



City Council Agenda Bill

20033

Bill Number

Subject: A discussion regarding the regulation of amateur radio antennas.

Summary Statement: City Council directed staff to research the possibility of regulating amateur radio antennas. Council Member Lilliquist presented a draft ordinance at the July 1 work session, which the City Council subsequently voted 6-1 to direct staff to bring forward for consideration. Should City Council direct staff to complete a type VI legislative review process for this ordinance, this work would be scheduled to be completed as part of the 2014 PCD work program. City Council direction is requested whether this matter is to be included as part of the 2014 PCD work program.

Previous Council Action: July 1, 2013; City Council vote to consider ordinance, March 25, 2013; City Council direction to staff

Fiscal Impact: Undetermined

Funding Source: N/A

- Attachments:**
- Draft Ordinance
 - Staff Memorandum
 - RCW 35A.21.260

Meeting Activity	Meeting Date	Staff Recommendation	Presented By	Time
Committee Briefing Council Direction Requested	15-Jul-2013	Provide Direction to Staff	Jeff Thomas, PCD Director	5 min

Council Committee:
Committee of the Whole
Seth Fleetwood, Chair

Agenda Bill Contact:
Jeff Thomas, PCD Director 778-8300

Committee Actions:

Reviewed By	Initials	Date
Jeff Thomas, PCD Director	JST	7-9-2013
Legal	AMM	7/9/13
Mayor	KL	7/9/13

Council Action:

ORDINANCE NO. _____

AN ORDINANCE AMENDING HEIGHT RESTRICTIONS IN SINGLE FAMILY RESIDENTIAL ZONES TO LIMIT THE HEIGHT OF BUILDING APPURTENANCES AND GROUND-MOUNTED TOWERS

WHEREAS, the City of Bellingham, as a first-class city defined in accordance with Chapter Title 35, Chapter 22 of the Revised Code of Washington and created in accordance with Article XI, Section 10 of the Constitution of the State of Washington, has the authority to regulate zoning and land use, including the establishment of reasonable building height limits; and

WHEREAS, the City of Bellingham has enacted its authority to regulate building height generally through BMC 20.10.070, and specifically through land use type and use qualifier; and

WHEREAS, height limits in single family zoned areas within Bellingham are governed under BMC Section 20.20.040(E), which prohibits structures over 35 feet, except for building appurtenances as specified under BMC 20.10.070(B); and

WHEREAS, Federal Communication Commission rules that govern amateur radio antennas, codified in 97.15(b) CFR, state that local ordinances regulating the placement, screening, or height of antennas based on safety or aesthetic considerations must reasonably accommodate amateur communications and represent minimum practical regulation to accomplish the local government's legitimate purposes; and

WHEREAS, permissible forms of local regulation amateur radio towers include restrictions on height, placement, location, aesthetics, signage, and lighting; and

WHEREAS, the City of Bellingham currently applies setback requirements to amateur radio towers in single family areas, under BMC 20.30.040(F); but does not apply height limits to amateur radio towers in single family areas under BMC 20.30.040(E); and

WHEREAS, oversized amateur radio towers can cause safety concerns and unwanted aesthetic impacts in residential areas, particularly areas comprised of single family homes with established maximum height limits of 35 feet and in areas where views are highly valued; and

WHEREAS, the City of Bellingham wishes to provide for the protection of views and the preservation of residential property values and desirability, while making reasonable accommodation for amateur radio facilities on private property within residentially zoned areas of the city;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Building Appurtenance Ord.

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

OPTION A:

Bellingham Municipal Code, Section 20.10.070 is amended to read as follows:

BMC 20.10.070 Height

A. Buildings and structures shall not exceed the height limitation as specified in the applicable general use type development handbook. The property owner may elect to follow either height definition when there is an option; provided, that the director determines that the choice will not be unduly detrimental to the existing or future development of the adjacent properties.

B. Spires, towers, antennas, domes, steeples, flag poles, chimneys, smokestacks, and/or ventilators may be erected above the height limitation, provided no usable floor space above the height limit is added thereby, and provided that in single family residential zones such building appurtenances extending above the roof level may not exceed a maximum height of 45 feet.

1. This exception shall not apply to wireless communication facilities as defined in BMC Chapter 20.13, but shall apply to personal ham radio facilities.
2. No overheight object shall be used for advertising of any kind.

OR OPTION B

Bellingham Municipal Code, Section 20.30.040 is amended to read as follows:

20.30.040 Standard development regulations.

E. Height. No structure shall exceed 35 feet under BMC 20.08.020, height definition No. 1 or 20 feet under height definition No. 2.

1. Building appurtenances such as spires, towers, antennas, steeples, flag poles, chimneys, smokestacks, and/or ventilators may be erected above the height limitation, provided no usable floor space above the height limit is added thereby and further provided that no overheight structure exceeds 45 feet under BMC 20.08.020, height definition No. 1 or 30 feet under height definition No. 2.
2. Ground-mounted or free standing towers shall not exceed 35 feet in height, measured from the base, and shall not be located in any required setback area.

PASSED by the Council this _____ day of _____, 2013.

Council President

DRAFT

Building Appurtenance Ord.

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

MEMORANDUM

TO: City Council
FROM: Jeff Thomas, PCD Director
DATE: June 25, 2013

SUBJECT: Amateur Radio Antennas

On March 25, 2013, the Bellingham City Council directed staff to research the possibility of regulating amateur ("ham") radio antennas. Below is a discussion of Federal Communications Commission (FCC) rules on the subject, examples of regulations from elsewhere across the State of Washington, and staff's recommendation.

Federal Communications Commission Rules

The FCC imposes a limited federal preemption on local zoning regulations affecting amateur radio antennas (97.15(b) CFR). "Amateur Radio Preemption, 101 FCC 2nd 952 (1985)" states that local ordinances regulating placement, screening or height of antennas based on health, safety or aesthetic considerations must reasonably accommodate amateur communications and represent the minimum practicable regulation to accomplish the local government's legitimate purpose. This preemption is explicitly recognized in state statute RCW 35A.21.260.

Examples of Amateur Radio Antenna Regulations

Perhaps due to the partial federal preemption, many State of Washington municipalities do not have explicit regulations for amateur radio antennas. However, municipalities that do regulate these types of antennas have done so through the following categories of restrictions:

- 1) Height
- 2) Placement
- 3) Aesthetics
- 4) Signage
- 5) Lighting

Staff Recommendation

Historically, the City has seen few complaints regarding amateur radio antennas. Current residential single (RS) setback requirements (Bellingham Municipal Code Section 20.30.040.F) apply to amateur radio antennas, as do building permit requirements. Any additional restrictions on amateur radio antennas could be construed as a potential infringement on one's ability to install such, especially the prohibition of their placement in residential single zones. Therefore, staff does not recommend taking any action to amend the regulation of amateur radio antennas.

RCW 35A.21.260

Amateur radio antennas — Local regulation to conform with federal law.

No code city shall enact or enforce an ordinance or regulation that fails to conform to the limited preemption entitled "Amateur Radio Preemption, 101 FCC 2nd 952 (1985)" issued by the federal communications commission. An ordinance or regulation adopted by a code city with respect to amateur radio antennas shall conform to the limited federal preemption, that states local regulations that involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to reasonably accommodate amateur communications, and to represent the minimal practicable regulation to accomplish the local authority's legitimate purpose.

[1994 c 50 § 2.]