



Planning Commission Agenda Report

February 20, 2018
Item 6.a.

- SUBJECT:** P19-0027
- APPLICANT:** City of Pleasanton
- PURPOSE:** City-initiated application to consider and make recommendations regarding: (1) amending Chapter 18.110 (Personal Wireless Service Facilities) of the Pleasanton Municipal Code (PMC) to add a new section 18.110.010.B., Special Provisions for Small Wireless Facilities, and making them subject to a permit as specified in a new City Council Policy; and (2) adoption of a citywide City Council Policy; Small Wireless Facilities, regulating the permitting, design, and location of such facilities.
- LOCATION:** Citywide
- EXHIBITS:**
- A. Draft Planning Commission Resolution with:
Attachment 1: Draft Ordinance
Attachment 2: Draft Policy
 - B. Frequently Asked Questions

STAFF RECOMMENDATION

Staff asks that the Planning Commission review, and recommend to the City Council, adoption of an amendment to the City's wireless ordinance to recognize small wireless facilities and the proposed City Council Policy Regulating Small Wireless Facilities.

EXECUTIVE SUMMARY

In order to comply with recent changes in federal and state law that affect local authority over small wireless facilities, on March 11, 2019, the City Council will be asked to review and adopt an amendment to the City's wireless ordinance recognizing small wireless facilities and adopt a policy to regulate the permitting of said facilities.

BACKGROUND

On September 26, 2018, the Federal Communications Commission (FCC) adopted new rules that further limit local authority to regulate "small wireless facilities" as that term is defined in 47 C.F.R. § 1.6002(l). The FCC rules, which became effective on January 14, 2019, would require the City to review small cell applications faster and consistent with the FCC's national standard for permissible local regulations. These rules are part of a larger rulemaking that aims to reinterpret the federal Telecommunications Act of 1996 and prohibit actual and effective local moratoria on infrastructure deployments.

Small wireless facilities generally include the smaller scale antennas and associated facilities (as compared to first generation macro facilities) that are part of the next generation of wireless technology, known as 5G. 5G operates at significantly faster speeds than the existing 4th Generation (4G) technology, using higher frequency, directional radio waves over shorter distances. 5G technology calls for smaller, more frequently-placed antennas than 4G, which lend themselves to placement on light-poles and similar existing infrastructure. Wireless carriers have begun 5G installation in a number of major cities areas across the country, including Sacramento and Los Angeles, and are working towards nationwide deployment by the end of 2020. Exhibit B, attached, is a “Frequently Asked Questions” (FAQ) that staff has developed to provide additional information on small wireless facilities, and the scope of current Federal and City regulations.

Under the new rules, the FCC defines the presumptively reasonable time for review as 60 days for small cell attachments to existing structures and 90 days for attachments to new structures. Any administrative appeal must also occur within the applicable shot clock. If the City fails to issue a timely final decision, the City’s failure to act presumptively constitutes an effective prohibition of service and the applicant may file a claim in federal court for an injunction to issue “shovel-ready” permits.

In addition, the FCC provides that a local small cell regulation causes an effective prohibition in violation of federal law unless the regulation is (1) reasonable; (2) no more burdensome than regulations imposed on similar infrastructure deployments; and (3) objective and published in advance. Reasonable regulations are those that are technically feasible and reasonably directed to avoiding or remedying the “intangible public harm” (as it is described by the FCC) of unsightly or out-of-character deployments. Although the FCC declared that minimum spacing or undergrounding requirements would potentially violate the new test, the FCC provided little guidance as to the scope of specific local regulations that would likely be considered to be preempted. The regulations mean that the City may not prohibit placement of small cells within the public right-of-way or on publicly-owned and operated utility poles but can prescribe reasonable standards for their placement and design.

On December 10, 2018, the FCC clarified the effective dates for the rule, stating that the shot clock and fee regulations go into effect on January 14, 2019, with the aesthetic regulations going into effect on April 15, 2019. In order to meet the April 15 deadline regarding aesthetic regulations, staff scheduled this special meeting of the Planning Commission for February 20 and a special meeting of the City Council on March 11, 2019. At that meeting, the Council will be given the option of either adopting the code amendment as an urgency item to go into effect immediately, or as a regular code amendment, in which case the second reading would take place on March 19 and the amendments would take effect thirty days thereafter, on April 18, 2019.

AMENDMENT OF THE CITY’S WIRELESS ORDINANCE

Because small cell wireless technology is relatively new, the City’s existing wireless ordinance (Chapter 18.110) does not explicitly address small wireless facilities. Accordingly, staff seeks to amend section 18.11.0.010.B of the Pleasanton Municipal Code to recognize small wireless facilities and regulate those policies by adopting a City Council Policy overseeing the permitting of these facilities.

ADOPTION OF COUNCIL POLICY REGULATING SMALL WIRELESS FACILITIES

The purpose of the Council's Small Wireless Facilities Policy (Policy) is to establish reasonable and comprehensive standards and procedures for the permitting of small wireless facilities within the City, including but not limited to the siting of facilities, aesthetics, construction, operation, modification, and removal. The Policy is intended to promote the community interest of protecting the City's visual character from potential adverse impacts from facilities while providing access to high quality advanced wireless technology for the City's residents, businesses, and visitors. The Planning Commission should note that, as a policy rather than an Ordinance, the City may amend or revoke the provisions more quickly. This approach is recommended by the City's outside counsel due to the rapid and sometimes unpredictable changes in the federal law.

Key provisions of the Policy

1. Application Requirements

Applicants are required to submit a variety of items, including but not limited to, a project narrative, construction drawings, a site survey, a radio frequency ("RF") report certifying compliance with federal standards, photo simulations, an executed Pole License Agreement, and review/permitting fees.

2. Community Development Director shall review all applications

The Community Development Director, or his/her designee, shall be responsible for reviewing all applications and approving, conditionally approving or denying the application.

3. Noticing

The Community Development Director shall ensure that notice of the project application is mailed to all properties and record owners of properties within 250 feet of the project site. The notice will contain a description of the project, the applicant's contact information, and a statement to send comments to the Director within a specified timeframe.

4. Decisions and Appeals

The findings for approval have been amended to reflect the new objectivity requirement in the FCC rules. Due to the extremely short shot clocks, the initial decision to approve or deny will be made by the Community Development Director. Interested persons will have the opportunity to appeal the decision directly to the City Council. The entire process will be fast-tracked to ensure adequate time for public participation in the appeal process.

5. Location Preferences and Design Standards

The policy sets forth ranked preferences for locations and support structures within those locations. Residential areas and new freestanding poles or similar structures are the least preferred and require the applicant to demonstrate why no more preferred location within a reasonable distance from the site is technically feasible. Staff has also worked with outside counsel to develop detailed and objective design criteria and standards that preserve local authority and comply with the FCC's restrictions.

6. Automatic Conditions of Approval

The policy contains a substantial number of “standard conditions” applicable to all deployments. These ensure that the maintenance and operational requirements for all facilities are evenly applied, and also ensure that all facilities meet minimum standards in the event that an approval is mandated by law.

PUBLIC NOTICE

A display ad for this item was published in *The Valley Times*. At the time this report was published, staff had not received any comments to the Planning Commission. Any comments that are subsequently received will be made available to the Commission.

ENVIRONMENTAL ASSESSMENT

The proposed code amendment is not considered a “project” under the California Environmental Quality Act (CEQA) because the proposal is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Moreover, if the code amendment were to qualify as a “project” subject to CEQA, it would be exempt from further environmental review in accordance with CEQA Guidelines section 15061(b)(3) because the project involves the adoption of regulations for small cell wireless facilities and does not directly or indirectly authorize or approve any actual physical changes in the environment.

SUMMARY/CONCLUSION

The proposed ordinance and policy are necessary for compliance with new FCC regulations. Although these new regulations are intended to restrict local authority, staff has worked with outside counsel to develop a flexible approach that preserves as much of the City’s authority as possible while still achieving compliance. Staff recommends that the Planning Commission review the proposed ordinance and policy and adopt the resolution to recommend the same to the City Council.

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