

Comments on Proposed Amendments to St. Paul Cell Tower Zoning Ordinance

- Section 6409 of the federal Spectrum Act provides that “a State or local government may not deny, and must approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 § 6409(a), 126 Stat. 156 (2012)
- The FCC recently adopted rules implementing section 6409. 47 C.F.R. Part 1, subpart CC. Among other things, those rules spell out what modifications of any existing wireless tower or base station constitute eligible facility modifications which a State or local government is required to approve.
- The stated purpose of the proposed revisions to St. Paul’s cell tower zoning ordinance is to conform that ordinance to the new FCC rules. Consistent with this stated purpose, the following sentence would be added to section 65.310(a): “A conditional use permit is not required for any eligible facility modification allowed under 47 CFR Part 1. “
- However, other proposed revisions would effectively remove the benefit of this language and undermine the intent of section 6409 and the FCC’s implementing rules:
 - Language would be added to section 65.310 allowing the review of a proposed conditional use permit for a new structure to “take into account” future modifications to that structure that would be allowed under 47 C.F.R. Part 1.
 - Section 65.310(d)(1) would be revised to eliminate the allowance for new freestanding poles designed to carry 2 antennas to exceed 75 feet by up to 25 feet. This is being proposed to eliminate the possibility that a later modification to extend the height of the pole by 28 feet (which the City would be required to allow under the FCC’s rules), would result in a tower with a height that exceeds the current maximum height of 100 feet. It would also eliminate the possibility that a new freestanding pole of up to 100 feet could be built to carry 2 antenna RAD centers (which could be either 1 carrier that needs 2 RAD centers or 2 carriers that each need 1 RAD center).
 - Section 65.310(e) would be revised to reduce the current maximum allowed height of a freestanding pole in industrial districts from 150 feet to 122 feet. Again, the purpose and effect of this revision is to eliminate the possibility that a future modification to extend the height of such a tower by up to 28 feet (which the City would be required to allow under the FCC’s rules) will result in a tower higher than 150 feet, the current maximum height. Given that this subsection applies to both new and existing

freestanding poles in industrial districts, the intent is not clear with respect to existing poles.

- Thus, the proposed ordinance revisions are contrary to the intent of the FCC's rules, which is "to promote the deployment of wireless infrastructure" by "eliminating unnecessary reviews, thus reducing the costs and delays associated with facility siting and construction." FCC Report and Order, par. 1, WT Docket No. 13-238 (Oct. 21, 2014).
- By reducing the maximum heights of freestanding poles, the proposed revisions would severely limit the ability to collocate multiple wireless antennas on new freestanding poles (65.310(d)(1)) and on freestanding poles in industrial districts (section 65.310(e)).
 - Thus, proposed revisions are directly contrary the FCC's intent to "facilitate the zoning process for collocations", recognizing that "collocation on existing structures is often the most efficient and economical solution for mobile wireless service providers that need new cell sites to expand their existing coverage area, increase their capacity, or deploy new advanced services." FCC Report and Order, par. 142, WT Docket No. 13-238 (Oct. 21, 2014).
 - Proposed revisions would have unintended effect of leading to need for more freestanding poles than would otherwise be the case.
 - As demand for wireless service increases, proposed revisions would have the unintended effect of impairing or prohibiting the ability of wireless carriers to provide reliable service or to increase the capacity of their networks.
- Proposed amendments should be changed as follows:
 - Section 65.310(a)-Delete next to the last sentence, beginning "Conditional use permit review for such antennas will take into account..." Revise the last sentence to read: "Notwithstanding any provision of the St. Paul Zoning Code to the contrary, a conditional use permit is not required for any eligible facility modification allowed under 47 C.F.R. Part 1."
 - The proposed amendment to section 65.310(d)(1) should be rejected.
 - The proposed amendment to section 65.310(e) reducing 150 feet to 122 feet should be rejected.
- Other revisions to the existing code language need to be made to conform with the FCC rules implementing section 6409

- For example, requiring a CUP to add wireless antennas to an existing wireless residential structure less than 60 feet high, as Section 65.310 (a) would do in an expanded area, is contrary to the new FCC rules to the extent the additional antennas qualify as an eligible facility modification (i.e., increase in height above top of structure of no more than 10% or 10 feet, whichever is greater). FCC Report and Order, par. 193, WT Docket No. 13-238 (Oct. 21, 2014).
- Thus, the first sentence of Section 65.310(a) should be revised as follows: "In residential, traditional neighborhood and business districts, a conditional use permit is required for cellular telephone antennas on a residential structure less than sixty (60) feet high, unless the antennas are an eligible facility modification allowed under 47 CFR part 1."

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Butler, Sonja (CI-StPaul)

From: Michael Jon Olson <michaeljon@hamlinemidway.org>
Sent: Wednesday, February 18, 2015 10:41 AM
To: Dermody, Bill (CI-StPaul)
Subject: Cellular Telephone Antennas Text Amendments
Attachments: ENS+CellularTelephonePH03-13-15.pdf

Bill,

Hamline Midway Coalition/District Council 11 fully SUPPORTS the proposed Cellular Telephone Antennas Text Amendments as described in the attached public notice.

Thank you for your consideration.

Michael Jon Olson
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