County Board of County Commissioners adopted the UZC amendments but not the WCMP amendment in December 2016. The Wichita City Council tabled both the WCMP and UZC amendments in December 2016 with the stated intention of seeking changes to the statute. No changes to the statute have been approved.

In October 2018, the Federal Communications Commission (FCC) issued a Declaratory Ruling that becomes effective January 14, 2019. The ruling establishes additional mandates regarding how local units of government can regulate wireless communication facilities as follows:

- 1) Requiring small wireless facilities up to a certain height and size to be permitted in the right-of-way and establishing “presumptively reasonable” fees that local governments can charge for the use of right-of-way.
- 2) Requiring that local aesthetic requirements be reasonable, non-discriminatory, objective, and published no later than April 14, 2019.
- 3) Limiting the time to review of an application for small wireless facility for completeness to 10 days and establishing a procedure for written notification of application deficiencies.
- 4) Requiring that a single application be accepted for multiple locations.

Staff in consultation with the Advanced Plans Committee has developed the attached draft of the Wireless Communication Master Plan and the attached draft of Amendments to the Wichita-Sedgwick County of the Unified Zoning Code. Combined, these documents contain the amendments to the Wichita-Sedgwick

County Comprehensive Plan and Unified Zoning Code needed to comply with changes to State law and the new FCC ruling.

The MAPC set a public hearing for January 24, 2019, to consider adopting the draft of the Wireless Communication Master Plan as an element of the Wichita-Sedgwick County Comprehensive Plan and to consider adopting the implementing amendments of the UZC.

**Recommended Action:** Approve the resolution adopting the attached draft of the Wireless Communication Master Plan as an element of the Wichita-Sedgwick County Comprehensive Plan and recommend that the governing bodies adopt the attached draft of Amendments to the Wichita-Sedgwick County of the Unified Zoning Code.

This recommendation is based on the following findings.

1. **The extent to which removal of the restrictions will detrimentally affect nearby property:** While the proposed amendments provide regulations and development standards that are less restrictive than existing regulations, the proposed amendments comply with state law and FCC ruling and help mitigate detrimental impacts on nearby properties from the development of wireless communication facilities.
2. **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon property owners:** The proposed amendments will further the health, safety, and welfare of the community by providing regulations that increase the compatibility of wireless communication facilities with surrounding properties and give those property owners more notice of potential facilities than would otherwise be provided under the provisions of state law or the FCC ruling alone. The proposed amendments comply with state law and the FCC ruling and provide sufficient development opportunities for wireless communication facilities as to not create an undue hardship for developers of facilities.
3. **Conformance of the requested change to the adopted or recognized Comprehensive Plan:** The adopted 2035 Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, inadvertently does not have an element addressing wireless communication plan. Adopting the Wireless Communication Master Plan will provide the needed guidance in the Comprehensive Plan regarding wireless communication facilities.
4. **Impact of the Proposed Development on Community Facilities:** The Wireless Communication Master Plan provides guidance for wireless communication facilities located within the public right-of-way to help mitigate detrimental impacts on traffic or pedestrian safety and existing or planned locations of utilities, drainage, street lights, sidewalks, driveways, turn lanes, etc.

**Attachment:** Resolution  
Draft Wireless Communication Master Plan, December 2018  
Draft Amendments to the Wichita-Sedgwick County of the Unified Zoning Code

KNEBEL, PLANNING STAFF, presented the staff report.

RICHARDSON are we changing the compatibility setback to the height of the tower from the other standards because of the FCC or state mandate.

KNEBEL under the previous guidelines we were required to treat wireless facilities the same as any other structure. The setback for a structure that is not a wireless facility where adjacent to duplex or single-family

zoning results in a 600 to 800-foot setback for a typical wireless support structure. Such setbacks are not practical in an urban area, and we would end up having to waive the requirement all the time. A revised analysis of the statute indicates that we are not required to treat wireless facilities the same as buildings. The new reading is we are not supposed to discriminate against a wireless facility.

**RICHARDSON** the intention is to have the county and city have the same regulations.

**KNEBEL** yes. Now the zoning code has two sets of rules for wireless facilities depending upon if the site is in the City or in the County.

**FOSTER** asked a number of questions that clarified the recommended language.

**RICHARDSON** is a wireless facility considered a utility so that you could put one of these in a person's backyard.

**KNEBEL** no it is not considered a utility based upon the definition of a wireless communication facility.

**GREG FERRIS**, expressed concerns; on page 14, Item no. 6, the appearance of a proposed facility...in photo simulations. Photo simulations make sense in environmentally sensitive situations. In a regular setting everyone knows what a cell tower looks like. In an area developed with commercial or industrial uses it is an unnecessary expense to require a photo simulation. Additionally, the proposed requirement that a zoning application and building permit application be submitted concurrently is onerous. After you apply for zoning you have to go through the FCC process. The FCC process takes anywhere from four to six months. The reason why most people do not do the FCC review before they get zoning is it costs between \$25,000 and \$50,000. The other issue is a building permit in Wichita is good for six months. You can usually get a six month extension but it is not automatic. Most companies are not going to be willing to invest that much not knowing if the zoning will be approved. If one applies for zoning and a building permit at the same time the building permit may not be good by the time the FCC approval comes through. No one should have to file for both the zoning and the building permit at the same time. If they are forced to spend all that money up front every cell tower that is denied will almost certainly result in a lawsuit because so much money has already been invested.

**SUSAN CUNNINGHAM**, wanted clarification if the proposed plan protects private property or the river corridor or sensitive areas. Is this plan replacing the earlier plan; just making changes or what.

**KNEBEL** with respect to visually and environmental sensitive locations Kansas statutes expressly prohibits a locality from using that sort of criteria to require a different development standard. Gregg is right that we used to require photo simulations only in those circumstances unless it was determined by the planning director that photo simulations were not required. A photo simulation is helpful for neighbors to place the proposed tower in context. The proposed plan does not retain language regarding visually and environmentally sensitive areas because of earlier mandates. The plan that is proposed is an amendment to the current plan, and the changes included are all of the items contained in the staff report and in the presentation, which are being done because of mandates by the state and federal governments. Regarding the shot clock ruling, there are several pages clarifying what is meant by the shot clock. He agrees it is a pain and staff would rather not have both zoning and building permit applications submitted at the same time, but we cannot assure processing both a zoning and a building permit within 150 days when we allow the applicant to control when the second part of the permit is filed. Given the state law saying that if the city does not act within 150 days, the easiest way to get approval is to file the zoning application and then 151 days later say, hey it's been approved and I don't even have to get a building permit. The building permit that I never filed for is deemed approved by law.

**RICHARDSON** is it possible for the applicant to suspend the clock.

**KNEBEL** the language should read: it is required that an application for a building permit shall be submitted at the time a zoning application is filed unless the applicant submits a tolling agreement for the building permit. The shot clock would stop once zoning is approved and not start until a building permit is filed.

**FOSTER** asked about who determines when an application is complete.

**KNEBEL** the director of planning.

**MOTION:** To approve per staff recommendation as discussed today.

**McKAY** moved, **WARREN** seconded the motion, and it carried (13-0).

---