



CITY OF SAN MATEO

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Agenda Report

Agenda Number: 2

Section Name: {{section.name}}

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TO: Sustainability & Infrastructure Commission

FROM: Azalea Mitch

PREPARED BY: Public Works Department

MEETING DATE: April 14, 2021

SUBJECT:

Wireless Communications Facilities in the Public Right-Of-Way – Update to SMMC Chapter 17.10 and Design Standards and Application Requirements

RECOMMENDATION:

Discuss and review revisions to San Mateo Municipal Code (SMMC) Chapter 17.10 "Wireless Communications Facilities in the Public Right-Of-Way" and Design Standards and Application Requirements for Wireless Communications Facilities and recommend approval to the City Council.

BACKGROUND:

The City adopted an ordinance in 2018 that established a process for wireless telecommunication sites in the public right-of-way. In accordance with State Public Utilities Code section 7901, telephone companies, which include wireless telecommunications service providers, have a statutory right to place equipment in the public right-of-way. However, in accordance with Public Utilities Code section 7901.1, cities have the "right to exercise reasonable control as to the time, place, and manner". Shortly after the City adopted San Mateo Municipal Code (SMMC) 17.10 and the corresponding standards, the Federal Communications Commission (FCC) adopted its September 26, 2018 order, the Declaratory Ruling and Third Report and Order In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (the "FCC Order"), regarding small cell wireless facilities deployment (i.e. "small cells").

Based on the FCC Order, effective as of January 2019, all City permits and authorizations for small cells placed on an existing structure must be issued within 60 days from the submittal of the application materials. The total processing time for small cells placed on a new or replacement structure is 90 days from submittal. If the City does not meet the shot clock, the City will not have complied with federal law and risks the wireless carrier taking the position that the application is deemed approved. The City's current approval process takes between 90 to 150 days, which is well beyond the FCC shot clock requirements.

The FCC Order also imposed restrictions on fees and costs charged by cities related to the small cells requiring the charges to be reasonable and reflect actual costs to the cities. The City's prior fee schedule will need to be reviewed and may require changes to the fees for the application, permit, and license, as well as the terms of the Master License Agreement, all to be consistent with the FCC Order. The FCC Order confirmed that local governments may regulate aesthetic standards for small cells but subject to certain limitations – they must be reasonable, objective, no more burdensome than on other similar infrastructure, and published in advance.

In October 2020, the Ninth Circuit Court of Appeals affirmed most of the FCC's requirements, including the FCC shot clocks. However, the Court did reject the "no more burdensome" and "objective" requirements related to the aesthetic standards, so the City may have a bit more discretion concerning aesthetic standards.

Given the recent FCC Order and the Ninth Circuit ruling, as well as a letter from Verizon's attorney that the City is not in compliance with the law, staff is recommending changes to SMMC 17.10 and the Design Standards and Application Requirements (Design Standards) to provide a streamlined process and comprehensive set of standards. Public Works staff worked with Barbara Choi and Stephanie Hall of Atchison, Barisone & Condotti, outside legal counsel for the City, on revisions to the Code and Design Standards.

A summary of the substantial Code revisions includes the following:

1. SMMC 17.10.020 – Permits will be reviewed and approved by the Director of Public Works or the Director's designee. Originally, the Director of Public Works approved Minor permits and the Sustainability & Infrastructure (S&I) Commission approved Major permits. Appeals will continue to be heard by the S&I Commission.
2. SMMC 17.10.040 – There will be one wireless permit, including Section 6409 approvals. Minor and Major permit types have been deleted.
3. SMMC 17.10.050 – Meetings were streamlined and simplified. In order to meet the FCC shot clocks, pre-submittal and neighborhood meetings are no longer required, but voluntary and highly encouraged. A submittal appointment is required for all applications.
4. SMMC 17.10.060 – Notices were streamlined and simplified. A notice is required to be mailed to all residents and property owners within 500' of the project site within five (5) days of the application submittal. Approval of applications will be posted on the City's Small Cell webpage.
5. SMMC 17.10.070 – Protests and appeals were streamlined and simplified. All appeals to be reviewed by the S&I Commission.
6. SMMC 17.10.090 – Site location guidelines have been deleted and placed in the Design Standards and Application Requirements document.
7. SMMC 17.10.100 – Design regulations have been deleted and placed in the Design Standards and Application Requirements document.
8. SMMC 17.10.110 – Temporary wireless facilities are allowed only for emergencies and do not require a wireless permit.
9. SMMC 17.10.120 – Amortization of nonconforming wireless facilities has been deleted. Language regarding nonconforming facilities has been added to the Design Standards and Applications Requirements document.

A summary of the substantive revisions to the Design Standards document is summarized below.

1. Updated Formatting, Appearance, and Name. The Design Standards were modified to include new formatting, expanded table of contents to include a list of figures and tables for easy reference, additional figures of acceptable and unacceptable designs, and updated Wireless Permit and Checklist. The name of the document was changed from "Design and Engineering Standards and Application Requirements" to "Design Standards and Application Requirements."
2. Chapter 2 (Site Location, Pole Selection, & Design Standards). Siting location and design standards were moved from the Code to the Design Standards document. The Design Standards were generally updated to be more objective and clearer.
3. Chapter 3 (Application Process and Requirements). Added this chapter to include information previously found in the Code and to specify the process for applicants, as well as the public. The most significant change is that neighborhood meetings are no longer mandatory but are voluntary due to shot clock limitations imposed by the FCC.
4. Chapter 4 (Installations on Streetlight Poles). The design requirements were updated in Table 4.1 for installations on streetlight poles to include specific design standards for electric service and metering, antenna placement, and

cables/wiring. Figures 4.2 and 4.3 were added to display acceptable designs since the Standard Drawings were deleted. Table 4.2 was added to clarify the procedures for attachments to streetlight poles.

5. Chapter 5 (Installations on Utility Poles). The design requirements were updated in Table 5.1 for installations on utility poles to include specific design standards for electric service and metering, antenna placement, and cables/wiring, as well as authorization from the pole owner. Figures 5.1 and 5.2 were added to display unacceptable and acceptable designs since the Standard Drawings were deleted. Table 5.2 was added to clarify the procedures for attachments to utility poles.
6. Chapter 6 (Installations of Freestanding Poles). The design requirements were updated in Table 6.1 for installations on freestanding poles to include specific design standards for electric service and metering, pole height, antenna placement, and equipment cabinets. Table 6.2 was added to clarify the procedures for freestanding poles.
7. Chapter 7 (Section 6409 Approval). Added this chapter to include information previously found in the Code and to specify the procedures for 6409 approvals.
8. Chapter 8 (Non-Conforming Wireless Facilities). Added this chapter to include information previously found in the Code and to specify that any non-conforming wireless facilities shall be brought into conformance with current design standards within 10 years.
9. Appendix. The Permit Application, Checklist and Standard Conditions of Approval were updated. The Detail Standard Drawings and Flowchart were removed.

Public Works staff will present proposed revisions to the Code and the Design Standards and Application Requirements to the Sustainability & Infrastructure Commission and seek a recommendation for approval to the City Council. A redlined version of the Code and the proposed Design Standards are attached for reference. A redlined version of the Design Standards was not included due to the substantial reorganization of the document. A copy of the current Design and Engineering Standards and Application Requirements is attached for comparison purposes.

BUDGET IMPACT:

There is no budget impact associated with review of the proposed ordinance and design standards.

ENVIRONMENTAL DETERMINATION:

This review of an ordinance is not a project subject to CEQA, because it can be seen with certainty that it will not cause a physical change in the environment. (Public Resources Code Section 21065.)

NOTICE PROVIDED

All meeting noticing requirements were met. In addition, notice of this meeting was sent to individuals signed up for notification and posted on the Small Cell Infrastructure webpage.

ATTACHMENTS

Att 1 – Redline of SMMC 17.10 Wireless Communications Facilities in the Public Right-Of-Way

Att 2 – Proposed Design Standards and Application Requirements For Wireless Communications Facilities

Att 3 – Current Design and Engineering Standards and Application Requirements

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