



CITY OF RAPID CITY

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MEMORANDUM

TO: Planning Commission

FROM: Carla Cushman, Assistant City Attorney *CC*

SUBJECT: Ord. No. 6355 *An Ordinance Amending Title 17 of the Rapid City Municipal Code to Exempt Small Wireless Facilities from the Definition of Microcell Wireless Communication Facilities*

DATE: September 26, 2019

This proposed ordinance clarifies the City's regulation of Small Cell Facilities. Small Cell Facilities (SCFs) are defined in federal law as wireless facilities which are generally less than 50 feet in height, include an antenna that is less than 3 cubic feet in volume and other equipment less than 28 cubic feet in volume, and comply with federal standards with regard to radiofrequency radiation. *47 CFR 1.6002(l)*. SCFs may provide 4G or 5G service, and they are used by wireless providers to expand and improve service to cell users in high demand areas. Such facilities must comply with extensive federal regulation; at the same time, Congress and the FCC have placed parameters on how local governments may regulate wireless service, including SCFs.

Over the course of the past year, the City has taken steps to regulate SCFs within its jurisdiction via a master agreement with providers, as many cities have done, instead of regulating SCFs through the City's zoning code. This decision was based on the relatively small size of these facilities as well as the limits set by the FCC on the City's oversight of SCFs. To that end, the City Council approved a Master License Agreement with CommNet Cellular Inc. d/b/a Verizon Wireless at its July 15, 2019 meeting that permits SCFs on City poles and provider poles on City right of way and City property. *See Item 11 to July 15, 2019 meeting, available at <https://www.rcgov.org/agendas/city-council-agendas/2019-city-council-agendas/2019-07-15-city-council-agenda-6788.html>.*

Ordinance 6355 clarifies that the City does not regulate SCFs through its zoning code, while retaining zoning oversight of other microcell wireless service providers as already provided in the zoning code. The ordinance instead requires that an agreement between the provider and the City must be executed before a provider may place an SCF on a City pole or its own pole on City property or right of way. Through negotiation of that agreement, the parties agree to the terms of the placement of SCFs in these areas and establish the procedure for the City to permit use of its property in this way. The agreements do not concern placement of SCFs on private property or on private structures within the ROW, which placement is between the wireless provider and the property owner.

Finally, Ordinance 6355 makes two other clean ups to RCMC 17.50.400. First, the ordinance removes an obsolete reference to SDCL 11-6-19, which was repealed in 2010. Second, it eliminates the provision that restricts the number of microcell facilities on any pole to three, as that provision discourages collocation of facilities when the City wants to encourage collocation of facilities as much as possible.

If you have any questions, please feel free to call me at 394-4140 or email me at carla.cushman@rcgov.org.