



TOWN OF FAIRFAX

STAFF REPORT

July 17, 2019

TO: Mayor and Council

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Introduce an ordinance to consolidate Titles 19 & 20 ("Telecommunications") of the Fairfax Town Code into a revised Title 19 which establishes uniform and comprehensive regulations for wireless telecommunication facilities (e.g., 5-G) within the Town on private property and within the Town's public rights-of-way; CEQA exempt Section 15060(c)(2), Section 15378, Section 15061(b)(3), Section 15305, and Section 15303

RECOMMENDATION

Introduce and read by title only "An Ordinance of the Town Council of the Town of Fairfax Consolidating Titles 19 And 20 ("Telecommunications") of the Fairfax Municipal Code into a Revised Title 19 Which Establishes Uniform and Comprehensive Regulations for Wireless Telecommunication Facilities."

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 ordinance was modeled after Mill Valley's ordinance which included a minimal distance between facilities requirement adopted by Petaluma. The key provisions of the ordinance are:

- 1) Prohibits small cell facilities (5-G) in the public right of way and private property in

- residential zones.
- 2) Requires a minimal distance of 1,500 between small cell facilities.
 - 3) Establishes design and installation standards.
 - 4) Establishes an application process.

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.

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 29th 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 "Smart meters and related equipment" which prohibits smart meters.

At its November 29th 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 languages revisions to the ordinance at the meeting.

After receiving public comment at its November 29th meeting, the PC provided staff with its comments and requested that staff return with a summary of the PC's comments. On December 20th, the PC reviewed its comments and offered additional comments for the Council's consideration. Specifically, the PC recommended that the Council consider the PC's comments prior to the adoption of the ordinance.

The item was agendaized for the Council's January 16th meeting, but was continued to a special January 23rd Council meeting. At its January 23rd meeting, the Council considered the PC's recommendation, received public comment, and provided staff with general direction as to revisions it would like to see with special consideration given to ensure that the provisions of Old Title 19 were consolidated into the new Title 19.

At its April 23, 2019, meeting, the Council discussed/considered additional revisions to the proposed ordinance and reviewed a Concordance Table explaining where the provisions of old Title 19 are incorporated into the New Title 19.

DISCUSSION

At the Council meeting, legal counsel will "walk" the Council through the revisions made to the ordinance and explain the rationale behind specific language revisions. Legal Counsel will also provide an update on the appeal challenging the FCC's ruling in the U.S. 9th District Court of Appeals.

Attached is a redline of the ordinance incorporating the Council's comments from the April 23rd meeting. The revisions include the following:

- Correcting typos and clarifying definitions
- Not permitting wireless facilities in OA or PD zones
- Adding a story pole requirement
- Adding a public noticing requirement
- Providing maximum latitude to the independent expert as to how and when monitoring is done
- Requiring new wireless communications facilities to be located a minimum of 50 feet from all residences and a minimum 300 feet from child day care centers, schools, playgrounds, parks, ballfields, and medical facilities
- Not permitting wireless telecommunications facilities on ridgelines
- Prohibiting the mounting any and all hardware or antennas on decorative light poles except as a replacement pole that matches the existing decorative light poles in the vicinity
- Requiring insurance

CEQA

The 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 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. The 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 Ordinance 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."

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. Redline of ordinance
- B. Clean version of ordinance
- C. Applicant/Permit Checklist (to be distributed prior to the meeting)