



CITY OF SAN MATEO

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Agenda Report

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TO: Sustainability and Infrastructure Commission

FROM: Matt Fabry

PREPARED BY: Public Works Department

MEETING DATE: October 23, 2024

SUBJECT:
Wireless Communication Facilities in the Public Right of Way Update

RECOMMENDATION:

Review amendments to San Mateo Municipal Code (SMMC) Chapter 17.10 "Wireless Communications Facilities in the Public Right-Of-Way" and City Policy for "Small Wireless Facilities in the Public Right-of-Way" and recommend approval by the City Council.

BACKGROUND:

Small wireless facilities (SWFs) are those that meet certain Federal Communications Commission (FCC) criteria, namely (1) specified height limits for the support structure on which they are mounted, (2) each antenna is no more than three cubic feet in volume, (3) all other wireless equipment associated with the support structure is no more than 28 cubic feet in volume, (4) the facilities does not require technical registration requirements, (5) the facilities are not located on tribal lands, and (5) the facilities do not result in human exposure to radiofrequency (RF) radiation in excess of applicable safety standards. A discussion of the history of federal and state laws and court decisions applicable to SWFs is included as Attachment 4.

On July 16, 2018, the City adopted San Mateo Municipal Code (SMMC) Chapter 17.10 "Wireless Communications Facilities in the Public Right-of-Way" (Ordinance) that established a process for review and approval of wireless telecommunication sites in the public right-of-way.

After the Ordinance was adopted, the FCC adopted a Declaratory Ruling and Third Report and Order, FCC-18-133 (the "Small Cell Order"). The Small Cell Order imposed various new requirements on municipalities, which included a "technical feasibility" caveat to local aesthetic authority and a new "shot clock" for SWFs that required approval or denial within 60 days for SWFs proposed on existing structures and within 90 days for SWFs proposed on new support structures.

In 2020, to comply with the Small Cell Order, the City began developing a new ordinance and associated design standards. In 2021, the City amended the Ordinance and adopted the Design Standards and Application Requirements (Design Standards) currently in effect.

In 2023, the City received numerous small cell permit applications, several of which were brought to the Sustainability and Infrastructure Commission (SIC) for appeal hearings. Staff started receiving feedback from local community members and the industry about the permit applications and the Ordinance, including requests to amend the Ordinance, Design Standards, and the City's review process for permit applications.

From January to May 2024, City staff engaged the community and industry to receive input, and on May 6, 2024, City staff

provided a presentation to Council at a study session that was focused on the feedback received on the existing Ordinance and Design Standards. Staff received direction from City Council regarding possible amendments and revisions to the Ordinance and Design Standards. Furthermore, in response to much of the public feedback, City Council directed staff to consider the City of Encinitas' wireless ordinance when drafting revisions.

An update to the City's Ordinance and Design Standards (Update, included as Attachments 1-3) has been drafted to incorporate City Council direction, community input, industry input (telecom providers with active master license agreements with the City), and staff's experience to-date processing applications.

THE DRAFT UPDATE:

Based on review and consideration of all input as described above, the City Attorney's Office (CAO) hired the Telecom Law Firm, PC, which drafted City of Encinitas' wireless ordinance, and which recommended various changes to City regulations based on Council direction. The Update is the outcome of close coordination and review between the Public Works Department, attorneys from the CAO and outside counsel, and the City Manager's Office. It proposes to amend the Ordinance and replace the Design Standards with a City policy regarding small wireless facilities in the public right-of-way (Policy).

Substantial Code revisions include the following:

1. SMMC 17.10.030(d) – Small Wireless Facilities will be reviewed in accordance with the City Policy which replaces the Design Standards and Application Requirements.
2. SMMC 17.10.070(g) – Appeals to be reviewed by a Public Hearing Officer and the appeal window has been extended from 5 day to 10 days.
3. SMMC 17.10.080(b) – A Public Hearing Officer will have discretion to modify or amend standard conditions of approvals. SIC has been removed.

The Design Standards and Application Requirements document has been replaced entirely with a City Policy modeled after the City of Encinitas. New formatting, organization, and standards have been included for easy reference and to remove conflicting standards. In general, the proposed City Policy is more restrictive than the existing Design Standards. The City Policy updates location preferences and designates Restricted Areas to facilitate setbacks from residential neighborhoods and schools. Submittal information and public noticing requirements have been increased. Public Utility Easements are no longer acceptable locations for a SWF. Consistent with federal requirements that the City not prohibit or effectively prohibit telecommunication services, an exception process is incorporated to allow applicants to request exceptions to any standard or requirement within the City Policy, but any exception must be requested upfront.

The Update addresses City Council's May 6, 2024, direction as follows:

1. Conformance to State Regulations: Comply with state mandated batch-processing rules.
 - The Policy includes language that complies with batch-processing rules. Policy Section 6(i).
2. Definitions and Clarity: Explore objective design standards to make installations less intrusive.
 - The Policy includes objective standards such as placement requirements for freestanding poles and definition of minimum heights for antennas installed on existing poles. Policy Sections 10 and 11.
 - The Policy includes antenna height requirements to not allow placement of an antenna at a building window height elevation. Policy Section 11(h)(4).
3. Appeal Process: Use hearing officers to consider appeals and extend the appeal timeframe from 5 to 10 days.
 - The Ordinance amendment replaces SIC with Hearing Officers for considering of Director Decisions. SMMC 17.10.070(g).
 - The Ordinance amendment extends the appeal window from 5 days to 10 days. SMMC 17.10.070(g).
 - The Ordinance and Policy limit bases for appeals to Director findings. SMMC 17.10.070(g) and Policy Section 8(d).

4. Public Notice and Outreach: Make on-site notices of proposed facilities more visible and in more languages. Use informed delivery for mailers.
 - The Policy includes increased public noticing requirements for both site postings and mailed notices. Policy Section 7(b & c).
 - The Policy includes the requirement that mailed notices utilize informed delivery for proof. Policy Section 7(c).
 - The Policy states staff will create and provide required public notice templates in multiple languages. Policy Section 7(b & c).
5. Objective Standards: Define “technically infeasible,” remove conflicting requirements, and clarify which standards apply to which design cases.
 - The Policy defines “technical infeasibility” as a circumstance that is physically impossible. Policy Section 3(gg).
 - The Policy has been reviewed to avoid conflicting standards and clarify which standards apply to which design cases. Policy Section 11.
6. Facility Separation: Increase separation requirements while maintaining location flexibility.
 - The Policy includes a 300-foot separation requirement between SWFs. Policy Section 10(a)(4).
7. Post-Construction: Require applicants to submit annual RF reports for each active facility.
 - The Policy includes the standard condition for permittees to provide annual RF affirmation reports. Policy Section 9(a)(16).
8. Pole Options: Expand pole options to reduce impacts on the right-of-way, including more discretion to use freestanding poles when warranted.
 - The Policy expands existing support structure options to include traffic signal poles. Policy Section 11(n).
 - The Policy includes criteria to determine when a freestanding pole is preferable to an existing pole. Policy Section 10(g).
9. City Review Processes: Explore options to use third-party experts to assist with technical reviews.
 - The Ordinance and Policy maintain the authority for the Director to retain independent expert consultants.
 - Staff has contracted with three on-call consultants to provide expert RF review services.
 - Staff anticipates contracting with one or more firms to provide all-encompassing SWF review services.
10. Installation Standard: Explore options to reduce the number of meter pedestals in the right-of-way.
 - The Policy includes a preference for pole-mounted meters, or when a ground-mounted cabinet is required, to incorporate the meter within the same ground-mounted cabinet. Policy Section 11(m).
11. Conformance to Other Regulations: Amend the design guidelines to be consistent with other application requirements.
 - The Policy has been written to be consistent with other applicable regulations. Policy Section 11.
12. Application Requirements: Revise application requirements to require all relevant information be submitted as part of the permit application for transparency and to allow staff and the public to better understand the proposal and feasible alternatives.
 - The Policy includes a list of application requirements that have been increased and refined to require all information relevant to review for conformance with the Ordinance, Policy, and state and federal laws. Policy Section 6(b).
13. Appeal Cost Recovery: Adopt an appeal fee that is minimal or not cost-prohibitive to the public.
 - Staff proposes adoption of an appeal fee equal to other City appeal fees but less than actual costs

incurred.

14. Residential Category: Consolidate the definition of residential.

- The Policy considers all types of residential definitions by basing criteria on “residential” land uses, “mixed-use” land uses, and “residential dwelling units” for restrictions. Policy Section 10(a & b).

15. Restrictions Instead of Preferences: Explore language to specifically restrict areas instead of only listing location siting preferences.

- The Policy updates the location preferences with a new order of preference. Policy Section 10(a).
- The Policy includes “restricted areas” within the location requirements. Policy Section 10(b).

16. Review the Encinitas Ordinance: Inquire what issues or problems the City of Encinitas has encountered through their wireless ordinance.

- Staff has contacted the City of Encinitas and confirmed that they have not received any wireless applications since their ordinance was adopted; therefore, issues or problems with their ordinance cannot be confirmed.

STAFF RECOMMENDATION:

Staff recommends the Commission recommend approval by City Council of the proposed updated ordinance and policy documents (attached).

NEXT STEPS:

Following SIC’s review and recommendation on the proposed Update, staff will incorporate any recommendations from SIC into the administrative report for City Council and prepare the Update for City Council consideration.

BUDGET IMPACT:

There is no budget impact associated with review of the proposed Ordinance and Policy update.

ENVIRONMENTAL DETERMINATION:

This Ordinance amendment and City Policy adoption is not a project subject to CEQA, because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. (CEQA Guidelines Section 15378(b)(5)). Small cell facilities are categorically exempt from CEQA as they either are (1) minor alterations of existing facilities, (2) replacements of existing structures where the new structure will be located in the same site and have substantially the same purpose, or (3) construction and location of new small facilities or structures. (CEQA Guidelines Section 15301, 15302, 15303).

NOTICE PROVIDED

All meeting noticing requirements were met. Additionally, notice of this meeting was sent to the Small Cell Infrastructure email newsletter, posted on the City’s Small Cell Infrastructure webpage, and sent to stakeholders that have specifically requested notice.

ATTACHMENTS

Att 1 – Redline of SMMC 17.10 Wireless Communications Facilities in the Public Right-of-Way
Att 2 – Proposed SMMC 17.10 Wireless Communications Facilities in the Public Right-of-Way
Att 3 – Proposed City Policy for Small Cell Facilities in the Public Right-of-Way
Att 4 – History of Wireless Small Cell Facilities
Att 5 – Public Comment

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