



# TOWN OF FAIRFAX

## STAFF REPORT

### January 16, 2019

**TO:** Mayor and Council

**FROM:** Garrett Toy, Town Manager *GT*

**SUBJECT:** Discuss/consideration of the Planning Commission's recommendation regarding an ordinance to consolidate Titles 19 & 20 ("Telecommunications") of the Fairfax Municipal Code into a revised, new Title 19 which establishes uniform and comprehensive regulations for wireless telecommunication facilities (aka 5G or small cell)

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#### **RECOMMENDATION**

Discuss/consider the Planning Commission's comments, direct staff to revise the proposed ordinance as appropriate, and return with the revised ordinance for Council consideration at a future meeting.

#### **BACKGROUND**

The Town's current wireless telecommunications facility regulations were adopted in 1999 and are contained in Title 19: Telecommunications of the Town's municipal code. This section of the Code has not been modified since its adoption and was primarily adopted to address large cell phone towers.

At its September 5, 2018 meeting, the Council discussed the general policy issues regarding small cell facilities (aka 5-G facilities), received public comment, and referred the matter to the Planning Commission (PC) to develop development standards, application requirements, permitting process, and locational and configuration preferences.

However, on September 26, 2018, the Federal Communication Commission (FCC) was scheduled to meet to consider a ruling that would significantly preempt local authority to regulate certain aspects of wireless telecommunications facilities (small cell facilities), by among other things, imposing new shorter shot clocks on the processing of "small wireless facilities" and requiring aesthetic requirements to be (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) published in advance.

Given this potential FCC action, the increased industry interest in construction of small-cell facilities in the public right-of-way, and the lack of clear criteria to process applications for small wireless telecommunications facilities in a consistent and expeditious manner and within the limits of federal and state law, the Council adopted an urgency ordinance on September 26, 2018 to immediately establish standards to ensure that the Town is able to limit disruption to the public right-of-way as well as impose aesthetic regulations on small cell facilities.

The urgency ordinance provides uniform and comprehensive regulations for the permitting, development, siting, installation, design, operation, and maintenance of wireless telecommunications facilities in the Town. The ordinance is similar to recent regulations enacted in Mill Valley, which is modeled after those of San Anselmo and Ross.

The urgency ordinance is an interim ordinance until the Town can adopt a permanent ordinance through the regular ordinance approval process, which requires Planning Commission review and recommendation to the Town Council.

## **DISCUSSION**

On October 25, 2018, the Planning Commission received public comment and discussed the proposed ordinance, but due to the lateness of hour, continued the item to the November 29<sup>th</sup> meeting. The proposed ordinance was crafted using the urgency ordinance adopted by the Council and reflected a consolidation of the urgency ordinance (Title 20 of Town Municipal Code) with the existing Title 19.

It should be noted that the proposed new Title 19 does not affect the existing Title 13, Chapter 13.12 "Telecommunications" which establishes the regulatory framework for the administration of telecommunication franchises such as cable television. The proposed ordinance also does not affect Title 8, Chapter 8.68 "Smartmeters and related equipment" which prohibits smartmeters.

Attached is a "Concordance Table" provided to the PC which shows which sections of the new Title 19 cover the provisions of the old Title 19. Also attached is the redline of the proposed ordinance, provided to the PC, noting any differences between the proposed ordinance and the urgency ordinance adopted by the Council. The notes in the margins include comments regarding (a) any language moved from another section; (b) any language incorporated from the old Title 19 into the new Title 19 (e.g., old 19.08.090 "Road and Accessway" was included in new 19.04.070); and (c) comments from the Council at their September 26<sup>th</sup> meeting.

At its November 29<sup>th</sup> meeting, the Planning Commission agreed that it would propose to the Town Council general policy revisions as opposed to specific language revisions to the ordinance. This would avoid the complicated process of making specific language revisions to the ordinance at the meeting. Staff indicated it becomes very confusing for staff, policymakers, and the public to make numerous language revisions to ordinances at the meeting. Furthermore, this prevents the process from getting "bogged down" in the details and allows the Town Council to consider an ordinance sooner rather than later.

After receiving public comment at its November 29<sup>th</sup> meeting, the PC provided staff with its comments and requested that staff return with a summary of the PC's comments. On December 20<sup>th</sup>, the PC reviewed its comments and offered additional comments for the Council's consideration. Specifically, the PC resolution requests the Council to consider the PC's comment prior to the adoption of the ordinance. Staff indicated to the PC that its comments would be placed on the Council's January 16, 2019 agenda for discussion/consideration. This will allow the Council the opportunity to direct staff to make modifications/amendments to the ordinance prior to its consideration by the Council. Staff would return with an amended ordinance for Council consideration at a future meeting to be determined by the Council.

The PC comments from its November 29<sup>th</sup> and December 20<sup>th</sup> meetings are attached to the PC resolution. As background, we have also attached the PC staff report from October 25<sup>th</sup>, which summarizes the provisions of the proposed ordinance and responses to some questions raised at the PC's November 29<sup>th</sup> meeting. Staff is working to categorize (e.g., design

standards, location) the PC comments to assist the Council in its discussions and will distribute the materials prior to the meeting.

**FISCAL IMPACT**

Once the regulations are approved and implemented, the application fees for a Conditional Use Permit and Design Review would cover the cost of the discretionary approvals.

**ATTACHMENTS**

- A. Concordance Table
- B. Planning Commission Resolution with attached summary of PC comments
- C. Redline of ordinance
- D. Responses to Questions from PC Meeting
- E. PC staff report from October 25<sup>th</sup> (without attachments)