

FACTSHEET

TITLE: TEXT AMENDMENT NO. 14019
(Title 27 - Personal Wireless Facilities)

BOARD/COMMITTEE: Planning Commission

APPLICANT: Acting Director of Planning

RECOMMENDATION: Approval (9-0: Sunderman, Harris, Beecham, Cornelius, Hove, Scheer, Corr, Weber and Lust voting 'yes').

STAFF RECOMMENDATION: Approval

OTHER DEPARTMENTS AFFECTED: N/A

SPONSOR: Planning Department

OPPONENTS: None

REASON FOR LEGISLATION:

To amend Chapter 27.68 of the Lincoln Municipal Code relating to Personal Wireless Facilities by amending Sections 27.68.020, 27.68.030, 27.68.120, and 27.68.130 to modify the definitions of "abandonment" and "partial abandonment"; to modify administrative permit provisions; and to delete provisions regarding the initial term and renewal of special permits and administrative permits; repealing Sections 27.68.040, 27.68.050, 27.68.060, and 27.68.070 of the Lincoln Municipal Code in their entirety; and repealing Sections 27.68.020, 27.68.030, 27.68.120, and 27.68.130 of the Lincoln Municipal Code as hitherto existing.

DISCUSSION/FINDINGS OF FACT:

1. This text amendment and the associated amendment to the County's Zoning Resolution were heard at the same time before the Planning Commission.
2. The purpose of this text amendment is to amend the zoning ordinance to eliminate the requirement for special and administrative permits for wireless facilities to be renewed every 15 years; to extend the amount of time allowed before facilities are considered abandoned; to clarify that rooftop-mounted antennas may be approved by administrative permit instead of special permit.
3. The staff recommendation of approval is based upon the "Analysis" as set forth on p.2-4, concluding that it is appropriate that wireless facilities be treated in the same manner as most every other zoning permits in the zoning ordinance. Deleting the renewal provisions will not diminish the City's ability to maintain compliance with an approved permit. It will actually save significant amounts of time, effort and resources on the part of carriers and staff if the renewal process is removed.
4. On December 10, 2014, this application appeared on the Consent Agenda of the Planning Commission and was opened for public hearing. No one came forward to speak.
5. On December 10, 2014, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend approval of this text amendment to Title 27 of the Lincoln Municipal Code.
6. On December 10, 2014, the Planning Commission also voted 9-0 to recommend approval of the same amendments to the Lancaster County Zoning Resolution (County Text Amendment No. 14020). The County Board is scheduled to hold public hearing on January 13, 2015.

FACTSHEET PREPARED BY: Jean Preister, Administrative Officer

DATE: December 29, 2014

REVIEWED BY: Stephen S. Henrichsen, Development Review Manager 

DATE: December 29, 2014

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for December 10, 2014 PLANNING COMMISSION MEETING

PROJECT #: Text No. 14019 - Chapter 27.68 Personal Wireless Facilities

PROPOSAL: To eliminate the requirement for special and administrative permits for wireless facilities to be renewed every 15 years, to extend the amount of time allowed before facilities are considered abandoned, and to clarify that rooftop-mounted antennas may be approved by administrative permit instead of special permit.

CONCLUSION: There are only a few zoning permits that have any sort of built-in time constraint. Adopted in 2000, the regulations for personal wireless facilities were in part reflective of the conditions in the wireless industry at that time. Proliferation of facilities was a significant concern, as well ensuring that facilities remained in use and in compliance with the Zoning Ordinance. Presumably, the renewal process was deemed necessary to maintain continued compliance with the original permit approval.

During the fourteen years since adoption, there have been no significant issues of noncompliance with any of the permittees. Certainly, there have been no issues which weren't addressed using the authority already provided under the Zoning Ordinance via the approved zoning permit. That is, the City has the ability to demand compliance with the approved administrative or special permit, as is the case with any other use allowed by a similar permit. Beyond that, there is no demonstrated reason to treat wireless facilities different than other uses regulated by the Zoning Ordinance. The renewal process represents a significant dedication of time, effort and resources on the part of both applicants and staff for no demonstrated benefit.

RECOMMENDATION:

Approval

ASSOCIATED APPLICATIONS:

TX#14020 - A similar text amendment to modify the Lancaster County Zoning Regulations.

ANALYSIS:

1. This is a proposed text amendment to Chapter 27.68 Personal Wireless Facilities of the Lincoln Municipal Code. Chapter 27.68 was adopted in 2000, and is specifically designed to regulate cellular telephone towers and associated facilities. It states that new towers are regulated by special permits, and antennas located on top of buildings or are camouflaged are regulated by administrative permits. Special permits must be approved by the Planning Commission, and administrative permits can be approved by the Planning Director.

2. This proposed text amendment contains three major changes, each explained individually below.

A. Deletion of permit renewal provisions:

1. Paragraphs 27.68.040 through 27.68.070 all deal exclusively with the permit renewal process. As written, all administrative and special permits for wireless facilities are approved for 15 years, after which time all permits must be renewed.

The wireless industry operated differently in 2000, and some of those differences likely drove the adoption of the permit renewal provisions. One significant change has been nationwide leases among most major carriers. Previously, most every carrier sought to locate their antennas on towers they owned, and co-location was undesirable. The desire on the part of every carrier to own all the towers supporting their antennas meant unnecessary facilities would be built.

However, that's not the case today. A new tower represents a significant capital investment, along with the need to gain permit approval from both local and Federal government agencies. In contrast, co-location on an existing facility is much more economical, and is also encouraged by the Zoning Ordinance.

As with any administrative or special permit, the Zoning Ordinance provides authority for enforcement to ensure compliance with an approved permit. So, for any wireless carrier with facilities approved by either an administrative or special permit, the City has the authority to pursue enforcement action for non-compliance at any time it is deemed necessary. This authority is separate from and exclusive of the permit renewal process.

Wireless facilities must be maintained, as well as upgraded from time to time to reflect new technologies. Such changes and upgrades are reviewed as part of the administrative and special permits. The Zoning Ordinance provides that minor changes can be approved administratively, but more significant changes require Planning Commission approval.

Of the 81 special permits and handful of administrative permits contained in the Zoning Ordinance, the only other permit besides those for wireless facilities which contain some sort of time limitation is 27.63.160 Excavation.

B. Changes to the abandonment provisions:

1. A change in the amount of time allowed from 90 days to 180 days before a facility is considered abandoned. Three months does not allow much time to either find alternate carriers, or account for delays caused by weather or other unforeseen events.

2. Add a new definition for Partial Abandonment. The first paragraph of Section 27.68.130 is actually a definition, and does not belong as the first paragraph of a section which describes the administrative process for abandoned facilities. For clarity, it has been added as a new definition.

- C. Changes to the Administrative Permit provisions:
1. Since adoption in 2000 the intent of Section 27.68.030(c)(1) has been interpreted to mean that rooftop-mounted facilities and camouflaged facilities are allowed by administrative permit. These are both desirable applications that are encouraged by the Zoning Ordinance, so a less rigorous review and approval process is appropriate. This proposed change modifies the text to make it clear that rooftop-mounted facilities and camouflaged facilities are be allowed by administrative permit.
 3. It is appropriate that wireless facilities be treated in the same manner as most every other zoning permit in the Zoning Ordinance. Deleting the renewal provisions will not diminish the City's ability to maintain compliance with an approved permit. However, it will save significant amounts of time, effort and resources on the part of carriers and staff if the renewal process is not in effect.

Prepared by:

Brian Will
bwill@lincoln.ne.gov
November 21, 2014

APPLICANT: David Cary, Acting Planning Director
City of Lincoln/Planning Department
555 South 10th Street
Lincoln, NE 68508

CONTACT: Brian Will
City of Lincoln/Planning Department
555 South 10th Street
Lincoln, NE 68508
402-441-6362

TEXT AMENDMENT NO. 14019

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

December 10, 2014

Members present: Scheer, Harris, Cornelius, Beecham, Corr, Sunderman, Weber, Hove and Lust.

The Consent Agenda consisted of the following items: ***CITY TEXT AMENDMENT NO. 14019*** and **COUNTY TEXT AMENDMENT NO. 14020; ANNEXATION NO. 14006, CHANGE OF ZONE NO. 14031 and SPECIAL PERMIT NO. 14050; CHANGE OF ZONE NO. 14030; SPECIAL PERMIT NO. 14048 and STREET & ALLEY VACATION NO. 14011; STREET & ALLEY VACATION NO. 14010; and STREET & ALLEY VACATION NO. 14012.**

There were no ex parte communications disclosed.

Item No. 1.5, Street & Alley Vacation No. 14010, was removed from the Consent Agenda and had separate public hearing.

Cornelius moved approval of the remaining Consent Agenda, seconded by Hove and carried 9-0: Scheer, Harris, Cornelius, Beecham, Corr, Sunderman, Weber, Hove and Lust voting 'yes'.

Note: This is final action on Special Permit No. 14050 and Special Permit No. 14048, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.