

RESOLUTION NO. 2018-18

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX
RECOMMENDING THE TOWN COUNCIL ADOPT ORDINANCE NO. ____ ENTITLED
“AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
CONSOLIDATING TITLE 19 AND 20 INTO A REVISED TITLE 19
 (“TELECOMMUNICATIONS”) OF THE FAIRFAX MUNICIPAL CODE TO ESTABLISH
UNIFORM AND COMPREHENSIVE REGULATIONS FOR WIRELESS
TELECOMMUNICATION FACILITIES

WHEREAS, the purpose of this Ordinance is to update the Town's Municipal Code to provide uniform and comprehensive standards, regulations and permit requirements for the installation of wireless telecommunications facilities in the Town including on private property and in the Town's public right-of-way; and

WHEREAS, the wireless telecommunications industry has expressed interest in submitting applications for the installation of “small cell” wireless telecommunications facilities in the Town's public rights-of-way. Other California cities have already received applications for small cells to be located within the public right-of-way; and

WHEREAS, if not adequately regulated, installation of small cell and other wireless telecommunications facilities within the public right-of-way can pose a threat to the public health, safety and welfare, including disturbance to the public right-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise or lack of camouflaging of wireless facilities including the associated pedestals, meters, equipment and power generators; and the creation of unnecessary visual and aesthetic blight by failing to utilize alternative technologies or capitalizing on collocation opportunities which may negatively impact the unique quality and character of the Town; and

WHEREAS, the Town currently regulates wireless telecommunications facilities through the zoning permit process that was enacted as Title 19 in 1999. The existing standards have not been updated to reflect current telecommunications trends or necessary legal requirements. Further the primary focus of the zoning regulations is wireless telecommunications facilities located on private property, and the existing Code provisions were not specifically designed to address the unique legal and practical issues that arise in connection with wireless telecommunications facilities deployed in the public right-of-way; and

WHEREAS, Section 2902 of the California Public Utilities Code authorizes municipal corporations to retain their powers of control to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and

repair of public streets by any public utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets; and

WHEREAS, Section 7901 of the California Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters; and

WHEREAS, Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner, and may involve the imposition of fees; and

WHEREAS, state and federal law have changed substantially since the Town last adopted regulations for wireless telecommunications facilities in the Town. Such changes include establishing “shot clocks” whereby the Town must approve or deny installations within a certain period of time. Federal regulations require local governments to act on permit applications for wireless facilities within a prescribed time period and state and federal law and regulations permit applicants to invoke a deemed granted remedy when a failure to timely act occurs. See 47 U.S.C. § 332(c)(7)(B)(iii); 47 C.F.R. §§ 1.40001 et seq.; Cal. Gov't Code § 65964.1. Under federal law, a decision on certain applications must be made in as few as 60 days. The Town is in need of clear regulations for wireless installations in the public right-of-way given the number of anticipated applications and legal timelines upon which the Town must act; and

WHEREAS, the public right-of-way in the Town is a uniquely valuable public resource, closely linked with the Town's natural beauty, and significant number residential communities. The reasonably regulated and orderly deployment of wireless telecommunications facilities including in the public right-of-way is desirable, and unregulated or disorderly deployment represents an ever-increasing and true threat to the health, welfare and safety of the community.

WHEREAS, the regulations of wireless installations including in the public right-of-way are necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the Town, and to ensure that all wireless telecommunications facilities are installed using the least intrusive means possible; and

WHEREAS, The Town finds that in light of more recent developments in federal and state law with respect to the regulation of small cell and other wireless telecommunications facilities, there is a need for the Town to update its current ordinances based on current telecommunications trends, updates in laws, as well as aesthetic and location options for wireless facilities. The Town finds that Northern California is now experiencing an unprecedented increase in the number and intensity of

wildfires exacerbated by the effects of climate change, and that power lines and electrical equipment failures are a leading cause of California wildfires; that overburdened utility poles can present a hazard of collapsing and failing, that wireless facilities may present an electrical hazard and/or increase the risk of electrical fires if not properly regulated, installed and monitored; and

WHEREAS, the Town finds that a personal residence is for most homeowners their single greatest financial asset, and that proximity of wireless facilities has been shown to adversely affect property values of personal residences. The Town further finds that aesthetic considerations in residential zones are especially important in close proximity to personal residences; and

WHEREAS, the Town recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent with the current state of the law in ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare. The Town does not intend that this Ordinance prohibit or have the effect of prohibiting telecommunications service; rather, it includes appropriate regulations to ensure that the installation, augmentation and relocation of wireless telecommunications facilities including in the public right-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the Federal Telecommunications Act and the California Public Utilities Code while, at the same time, protect to the full extent feasible against the safety and land use concerns described herein; and

WHEREAS, adoption of this Ordinance is consistent with the Town's General Plan. The Town's General Plan provides goals and policies to preserve the high-quality design, small-Town character, aesthetics and environmental characteristics while also maintaining a strong, healthy economy for its local business and assuring the health and safety of the predominantly residential character of the community. Adoption of this Ordinance will provide uniform and comprehensive regulations and standards for wireless telecommunications facilities in furtherance of these goals and objectives while reducing the potentially negative impacts; and

WHEREAS, the adoption of the proposed Ordinance is exempt from the California Environmental Quality Act ("CEQA"). Adoption of this Ordinance will enact only minor changes in land use regulations, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for the development of any new or expanded wireless telecommunication facilities anywhere other than where they were previously allowed under existing federal, state and local regulations. The proposed Ordinance does not constitute a "project" within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) because there is no potential that small cell facility regulations will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because they have no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. Moreover, even if the proposed Ordinances and Resolution comprise a project for CEQA

analysis, the ordinance falls within the “common sense” CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” Finally, the wireless facilities themselves are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor encroachment permits, and Section 15303, which exempts the installation of small equipment and facilities in a small structure; and

WHEREAS, the Planning Commission has conducted a duly-noticed public hearing to consider the draft ordinance, heard the presentation of a staff report, and received public comment on the matter.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the Town of Fairfax as follows:

SECTION 1. The recitals set forth above are adopted as further findings of the Planning Commission.

SECTION 2. The Planning Commission has reviewed the draft ordinance attached hereto as Attachment 1 and finds that it is consistent with the Town General Plan, as set forth above.

SECTION 3. The Planning Commission hereby recommends that the Town Council strongly consider the Planning Commission’s comments in Attachment 2 and direct staff to revise the proposed ordinance in Attachment 1 as the Council deems appropriate prior to the ordinance’s adoption.

SECTION 4. After the Council’s discussion/consideration of the Planning Commission’s comments in Attachment 2, the Planning Commission hereby recommends that the Town Council adopt Attachment 1, with any Council amendments/modifications, hereto in order to consolidate Titles 19 and 20 into a revised Title 19 (“Telecommunications”) of the Fairfax Town Code to establish uniform and comprehensive regulations for wireless telecommunication facilities.

The forgoing Resolution was duly passed and adopted at a special meeting of the Planning Commission of the Town of Fairfax held in said Town on the 20th day of December 2018 by the following vote, to wit:

AYES:	Fragoso, Gonzalez-Parber, Kehrlein, Rodriguez, Swift, Chair Newton
NOES:	None
ABSENT:	Green
ABSTAIN:	None

Mimi Newton, Chair

Attest:

Ben Berto, Planning Director

SUMMARY OF THE PLANNING COMMISSION'S COMMENTS ON ORDINANCE REGARDING WIRELESS COMMUNICATION FACILITIES

November 29, 2018 Special Meeting

Below is a summary of the Planning Commission's comments regarding the proposed ordinance regulating wireless communication facilities.

- Require equipment owners of wireless communication facilities (WCF) to follow an annual recertification and affidavit process similar to the process adopted by Burlington, Massachusetts (see attached).
- Strengthen the wording "if feasible" in the application process.
- Allow the Tree Committee to have some input in the process if trees are affected.
- Do not allow WCF on the decorative streetlights.
- Require public noticing for eligible facility requests. The Town should publish this information on its website.
- Add provisions for addressing endangered species, including the creation of buffer zones.
- Require equipment mock-ups or story poles, if applicable, for new applications.
- Require applications to include a map of the geographic service area.
- Establish a time limit for the design and development standards extension.
- Any lighting on poles should be dark sky compliant and the color should be regulated.
- Prohibit WCF in the Open Space Zone (OA) and any deeded public access areas; add OA to the table which identifies the zoning districts WCF's are not permitted.
- Strengthen the provisions for compliance with ADA including protection for those with EMF disabilities.
- Add recitals to ordinance to better describe the historic character and rural nature of the community.
- The resolution and ordinance should better define "small cell".
- If permitted, require CEQA review and, if appropriate, preparation of initial study for eligible facility requests.
- Beef up the "Exceptions" provisions and pull together all "Exceptions" into one "Exceptions Section."
- Add locational restrictions to include "not on ridgelines, in flood zones, near a mural, not affecting protected species or heritage trees, not by historic buildings (50 years or more)".
- Reduce size of WCF from six cubic feet to as small as possible.
- Consider adding the Town of San Anselmo exception standards.
- Reduce the Permit Expiration period to less than 10 years.
- Ensure that PG&E Smart Meter protections are not affected by this ordinance.
- Suggested staff obtain letters from doctors that support the assertions about health risks.
- Consider ordinance recommendations submitted by the local group.
- Require facilities to be a minimal distance from schools and day care centers.
- Add a buffer distance between WCF and residential units.
- Strengthen insurance requirements, including evidence of liability coverage, to better protect the Town.
- Concerns that consolidating the two titles into the new Title 19 may inadvertently omit key protection.
- Ensure the ordinance includes strong design criteria addressing fire hazards, view sheds, and aesthetic considerations.
- Only allow in utility undergrounding districts which requires equipment to be undergrounded.

Burlington MA

1. Annual Re-Certification and Affidavit.
 - a. Each year on July 1 the equipment owner shall submit an affidavit which shall list, by location, all small cell wireless installations it owns within the Town of Burlington by location, and shall certify: (1) each such installation that remains in use; (2) that such in use installations remain covered by insurance; and (3) each such installation which is no longer in use.
 - b. The equipment owner shall pay an annual re-certification fee of \$270 per installation which remains in use.
 - c. Any small cell wireless installation which is no longer in use shall be removed by the owner within 60 days of receipt of the annual re-certification affidavit, at the owner's expense.
 - d. Any small cell wireless installation which is not removed within 60 days after being listed as no longer in use in the annual re-certification affidavit shall be subject to a fine of \$100/day until such installation is removed.
 - e. Where such annual re-certification has not been timely submitted, or equipment no longer in use has not been removed within the required 60-day period, no further applications for small cell wireless installations will be accepted by the Town until such time as the annual re-certification has been submitted and all fees and fines paid.

Ordinance Recommendations, 11/29 Planning Commission

Dear Fairfax Planning Commission:

Below you will find a comprehensive list of recommendations for the Fairfax wireless Ordinance addressing 5G. Please consider these as you make recommendations to the Town Council; we believe the following suggestions will be helpful in creating the strongest and most effective wireless ordinance.

Attachments we refer to below include:

1. ADA/US Access Board Information
2. Property Value Reduction Information
3. Permitting Process and Measurements
4. Peter Lacques Recommendations

Below are proposed ideas/language to be included in the ordinance:

1. **Zoning and other prohibitions-** Installations in residential zoning districts, public rights of way and easements in all zones should be prohibited. Note: the Mill Valley Ordinance has an unintentional loophole on public rights of way- this needs to be addressed in all further ordinances, **to make sure public rights of way and easements are also prohibited in zones where facilities are and are not permitted.** We recommend eliminating the following additional zones: CC, CL, PD. We recommend keeping CS and CH as allowable zones, but further restricting areas by **parcel delineation**, to be reviewed and approved by the Planning Commission. Also **eliminate the item in the current draft stating “in the public right of way with the closest district being the commercial district”.** (we can provide exact details of where to make these amendments in the ordinance.)
2. **Property Values-** Studies show that property values can drop up to 20% when a small cell antenna is nearby, and 94% of home buyers are less interested in properties in cell antenna vicinities (**see attachment #2, Property Value Reduction Information**). We are recommending language be included in our Fairfax ordinance that protects property owners and property values from this effective “taking” of Fairfax residents’ property should 5G installations go forward. **Please see attachment #2 for more details and our specific recommendations.**
3. **Public Process-** Upon proposal of any wireless facilities from telecoms, we recommend that the applicant/town must notify all residents within 3000 feet of the proposed antenna location via the Town’s website, postings, and paper mail. During the application process, the town must provide a public comment period and schedule meetings to address questions and

concerns about the proposed facility. Telecoms are required to use story pole mock-ups to demonstrate actual size and visual impact of equipment. Public notice mailings should include information about the notification contents on the **outside of the envelope** such as, "Notice of Nearby Cell Antenna Proposal" to ensure the public sees and has an opportunity fully participate. See permitting process details, **Attachment #3, Permitting Process and Measurements** (composed by Frank Leahy, Mill Valley). Note: public hearings have been effective in discouraging the telecoms for Montgomery, MD and Burlington, MA.

4. **Permitting process-** The town must adopt a more rigorous permitting process. A Town of Fairfax's telecom permit application should be designed with elements as indicated in the attached document. Telecom equipment can be remotely upgraded or changed via software at any time, so both permitting and monitoring process should be specific, frequent, and rigorous. Details for exactly what to include in the process can be found in the attached document from electrical engineer Frank Leahy, **Attachment #3**.
5. **Monitoring-** We recommend that the town of Fairfax create a robust signal monitoring plan using contractors chosen by the Town, *not by the service provider (Verizon/ATT, etc.)*. In addition to developing a protocol on how and where to measure, the issue of how frequently measurement should be taken needs attention. Once per year (as proposed) is grossly inadequate.
We suggest including language for an ongoing real time monitoring plan that the telecoms would pay for. We need to know specifics about what kind and how strong the signals are from antennas, as signal changes can be made remotely by the telecoms. This requires more research, but we think is quite reasonable and feasible. If this cannot be done, then we will need monitoring at least once per month. (The attached document on permitting process recommendations written by Mill Valley electrical engineer Frank Leahy gives some guidance and suggestions on this as well, **Attachment #3**.)
6. **ADA-** Add language about the ADA, which addresses electrical sensitivity as a federally recognized disability: "The reviewing authority may NOT grant an exception if the exception itself violates federal and/or state law, including, but not limited to, the ADA", (Please see **Attachment #1, ADA/US Access Board Information**.) Note: the ADA was originally part of the revised Urgency Ordinance, then appeared to be removed by town staff edits. **We are asking that the content about the ADA be replaced and addressed.** The Americans With Disabilities Act should be re-instated, either in a section of its own or as part of the Limited Exceptions chapter, to challenge the preemptive nature of the FTA.

7. **Undergrounding** – Require undergrounding for cables and accessory equipment for facilities in the public right-of-way and amend language to state that ground-level equipment **MUST** be undergrounded. Omit “if feasible” in ordinance (Fairfax has “if feasible” language). Undergrounding must occur within 3 feet of the utility pole on which the antennas are mounted. This language should also be spelled out in the Conditions of Approval section. Before any digging occurs, a full cultural resources evaluation should be required (see below). Also, Fairfax has some undergrounding districts. **We urge the Town to restrict installation to these districts.** It is our understanding that undergrounding can cost telecoms 3 to 10 times as much as installing equipment on poles.
8. **Co-location-** Co-location (the addition of multiple antennas on an existing antenna structure) rules in California provide telecoms a green light with virtually no controls or regulations by local jurisdictions unless there are changes to the physical dimensions of the structure that the new equipment will be installed on. Co-location may be difficult to fight in places where there is existing equipment.

Existing co-location laws must be understood as they represent a serious problem for the Town. State law indicates that once any antenna equipment is installed on a pole, then all subsequent applications for that pole are automatically de facto pre-approved. **This needs to be considered as we design this ordinance.** We need to have language that does not allow these rules to be abused, and that ensures that telecoms do not circumvent the normal permitting processes we are planning on putting into place (such as public meetings, etc.). This is complex because co-location is protected by state law. There needs to be a robust public process re: co-location.

9. **Exceptions Clauses-** Exceptions could work for us or against us. If we are excessively restrictive in other areas, having an exception clause can protect us from being sued by the telecoms as it provides them a doorway in. If, however, we have too broad of an exceptions clause, it creates loopholes that can be big enough for 5G antennas to get through too easily, which is what the current language provides.

We would like the town’s legal council to craft this skillfully with the town’s and people’s interest as the priority. **Please make our Exceptions chapter a Limited Exceptions chapter. Our current language and requirements needs to be more specific and the process needs to be more demanding.** Please review San Anselmo’s ordinance, Chapter VII, C and D. Their requirements are spelled out clearly and there are lots of them. They also allow for the town to hire an expert to review and rebut an exception request at the expense of the applicant- we would like this as

well. And they allow any individual or entity to appeal any approval. These are tough requirements that are also not prohibitive.

10. **Fire Hazard and Other Hazard Potential-** A full fire hazard potential assessment must be conducted that includes the presence of nearby vegetation and structures. All materials in the facilities must be disclosed, including hazardous materials in any and all equipment. No poles should be overloaded such that a risk is created for life or property. There should be no co-location of equipment on such facilities. Mechanical consideration: poles and other structures must exceed general guidelines to ensure they can withstand earthquakes and storms. There are studies that show equipment killing trees and drying local vegetation through desiccation creates further fire hazards. This needs further assessment, which we can help provide.
11. **Other Hazards-** 5G equipment is frequently installed on poles underneath or adjacent to electrical wires and equipment, which has been the cause of several recent local fires (Santa Rosa, Camp, Malibu, etc.). Additionally, as indicated above, studies show equipment killing and drying out adjacent vegetation. [Please see the additions to Chapter 20 in Fairfax, attached-proposed changes to urgency ordinance 9/26, listed also in the Findings section of the ordinance, **Attachment #4, Peter Lacques Recommendations.**]
12. **Decorative Light Poles-** Prohibit installations on all Decorative Light Poles. In Fairfax, we have asked for this prohibition. (To protect our street lamps from a 50% height increase, amend by adding, "The downtown decorative street light poles are exempt from this section.")
13. **Viewsheds and Aesthetics Considerations-** Viewsheds and general aesthetics need to be considered via the design review process for all applications with full public noticing and involvement. Consideration should include historic preservation considerations and the general aesthetic character of our towns. Facilities must not disrupt or alter the aesthetic beauty or historic character of the town. This should be subject to review by the Town Planning Commission and approved by the Town Council.
14. **Schools and Child Care Centers-** Similarly, we wish to restrict a 1000 foot buffer around schools, child care centers, and elder facilities from consideration of 5G installation. As with the item above, this can be accomplished through our zoning restrictions as well as setbacks.
15. **Health Care Facilities** – We recommend that the Town of Fairfax require a 1000-foot buffer for antennas around medical care facilities to ensure safety of recovering patients. [Note: We are recommending only certain planning zones be eligible for 5G antennas. Within those zones, there will

be further restrictions. See “zoning”, above.]

16. **Establishing setbacks and antenna intervals-** We know each antenna can transmit up to at least 1 GB/sec of data at 3000 feet. Even with prohibition in the residential areas for antennas, this would impact a large swath of town, both residential and commercial. With setbacks and antenna intervals of 1000 feet in addition to limiting zoning and strategic placing, we can control where antennas are placed. We want to minimize exposure to people living and working in mixed use zones and on the edge of commercial zones.
17. **Endangered/Threatened Species, ESA-** Fairfax is home to several endangered and threatened species. Here in Fairfax we have Spotted Owls, and in our creeks we have threatened Steelhead and other listed species. We need to review the Natural Diversity Database to see what other listed species we have here. There are increasing numbers of studies emerging that focus on insect and other wildlife impacts from this technology. Using provisions in the Endangered Species Act could support their protection and limit exposure, creating a rationale for buffers. More research is needed here, and we can help in this area.
18. **Trees-** The town of Fairfax has a tree ordinance that requires a permitting process to remove trees. Fairfax’s tree committee reviews applications and make recommendations for approval/disapproval. There are studies that show cell tower radiation kills or damages trees. The study we recently reviewed was focused on cell towers installed in trees, but any trees in close proximity would presumably have similar effects. As part of the permit requirements, we recommend that telecoms be required to do a tree analysis within 100 feet of antennas and if there is a risk of killing trees, the telecoms must be required to monitor and if antenna is in close proximity apply and be granted a tree removal permit as a condition of it’s application if there is a reasonable risk of trees being damaged or killed.
19. **Cultural Resources-** Under CEQA there needs to be full assessment of cultural resources, including artifacts buried under the ground. We are asking for undergrounding of equipment and want to be assured that there are no cultural artifacts where telecoms may want to dig, and if there are, the proper process is followed (archeologists on site, etc.).
20. **Cumulative Impact Assessment-** CEQA requires cumulative impact assessments. Despite the FCC and 1996 FTA’s prohibition on health as a rationale for prohibiting installations, there may be other cumulative impacts that need to be assessed, such as visual or aesthetic and environmental impacts.
21. **Conflicts with Other Plans and Regulations-** CEQA has a category of “Conflict with any land use plan, policy or regulation”. We have outlined our

undergrounding districts and our tree ordinance here. Are there other potential conflicts with other plans or regs in Fairfax. Please evaluate this.

22. **Future Damages-** Regarding health, we want to investigate if there is anything in the law that allows corporations to be held liable for future damages (could a coal burning plant be liable for future damage to air quality or health of neighbors, etc.?) We would like to see language included here, especially in light of the dramatic increases of new studies emerging that indicate serious health and environmental concerns from microwave frequency radiation.
23. **Noise Assessment/Evaluation-** There should be no equipment that generates noise whatsoever. Ordinance needs to have language that specifies details around noise and abatement, including sound containment if there are fans or other noisy components.
24. **Recertification requirements-** Please consider adding a clause that requires annual re-certification of all facilities at the expense of the applicant. This measure is not prohibitive and is not gratuitously burdensome. It is wise policy to ensure that facilities are safe and efficient, and it should be the responsibility of the applicant to formally recertify equipment annually.
25. **Purpose and Intent Section of Ordinance-** Please make our Purpose and Intent passage more robust. It's imperative that Fairfax define its own values as it sees fit. We should refer to our intent to promote and protect public health, safety, and welfare, and specifically to protect residents from the effects of non-ionizing radiation. We should also refer to the public's right to be heard and to ensure the balance between public and private interests. Mention our intent to preserve visual character and environmental resources, and to supply the public with safe, high-quality telecommunications services. And, lastly, we should assert that, in all cases, Fairfax will abide by all federal and state laws and the tenets of the US and California constitutions, which designate the people as a sovereign.

SUMMARY OF THE PLANNING COMMISSION'S COMMENTS ON ORDINANCE REGARDING WIRELESS COMMUNICATION FACILITIES

December 20, 2018 Meeting
(based on the draft minutes)

Commissioner Swift provided the following comments:

- She referred to Attachment #2, "Summary of Planning Commission Comments", bullet #2 and stated "if feasible" should be defined; bullet #5 and stated applicants should provide staff with a public noticing for the Town Website; bullet #9 and stated a time limit should be established.
- She stated she would provide staff with more detail that provides context to the bullet point statements (see attached)

Commissioner Kehrlein provided the following comments:

- She asked if the Town could limit the height of the antenna- they should not exceed the height of the existing structures.
- They should be prohibited on the downtown decorative light poles.
- She had questions about the application process (Use Permit and Design Review vs. Zoning Administrator review).

Commissioner Gonzalez-Parber provided the following comment:

- She had a question about adding more restrictions and asked if the underground districts were seismically up to code. Town Manager Toy stated it was a vault that is underground.

Commissioner Rodriguez provided the following comments:

- There should be two separate ordinances if there is a concern about lost information.
- She would like to see more in the ordinance about EMF sensitivity.
- The definition about modification of these systems should include software changes and upgrades.
- The substantial changes should be reduced from the 20 feet down to 2 feet.
- Substantial changes should include height changes and changes to noise, light, and EMF.
- There should be land use buffers and more limitations on the zoning districts.
- They should incorporate the San Anselmo exceptions.
- She liked the idea of adding data safety, annual recertification, and a preference for undergrounding as Conditions of Approval.
- She liked the recommendation for a reduced number of years for approval.
- They should look at CEQA more closely in terms of adding a substantial change section with respect to a variety of colocations.

Commissioner Fragoso provided the following comment:

- She agreed with the comments made by Commissioner Kehrlein and Rodriguez.

Chair Newton provided the following comment:

- She agreed with a lot of what has been said.
- The two titles should be kept separate.
- She would like to look at the San Anselmo exceptions.
- She would like to limit the maximum time for an extension.
- It is important to ensure that the application process be transparent and allow for individuals with particular sensitivities to participate in the decision making in terms of particular locations
- The 24th bullet should read “minimum” and not “minimal”.

Commissioner Swift provided the following comments:

- If the staff feels the titles should be combined then it would be helpful to see a “walk-through” (red-line) between the old and the new.
- She had a question about the title of the resolution. Town Manager Toy noted the “Now, Therefore” section was the important part of the resolution.

Commissioner Rodriguez provided the following comment:

- This should be brought to the Council for review and comment and then return to the Commission for a final review.

Chair Newton provided the following comment:

- She is concerned about the burden on staff- being able to turn things around in order to get the information to the Council in February.
- She typically did not want to give the Council something this amorphous.
- Putting it off might not be that much more efficient.

Garrett Toy

Subject: RE: PC Meeting 20 Dec - Comments re Telecommunications - Item 3

From: Cindy Swift

Sent: Friday, December 21, 2018 11:21 AM

Subject: PC Meeting 20 Dec - Comments re Telecommunications - Item 3

Garrett/Ben

Along with the recommendation to provide the council a comparison of old Title 19 vs the current draft Title 19 so council and community can track the changes, here are my notes from last night's meeting reference my clarifications of some of the bullets in the Staff Report's **SUMMARY OF THE PLANNING COMMISSION'S COMMENTS ON ORDINANCE REGARDING WIRELESS COMMUNICATION FACILITIES. November 29, 2018 Special Meeting:**

1. Regarding the PC Comments attached to the staff report, the 2nd bullet recommends strengthening the wording 'if feasible' in the application process.

Reasoning:

The draft uses the term 'if feasible' throughout the draft.

For example: 1. Accessory equipment for roof-mounted facilities shall be installed inside the building to which it is mounted or underground, if feasible.

Or

Regarding modifications: At the time of modification of a wireless telecommunications facility, existing equipment shall, **to the extent feasible**, be replaced with equipment that reduces visual, noise, and other impacts, including but not limited to undergrounding the equipment and replacing larger, more visually-intrusive facilities with smaller, less visually-intrusive facilities.

Nowhere do we define what feasible means or how it is determined. Without more definition of this concept, I would be concerned that an applicant could consider, for example, cost as a factor in what they consider feasible.

2. 5th Bullet – "Require public noticing for Eligible Facility Requests. **This is in reference to 19.04.140 and the application process.** A lot of applications coming in may be of this type and per our draft only require the Planning Director approval/disapproval with no required noticing. There should be some noticing and it can be done by providing the applicant a format for a public notice and requiring it as a part of the application that they would need to complete. The town could then post that notice on its website.

3. 8th bullet – Requiring a physical map of a geographic service area in addition to the written description of that service area which is in the draft. **This is in REFERENCE: 19.04.050 A. 8**

4. 9th Bullet – establish a time limit for the design and development standards extension. **This is in reference to 19.04.140 I 5**, Build Out Plans for Eligible Facility Requests, which allows the zoning administrator to approve 1 extension but doesn't provide a maximum amount of time for that extension. There should be a maximum time limit in which the Zone Administrator can approve an extension.

And new from last night: The draft does not address the town's 6 underground utility districts, their requirements and impacts/restrictions to Title 19 applications.

Hope this helps -Thank you

Cindy Swift

Planning Commissioner