



## Memorandum

**Date:** April 16, 2019

**To:** Jeff Tyne, City Manager

**From:** Chris M. Jacques, AICP, Planning Director  
Cody Gleason, Senior Planner

**Through:** Peoria City Attorney's Office

**Re:** Implementation of FCC Order 18-133 ("Peoria Small Wireless Facility Policy")

---

---

### ***Peoria Small Wireless Facility Policy:***

This memorandum constitutes the interim policy regarding the processing, associated timelines, design standards and fees for all *Small Wireless Facilities* on private property. This policy seeks to establish immediate compliance with FCC Order 18-133 and other legislation until appropriate amendments can be enacted within the Peoria City Code.

---

### **Purpose:**

This memo is in response to the recent Declaratory Ruling by the Federal Communications Commission (FCC) issued through Order 18-133 on September 27, 2018. The focus of FCC Order 18-133 is to provide clarification on both the intent of the legislation regarding wireless communication facilities as well as the rules established by the FCC applicable to the deployment of said facilities. The FCC Order also provides additional limitations and guidance for local jurisdictions in an effort to facilitate *Small Wireless Facilities* in particular.

Due to the specified deadline of April 15, 2019 identified in the FCC Order, this memo serves to identify the interim policy and regulation changes that will be implemented by the City of Peoria prior to the adoption of applicable Zoning Ordinance and City Code updates. These amendments will be made necessary to address issues referenced herein. This interim policy memo is an effort to ensure compliance with all applicable Federal Legislation as well as the aforementioned FCC Order 18-133 regarding *Small Wireless Facilities*. This memo goes on to establish practices regarding processing,

timelines, design standards, and fees for all *Small Wireless Facilities* on private property. All facilities not meeting the definition of a Small Wireless Facility as defined within FCC Order 18-133 shall comply with the existing requirements within Section 21-813 of the City of Peoria Zoning Ordinance.

**Background:**

The FCC was formed by the Communications Act of 1934 to address radio broadcast regulations. The Telecommunications Act of 1996 was adopted in an effort to facilitate the deployment of telecommunications infrastructure and represented the most comprehensive overhaul of communications regulations since the aforementioned 1934 act.

In 2009, the FCC issued Declaratory Ruling FCC 09-99 establishing what has been termed “shot clocks” to provide review time frame limitations on local jurisdictions. These shot clocks ensure that the deployment of telecommunications facilities is not hindered by undue delays or review processes of local jurisdictions. Order 09-99 was addressed through planning practices and expedient reviews.

In 2014, the FCC issued Declaratory Ruling FCC 14-153 establishing thresholds for what has been deemed “substantial change” criteria. This was again in an effort to hasten the capability of wireless communications providers to deploy facilities throughout the country. Order 14-153 was the primary focus of the City of Peoria comprehensive re-write of the Wireless Communication Facilities Section of the Zoning Ordinance (Section 21-813).

Within the last few years, the State of Arizona Legislature passed multiple bills that provide limitations on local jurisdictions with respect to *Small Wireless Facilities*; however, those bills are specific to the requirements of *Small Wireless Facilities* within the right-of-way of local jurisdictions and is not concerned with the review of such facilities on private property. That process is already established through the City’s Development and Engineering Department.

The most recent FCC Order (18-133), which is the primary focus of this memo, is centered on the deployment of 5G technology. The order provides further delineation of shot-clock timeframes for *Small Wireless Facilities*, presumptive fees for the application of such facilities, the requirement to establish aesthetic criteria if aesthetics are to be enforced, and the definition of such facilities. The manner in which Peoria will address the elements of Order 18-133 to accommodate the requirements are identified in further detail herein. This memo shall function as an interim policy until such time necessary regulatory changes can be adopted by City Council.

## **City of Peoria Interim Policy:**

### **Process**

#### Pre-Application Conference not required

Typical City practices encourage, and for certain case types, require a pre-application conference prior to formal submittal. This memo clarifies that a pre-application conference is not a requirement of a Site Plan submittal for a *Small Wireless Facility*. Any applicant applying for a pre-application conference for a *Small Wireless Facility* does so on a voluntary basis, and understands that any shot clock associated with such facilities does not begin until such time as a formal Site Plan submittal is made.

#### Small Wireless Facilities Checklist

Existing processes require a checklist of items that are not always applicable to wireless facilities and in particular *Small Wireless Facilities*. In an effort to accommodate advancements in industry technology as well as legislation and federal policies, this memo establishes the checklist within the attached Small Wireless Facility Permit guide (Exhibit A) as minimum submittal requirements for *Small Wireless Facilities*. This tailored checklist will allow for the submittal of essential materials to address staff reviews and identify compliance with applicable City standards prior to any subsequent permit submittal. The checklist also identifies notes and information that must be on the plans at the time of submittal. The checklist will identify standard conditions of approval and informational comments to provide the applicant an expectation prior to submittal of the standards that will apply to every site.

#### Electronic Submittal Required

Current practices for case submittals do not verify the specifics of each submittal item for completeness until such time as the review is underway (i.e. standard notes would not be verified at the time of submittal for a Site Plan submittal). For *Small Wireless Facilities* on private property this level of detail on the plans would be a requirement at the time of submittal to ensure we are able to conduct a review for completeness at the time of submittal in accordance with FCC Order 18-133.

Most cases merely evaluate the appropriate materials are incorporated within the submittal. This provides for flexibility with most development cases and allows the developer an opportunity to coordinate with staff on specifics; however, the FCC ruling places an emphasis on establishing practices and ensuring that shot clock time frames can be met.

Based on legislation as well as FCC Order 18-133 regarding shot clocks, the City's existing procedures and review timeframes potentially place a burden on the City, and puts the remaining time and status of the City's review (including building permits) in a potentially precarious state. To accommodate these requirements, City staff will be requiring all *Small Wireless Facility* submittals be submitted online

through the Development Services Portal (see Exhibit A). This will allow for automated system tracking of the materials that are submitted, when they were submitted, and what the status is of the review for the applicant. Electronic submittals will also allow all reviewers to evaluate the same material simultaneously. This will cut down on routing requirements and timeframes.

#### Conditional Use Permit not Required

At times, there are requirements for the submittal of a Conditional Use Permit for *Small Wireless Facilities* dependent on the size and physical location of such facilities in accordance with Section 21-813 of the City of Peoria Zoning Ordinance. The requirement for any such hearing and potentially subjective conditions would be in clear violation of FCC Order 18-133. As a result, until the Zoning Ordinance can be modified to accommodate these issues, this memo establishes that *Small Wireless Facilities* would not be subject to a Conditional Use Permit regardless of size and placement (so long as said facilities meet the definition of a Small Wireless Facility).

#### Revised Notification Process

Existing practices for Site Plan submittals are established through Section 21-320 of the City of Peoria Zoning Ordinance. Section 21-315 of the City of Peoria Zoning Ordinance establishes notification requirements for a variety of case types including Site Plan submittals. Though procedures are established within these sections deviations shall be applied through this interim policy memo in order to accommodate the stated requirements within FCC Order 18-133.

In particular, the Zoning Ordinance requires a Notice of Application, and a Notice of Decision for each submittal. The purpose of these notification requirements are to establish minimum thresholds of citizen engagement for cases. These practices often create an expectation of the public's capability to participate within the review process. Public input often helps shape the result of the planning process. The purpose of FCC Order 18-133 is the expedient rollout of *Small Wireless Facilities* and the establishment of objective criteria within the review process. Citizen participation within this process would project an unrealistic expectation to the public of their capability to comment on, and engage staff on community solutions to the review process. Such participation typically also extends the ultimate resolution of the case review.

To follow the intent of the FCC Order, until such time as a subsequent amendment to the Zoning Ordinance (City Code) can be adopted to modify the requirements for these submittals, a Notice of Application and Notice of Decision shall not be applicable to Site Plans for *Small Wireless Facilities* submitted on private property.

#### Routing

Typical Site Plan reviews would be routed to a myriad of City Departments to provide an opportunity for each department to comment on any component of the plan that falls under their purview. This again displays the inclusive intent of planning practices when dealing with typical submittals. This

inclusivity of all parties is appropriate on larger scale projects and developments where multiple site aspects must be considered.

One of the focal points of FCC Order 18-133 is expediency in the review of such materials which places maximum thresholds or “shot clocks” on review timeframes for local jurisdictions. Considering the limited nature, and often low impact of such reviews when it comes to a *Small Wireless Facilities*, City staff will be deviating from the typical routing process. This deviation is solely for *Small Wireless Facilities* on private property. To ensure capacity within the shot clock timeframes identified within Order 18-133, and in an effort to alleviate unnecessary delays, *Small Wireless Facilities* will only be routed to essential review staff. This will decrease wait times that can result from a multitude of reviewers, and focus only on essential review items through a formulaic review process. As such the associated fee will be modified in accordance with the Fee section of this memo. Specifics regarding the personnel that will be routed the materials are identified within the Review subsection of this memo.

### Review

To aid in the efficient facilitation and review of Small Wireless Facilities, only essential City staff will be routed materials for review. Staff reviewers will consist of the following:

- Planning Technician
  - Intake of the materials and routing to the reviewing parties.
  - Check for completeness of the application.
  - Conducts administrative denial if all necessary materials are not submitted.
  - Coordinates payment from the applicant.
- Civil Engineer
  - Review for any modifications to drainage for the area or other civil engineering related review criteria.
- Engineering Technician II
  - Review for utility conflicts or impacts to right-of-way facilities.
- Planner/Senior Planner
  - Review materials for compliance with established standards within the City of Peoria Zoning Ordinance unless otherwise modified herein.
  - Review of the design standards established herein.
  - Approval of the Site Plan submittal materials and issuance of the associated approval letter.

### Approval

Standard Notes and Standard Conditions of Approval are provided to the applicant on the application for the Site Plan submittal (see Exhibit A). The Standard Notes, and Standard Conditions of Approval of the *Small Wireless Facility* Permit guide, as well as the applicable Design section requirements of this memo must be incorporated on the applicant’s plans and reflected in the submittal materials. Once an

application has been found to meet all requirements an approval letter and stamped approved plans will be issued to the applicant.

### Appeal

If an appeal is filed of the final decision regarding the Site Plan for a Small Wireless Facility, the Planning and Community Development Director shall act as the reviewing party to determine if Planning staff approved, or denied the *Small Wireless Facility* in violation of the provisions of the Zoning Ordinance or provisions as modified by this memo. The determination of the Planning and Community Development Director upon appeal shall be final. If a party wishes to seek relief from this determination, they must do so through the proper judicial channels.

### **Timelines**

FCC Order 18-133 establishes new timeframes for *Small Wireless Facilities* that are shorter than those of a macro facility. A summary of the required shot clock time frames are identified below in accordance with the aforementioned order.

- The application must be reviewed for completeness within 10 days.
  - Shot clock resets to (60 days for a collocation, or 90 days for a new verticality) upon submittal of missing materials that completes the application.
- The review of an application to collocate a *Small Wireless Facility* on an existing structure shall be conducted within 60 days from the date that the application is determined to be complete.
  - This shot clock is inclusive of all application submittals including Site Plan, as well as applicable Building and Engineering permits, but does not continue running unless the applicant has a submittal in to the City of Peoria for review (i.e. the clock does not run in between approval of the site plan and prior to building permit submittal).
- The review of an application to deploy a new *Small Wireless Facility* shall be conducted within 90 days from the date that the application is determined to be complete.
  - This shot clock is inclusive of all application submittals including Site Plan, as well as applicable Building and Engineering permits, but does not continue running unless the applicant has a submittal in to the City of Peoria for review (i.e. the clock does not run in between approval of the site plan and prior to building permit submittal).

### **Design**

Current City policies take a broad-brush approach to design implementation and stealth concealment efforts for wireless facilities on private property. The intent of this approach is to accommodate multiple design configurations that provide for the most context appropriate solution for each individual site.

### New Building Mounted

Facilities collocating on existing buildings shall comply with the following standards:

- All building mounted facilities shall be completely screened from view in a manner consistent with mechanical equipment screening that is mounted to buildings.
  - Surrounds or shrouds for screening must be architecturally integrated in to the building; including use of color and representative materials or provide a context appropriate modification to parapet walls.
  - Modifications to the building shall incorporate the same color and materials as the existing building.
- The placement of a Small Wireless Facilities and any associated concealment elements including shrouds, canisters, surrounds, etc. shall not extend beyond 10% of the existing building height.
- Each antenna shall be no more than 3 cubic feet in volume.
- All equipment associated with the Small Wireless Facility shall not exceed 28 cubic feet in volume.
  - All associated equipment must be screened by a material that is consistent with the design of the building.
- All wiring shall be completely shielded from view.

#### New Verticality

Facilities that are locating on a structure that did not previously exist on site must comply with the following standards:

- The facility shall take the form of the most ubiquitous vertical element on site or in the immediate area.
- The new verticality shall maintain consistent color, materials, design, and scale as the vertical element it seeks to mimic.
  - This will often times consist of elements such as parking lot lights.
    - Any new verticalities that mimic functional elements on site shall be functional themselves and meet requirements of that element to further aid in concealment.
      - i.e. if a the new verticality takes the form of a parking lot light it must function as one and meet any light shielding requirements.
- New verticalities may not obstruct the planned or existing vehicular or pedestrian access routes or sight visibility.
- New verticalities may not cause the removal of on-site landscaping without replacement of landscape materials in-kind with those that were removed.
- All antennae shall either be located within a canister or contain shrouding that mimics a canister.
- Each antenna shall be no more than 3 cubic feet in volume.
- All equipment associated with the Small Wireless Facility shall not exceed 28 cubic feet in volume.

- All associated equipment must be screened by a material that is consistent with the design of the new vertical element.
- The placement of new verticality Small Wireless Facilities shall not create a structure that is more than 10% taller than other adjacent similar structures.
- All wiring shall be completely shielded from view.

Existing Verticality other than Building Mounted

Facilities collocating on existing vertical on-site elements such as parking lot light-poles, flag-poles, water tanks, etc. shall comply with the following:

- Facilities collocating on existing vertical elements often require the replacement of said elements to accommodate components of the Small Wireless Facility. The items requiring accommodation often include structural footings, wider poles to accommodate wiring capacity, etc.
- Any such replacement shall substantially conform to the original element that the new verticality intends to replace as it relates to color, materials, design, and scale.
- All antennae shall either be located within a canister or contain shrouding that mimics a canister.
- Each antenna shall be no more than 3 cubic feet in volume.
- All equipment associated with the Small Wireless Facility shall not exceed 28 cubic feet in volume.
  - All associated equipment must be screened by a material that is consistent with the design of the existing verticality.
- The collocation of a Small Wireless Facilities shall not create a structure that is more than 10% taller than other adjacent similar structures.
- All wiring shall be completely shielded from view.

**Fees**

Until such time as an amendment to the City of Peoria City Code can be adopted by the City Council, the review fee for such facilities will be in line with the presumptive fee identified within FCC Order 18-133 which identifies \$500 per application for up to 5 sites with an additional \$100 per application beyond 5 sites. Unless submittals are made concurrently, they will not be viewed as a bundled application, and as such they will receive individual application fees of \$500 per application.

A fee study is underway to establish a Peoria specific fee for the review of the Site Plan submittal of a small cell application on private property. Initial estimations of the fully burdened rate for the cost of service would likely place the fee at approximately \$400 per application. This Peoria specific fee would be based on a per site basis rather than the FCC presumptive fee structure that establishes a lower rate for bundled applications.

**Next Steps**

City staff will identify the elements stated within this memo that modify the existing Zoning Ordinance regulations as well as City Code established fees. Staff will then initiate amendments to both documents that further the goal of compliance with federal legislation, policies, and in particular FCC Order 18-133.

CC: Katie Gregory, Deputy City Manager  
Vanessa Hickman, City Attorney  
David Benton, Chief Assistant City Attorney  
Adina Lund, Development and Engineering Director  
Jack Situ, Site Development Supervisor  
Traci Varland, Development Services Supervisor  
Michael Brune, Fire Prevention Inspection Supervisor  
Debbie Gibbs, Application Systems Supervisor