




TOWN OF FAIRFAX

STAFF REPORT

August 7, 2019

TO: Mayor and Council

FROM: Garrett Toy, Town Manager 

SUBJECT: Second reading and adoption of 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

Read by title only and adopt an ordinance entitled "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 urgency ordinance was modeled after Mill Valley's ordinance which included a minimal distance between facilities requirement adopted by Petaluma. 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

Should the Council want to make additional revisions to the ordinance at the meeting, the second reading of the ordinance would become the first reading and the second reading would be scheduled for the September Council meeting.

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

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. 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 initially on the Council's January 16th agenda, 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. For more background information, please refer to the July 17, 2019 staff report.

DISCUSSION

At its July 17th meeting, the Council introduced the ordinance. Tonight, is the second reading and adoption of the ordinance. If adopted, it would become effective in 30 days.

The attached ordinance reflects the Council's additional revisions made to the ordinance which include:

- Section 19.04.180(~~h~~)- Added language indicating that the annual re-certification process for a small cell facility must be completed before any further applications for that facility will be accepted by the Town.
- Section 19.04.140(I)(7)- Clarified that this section includes compliance with ADA language.
- Section 19.04.140(D)(7)- Added requirement for public notices for eligible facilities request applications.



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