



**BUSINESS OF THE CITY COUNCIL
CITY OF MERCER ISLAND**

**AB 5652
January 21, 2020
Regular Business**

AGENDA BILL INFORMATION

TITLE:	AB 5652: Small Cell Regulations – Confirm Scope of Work	<input type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Confirm scope of work for ZTR19-004, update to wireless communication facility code	<input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	Community Planning and Development
STAFF:	Evan Maxim, Director
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Federal Communications Commission (FCC) Fact Sheet, dated September 5, 2018
CITY COUNCIL PRIORITY:	3. Support the Leadership Team's Work Plan

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

SUMMARY

The Federal Communications Commission (FCC), which regulates wireless communication technology issued a [“Declaratory Ruling and Third Report and Order”](#), a document that provides regulatory guidance on the deployment of small cell facilities, effective January 14, 2019. These new rules are part of the FCC’s plan to facilitate the updating of the county’s wireless communication infrastructure and investment in 5G networks.

In response to the issuance of the new rules, the City Council unanimously passed Emergency Ordinance No. 19C-02, establishing Interim Design and Concealment Standards for Small Cell Facilities deployments, and directed staff to work with the Planning Commission to develop new code standards for small cell facilities.

The Declaratory Ruling and Third Report and Order created new standards with which the City’s code must be consistent. The federal rules also limit the extent to which local governments may restrict the installation of wireless communication facilities (see Exhibit 1). Topics covered in this latest set of federal rules include:

- Establishment of maximum review times for local review of different types of wireless facilities, including the new “small cell” facilities;
- Rules regarding how review times must be measured; and
- A prohibition on any local regulation that could “effectively prohibit” wireless infrastructure deployment.

After an introductory presentation by staff at its November 20, 2019 meeting, the Planning Commission recommended a scope of work that would focus their work on the following:

- Adding definitions for new terms (e.g. “small cell facility”), reflecting emerging wireless technology;
- Conducting a comprehensive review of existing City wireless communication facility standards to identify potential conflicts with FCC rules;
- Reviewing interim design standards; and
- Exploring limited provisions for adjusting wireless communication facility location.

Prior to commencing work on the development of new code standards, staff is seeking City Council confirmation on the scope of the proposed code amendment.

RECOMMENDATION

Confirm scope of work for ZTR19-004, update to wireless communication facility code.

FCC FACT SHEET¹

**Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment;
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment**

Declaratory Ruling and Third Report and Order
WT Docket No. 17-79; WC Docket No. 17-84

Background: To meet rapidly increasing demand for wireless services and prepare our national infrastructure for 5G, providers must deploy infrastructure at significantly more locations using new, small cell facilities. Building upon streamlining actions already taken by state and local governments, this *Declaratory Ruling and Third Report and Order* is part of a national strategy to promote the timely buildout of this new infrastructure across the country by eliminating regulatory impediments that unnecessarily add delays and costs to bringing advanced wireless services to the public.

What the Declaratory Ruling and Third Report and Order Would Do:

- Clarify the scope and meaning of the effective prohibition standard set forth in Sections 253 and 332(c)(7) of the Communications Act as they apply to state and local regulation of wireless infrastructure deployment.
- Conclude that Sections 253 and 332(c)(7) limit state and local governments to charging fees that are no greater than a reasonable approximation of their costs for processing applications and for managing deployments in the rights-of-way.
- Identify specific fee levels for small wireless facility deployments that presumably comply with the relevant standard.
- Provide guidance on certain state and local non-fee requirements, including aesthetic and undergrounding requirements.
- Establish two new shot clocks for small wireless facilities (60 days for collocation on preexisting structures and 90 days for new builds) and codify the existing 90 and 150 day shot clocks for non-small wireless facility deployments that were established in the *2009 Declaratory Ruling*.
- Make clear that all state and local government authorizations necessary for the deployment of personal wireless service infrastructure are subject to those shot clocks.
- Conclude that a failure to act within the new small wireless facility shot clock constitutes a presumptive prohibition on the provision of services. Accordingly, we would expect local governments to provide all required authorizations without further delay.

¹ This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WT Docket No. 17-79 and WC Docket No. 17-84, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*