



CITY COUNCIL AGENDA STATEMENT



April 9, 2019

File ID: 19-0174

TITLE

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING UPDATED DESIGN STANDARDS FOR SMALL WIRELESS FACILITIES WITHIN THE CITY'S RIGHT-OF-WAY AND DELEGATING AUTHORITY TO APPROVE FUTURE DESIGN STANDARDS TO THE CITY MANAGER OR DESIGNEE

RECOMMENDED ACTION

Council adopt the resolution.

SUMMARY

Increased usage of cellular data functions has subsequently increased the demand for greater capacity on cellular networks, thus requiring new wireless facilities. To provide higher bandwidth signals and extend coverage for more users, the next phase of cellular technology, 5G, will use a small wireless facility or small cell concept. These small cell deployments are significantly smaller than the previously built macro cell sites and have a more limited range by serving only users within the immediate proximity. As a result, the telecommunications industry is planning for a far greater density of small cell sites. Wireless service providers are proposing to install small cell equipment in outdoor applications on City-owned poles and City-owned street lights located in City Right-of-Way to provide faster data coverage and capacity for mobile phones and other cellular devices. To facilitate the installation of this technology and maintain acceptable aesthetics of the City's streetscape, City staff is proposing the provisions within the attached resolution as follow up to Resolution No. 2019-003 to regulate the design standards for small cell sites. Per a recent Federal Communications Commission (FCC) ruling, aesthetic regulations imposed by a municipality are permissible providing that they are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and are published in advance.

ENVIRONMENTAL REVIEW

The proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity is not a "Project" as defined under Section 15378 of the state CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. Although environmental review is not required at this time, once the scope of potential project(s) has been defined, environmental review will be required for each project and the appropriate environmental determination will be made. Notwithstanding the foregoing, it has also been determined that the activity qualifies for an Exemption pursuant to Section 15061(b)(3) of the California Environmental Quality Act State Guidelines. Thus, no environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

DISCUSSION

Wireless telecommunications facilities are regulated by federal, state, and local laws. Over the last few decades, legislation at the federal and state levels have been proposed and implemented to strip municipalities of their local zoning and permitting authority regarding the regulation of telecommunications facilities. A brief overview of the most notable acts and their implications is provided below.

Telecommunications Act

Federal law significantly limits the city's ability to regulate telecommunication facilities. Under the Telecommunications Act of 1996, a city cannot prohibit the provision of wireless service or unreasonably discriminate among wireless service providers. Also, under federal law, the city may not regulate the placement, construction or modification of wireless communications facilities on the basis of radio frequency emissions, so long as the facilities comply with the FCC regulations concerning such emissions. Despite federal limitations, cities historically have retained the ability to regulate the aesthetic of wireless facilities, including factors such as height and property line setbacks. However, federal law developments continue to erode that ability thereby reducing local control.

The Spectrum Act

In 2012, Congress enacted the Middle Class Tax Relief and Job Creation Act (The Spectrum Act of 2012). The Spectrum Act was intended to facilitate the telecommunication industry's rapid deployment of 3G and 4G wireless infrastructure by requiring local governments to approve any application that sought to modify an existing wireless telecommunication facility that does not "substantially change" the existing facility. The Spectrum Act itself contains no specific definitions, but in 2015, the FCC promulgated regulations containing definitions, processing requirements, timelines and remedies for applications that seek to modify an existing wireless telecommunication facility in accordance with the Spectrum Act. These FCC rules purport to bind local governments. Most significantly for cities, the federal regulations state very short permit processing timelines, referred to as "shot clocks", of 60, 90, and 150 days depending on the type of facility.

September 26, 2018 FCC Ruling

On September 26, 2018, the FCC issued a ruling and order designed to promote the expeditious deployment of small cell sites in the public ROW. Portions of the ruling and order purported to take effect on January 14, 2019; however, other portions of the ruling are not set to take effect until April 15, 2019. The recent FCC ruling applies to small wireless facilities defined as a facility that meets each of the following conditions:

1. The structure on which antenna facilities are mounted—
 - a. Is 50 feet or less in height, or
 - b. Is no more than 10 percent taller than other adjacent structures, or
 - c. Is not extended to a height of more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and

2. Each antenna (excluding associated antenna equipment) is no more than three (3) cubic feet in volume; and
3. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
4. The facility does not require antenna structure registration under federal law;
5. The facility is not located on Tribal lands; and
6. The facility does not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in federal law.

The recent FCC ruling purports to establish the following new standards for small wireless facilities:

- *Broad interpretation of local prohibitions:* The FCC order attempts to further limit the city's ability to adopt a regulation that "materially limits or inhibits the ability of wireless carriers."
- *Cost-based fees:* The FCC ruling states that cities are limited to charging fees that are no greater than a "reasonable approximation" of their costs for processing applications and for managing deployments in the right of way. The FCC ruling purports to establish a presumptively lawful, nationwide fee schedule for small cell applications as follows:
 - \$500 for a single up-front application that includes up to five (5) small wireless facilities, with an additional \$100 for each small wireless facility beyond five, or \$1,000 for non-recurring fees for a new pole to support one or more small wireless facilities;
 - \$270 per small wireless facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to city-owned poles in the ROW.
- *Aesthetic regulations:* The FCC order states that such local regulations will not be preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments and (3) published in advance.
- *Underground requirements:* The FCC ruling states that a requirement that all wireless facilities be deployed underground would amount to an effective prohibition and is thus not permitted.
- *Quid Pro Quo "in kind service":* The FCC ruling discourages situations where the city makes clear it will approve a deployment only on condition that the provider supply an "in-kind" service or public benefit, such as installing a communications network dedicated to city's exclusive use.
- *Batched applications:* The FCC ruling states that cities cannot prohibit batched applications (e.g., multiple street lights.)

In addition, the recent FCC ruling purports to establish a new set of even more restrictive "shot clocks" applicable only to small wireless facilities. These shot clocks are:

- Sixty (60) days for small cell wireless facility attachments to existing poles or structures; and
- Ninety (90) days for small cell wireless facilities on new poles or structures.

It should be noted that staff is informed that various elements of the FCC's ruling and order have been challenged administratively and in federal court. At the time of this action, staff is informed that these challenges have not yet been resolved. If such challenges ultimately affect the scope of this proposed resolution, staff will return and provide an update to the City Council regarding the same.

On January 8, 2019, the City Council adopted Resolution No. 2019-003, approving design standards for small wireless facilities in the City's right-of-way. The updated design standards (see Attachment 2 which is incorporated herein by this reference) represent minor modifications to those standards approved by Resolution 2019-003 and establish the new official design standards for small wireless facilities in the City's right-of-way. This action would further delegate authority from the City Council to the City Manager, or his/her designee, to approve updated design standards in the future. Staff recommends that the City Council approve this delegation of authority to allow the City adequate flexibility to timely and efficiently update the design standards applicable to small cell deployments within the City's right-of-way.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the real property holdings of the City Council members do not create a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The resolution supports the Economic Vitality Goal as the use of safe and secure access to data can help promote an environment for residents and businesses to prosper in. The goals of Strong and Secure Neighborhoods and Connected Community are also linked to this resolution as it will ensure the future installation of this technology will maintain acceptable aesthetics within the City's streetscape.

CURRENT-YEAR FISCAL IMPACT

Approval of the resolution will have no direct impact to the General Fund.

ONGOING FISCAL IMPACT

None. The competitive local exchange carriers will be responsible for constructing, managing and maintaining the small cell wireless facilities.

ATTACHMENTS

1. Updated Small Wireless Facility Design Standards

Staff Contact: Eddie Flores, City Traffic Engineer