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Legislation Text

File #: 19-183, Version: 1

UPDATES TO THE WIRELESS COMMUNICATION MASTER PLAN AND THE UNIFIED ZONING CODE REGULATIONS OF WIRELESS COMMUNICATIONS FACILITIES, DER2018-00016 (ALL DISTRICTS).

Presented by: Scott Knebel, Planning Manager.

RECOMMENDED ACTION: Adopt the findings of the MAPC; approve the Wireless Communication Master Plan, January 2019, and adopt the associated amendments to the Wichita-Sedgwick County Unified Zoning Code, authorize the Chairman to sign the resolutions and authorize the resolutions to be published.

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 colocation 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 colocation opportunities.
- 4) Requiring small cell facilities in lieu of macro facilities in visually/ environmentally sensitive locations.
- 5) Requiring applicants to agree to permit colocation 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 colocation 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 (UZO) in September 2016. The Sedgwick County Board of County Commissioners adopted the UZO amendments but not the WCMP amendment in December 2016. The Wichita City Council tabled both the WCMP and UZO 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.
- 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 Wichita-Sedgwick County Metropolitan Area Planning Commission (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.]

Alternatives:

1. Adopt the findings of the MAPC; approve the Wireless Communication Master Plan, January 2019, and adopt the associated amendments to the Wichita-Sedgwick County Unified Zoning Code, authorize the Chairman to sign the resolutions and authorize the resolutions to be published (requires a simple majority vote).
2. Deny the Wireless Communication Master Plan, January 2019, and associated amendments to the Wichita-Sedgwick County Unified Zoning Code, with the Board of County Commissioners adopting additional or alternative findings in support of denial (requires a two-third majority vote).
3. Return the Wireless Communication Master Plan, January 2019, and associated amendments to the Wichita-Sedgwick County Unified Zoning Code to the MAPC for reconsideration with a statement specifying the basis for the Board of County Commissioners’ failure to approve or disapprove (requires a simple majority vote).

Financial Considerations: There are not any additional financial considerations to the County associated with this application.

Legal Considerations: Pursuant to K.S.A. 12-747 and K.S.A. 12-757, the various options and vote

requirements are included in the “Alternatives” section above.

Policy Considerations: The MAPC recommendations are based upon the findings of fact stated in the attached MAPC minutes.

Outside Attendees: N/A

Multimedia Presentation: PowerPoint