



Jenny Leinen <leinen@monterey.org>

Please forward -- PG ordinance by Mr. Van Eaton

1 message

To: Leinen@monterey.org

Mon, Oct 15, 2018 at 11:40 AM

Please forward to the wireless ordinance subcommittee. Thank you.


Dear Subcommittee:

Attached is the conceptual cell tower ordinance written by Joseph Van Eaton for Pacific Grove and on the Planning Commission agenda this week. It includes many exemptions, the city manager making decisions instead of the Planning Commission, and exemption from ordinance rules for wireless carriers using city infrastructure under a contract (like San Jose's 4000 light poles). The report and proposed concept starts on p. 7

<https://www.cityofpacificgrove.org/sites/default/files/planning-commission/2018/10-18-2018/planning-commission-october-18-2018-agenda-packet.pdf>

Some of this ordinance framework is similar to what was suggested by Mr. Van Eaton and city staff in Monterey for different phases of the ordinance process.

Nina Beety

 **PG PC ordinance draft 10-18-18.pdf**
2832K



NOTICE OF PUBLIC HEARING

CITY OF PACIFIC GROVE PLANNING COMMISSION REGULAR MEETING AGENDA

6:00 p.m., Thursday, October 18, 2018

Council Chambers – City Hall – 300 Forest Avenue, Pacific Grove, CA

Copies of the agenda packet, and materials related to an item on the agenda submitted after distribution of the agenda packet, are available for review at the Pacific Grove Library located at 550 Central Avenue; the CDD counter in City Hall at 300 Forest Avenue, Pacific Grove from 8 a.m. – 12 p.m. and 1 p.m. – 5 p.m., Monday through Thursday; and on the internet at www.cityofpacificgrove.org/pc. Recordings of the meetings are available upon request. Materials can also be requested of staff during the PC hearing. Structures listed on the City's Historic Resources Inventory are denoted on the agenda with a "(HRI)" next to their project address.

1. Call to Order - 6:00 p.m.

2. Roll Call

Commissioners: Robin Aeschliman, Bill Bluhm (Vice-Chair), Jeanne Byrne, Mark Chakwin (Secretary), William Fredrickson (Chair), Steven Lilley, Donald Murphy.

3. Approval of Agenda

4. Approval of Minutes

a. October 4, 2018 Meeting

Recommended Action: Approve minutes as presented

5. Public Comments

a. Written Communications

Communications relevant to PC jurisdiction, but not related to a matter on this agenda, are attached under this agenda item.

b. Oral Communications

Comments from the audience will not receive PC action. Comments must deal with matters subject to the jurisdiction of the PC and will be limited to three minutes. Comments regarding agenda items shall be heard at the time such items are called. Whenever possible, letters should be submitted to the PC in advance of the meeting.

6. Consent Agenda

None.

7. Presentations and Trainings

None.

8. Regular Agenda

a. Conceptual Review of Ordinance for Wireless Telecommunications Facilities in Public Rights-of-Way

Location: Citywide

CEQA Status: Does not constitute a "Project" as defined by CEQA Guidelines § 15378

Staff Reference: Heidi Quinn, Assistant City Attorney

Recommended Action: Discuss and provide staff direction.

9. Items to be Continued

None.

10. Reports of Council Liaison

11. Reports of PC Subcommittees

Subcommittees of the PC will provide a summary report of their recent activities.

12. Reports of PC Members

PC members may ask a question for clarification, make a brief announcement or make a brief report on his or her activities. In addition, a majority of PC members may provide a referral to staff for factual information, request staff to report back to the body at a subsequent meeting concerning a PC-related matter, or direct staff to place a matter of business on a future agenda (G.C. 54954.2(a)(2)).

13. Director's Report

14. Adjournment. Next Meeting: Thursday, November 8, 2018

The City of Pacific Grove does not discriminate against persons with disabilities. City Hall is an accessible facility. A limited number of devices are available to assist those who are deaf or hard of hearing.

GENERAL NOTICE

- Please note that Section 65009(b)(2) of the California Government Code provides that legal challenges to the City's action on a project may be limited to only those issues raised in testimony during the public hearing process. PC will not consider any new items after 9:00 p.m. Any items remaining on the agenda will be continued either to the next regular meeting or to a special meeting at the discretion of PC. This meeting is open to the public and all interested persons are welcome to attend.

NOTICE TO APPLICANTS

- **Appearance by Applicant/Representative:** Applicants or their representatives must be present at the meeting for which their item, including those items on the Consent Agenda, is scheduled. If unable to attend, the applicant must submit a written request for continuance prior to the meeting. The item may be denied if continuance is not requested.
- **Submittal of Written Communications:** In order to receive due consideration by the Planning Commission, written communications pertaining to agenda items should be submitted to the Community and Economic Development Department by **9 A.M. the day prior to the meeting**. Materials submitted subsequent to that time, or directly to the Planning Commission at the meeting, may, at the Commission's discretion; result in a continuance of the item.
- **Appeals and Appeal Period:** Decisions rendered by the Planning Commission may be appealed to the City Council using a form available at the Community and Economic Development Department. The appeal form, plus an appeal fee, must be filed within 10 days of the action being appealed. The aforementioned appeal period notwithstanding, the City Council reserves the right to call up for review Planning Commission decisions until its next regularly scheduled meeting. No building permit pertaining to a Planning Commission action may be issued until the appeal period has passed.
- **Judicial Time Limits:** This serves as written notice that Pacific Grove Municipal Code (PGMC) §1.20.010 incorporates §1094.6 of the Code of Civil Procedure of the State of California and provides a ninety-day limitation for judicial review of any final administrative decision by the council, or any board, commissioner, or officer of the city.



MINUTES

CITY OF PACIFIC GROVE PLANNING COMMISSION REGULAR MEETING

6:00 p.m., Thursday, October 4, 2018

Council Chambers – City Hall – 300 Forest Avenue, Pacific Grove, CA

1. Called to Order - 6:00 p.m.

2. Roll Call

Commissioners Present: Robin Aeschliman, Bill Bluhm (Vice-Chair), Jeanne Byrne, Mark Chakwin (Secretary), Steven Lilley, Donald Murphy.

Commissioners Absent: William Fredrickson (Chair)

3. Approval of Agenda

On a motion by Commissioner Byrne, seconded by Commissioner Chakwin the Commission voted 6-0-1 (Chair Fredrickson absent) to approve the Agenda. Motion Passed.

4. Approval of Minutes

On a motion by Commissioner Murphy, seconded by Commissioner Lilley, the Commission voted 6-0-1 (Chair Fredrickson absent) to approve the minutes for Planning Commission for July 26th, 2018, with corrections. Motion Passed

- At this point Commissioner Murphy stated that the Planning Commission Minutes from the June 7th 2018 meeting, which required corrections, still needed to be presented to the Planning Commission for final approval. Senior Planner Aziz stated that staff would look into that situation.

5. Public Comments

- Written Communications - None
- Oral Communications - None

6. Consent Agenda

The following item was pulled by Commissioner Byrne, and became Item 8a under the Regular Agenda.

Project Description: Allow flexibility to hold regular ARB meetings on the 2nd Tuesday of the month instead of the 4th Tuesday.

CEQA Status: Does not constitute a “Project” as defined by CEQA Guidelines § 15378

Staff Reference: Anastazia Aziz, AICP, Principal Planner

Recommended Action: Recommend approval to Council and initiate PGMC amendment.

{please refer to the audio recording for details}

7. Presentations and Trainings

None.

8. Regular Agenda

- a. **Project Description:** Allow flexibility to hold regular ARB meetings on the 2nd Tuesday of the month instead of the 4th Tuesday.
CEQA Status: Does not constitute a “Project” as defined by CEQA Guidelines § 15378
Staff Reference: Anastazia Aziz, AICP, Principal Planner
Recommended Action: Recommend approval to Council and initiate PGMC amendment.

- Principle Planner, Anastazia Aziz, gave a presentation and answered Commissioner’s questions.
{please refer to the audio recording for details}
- The Vice Chair opened the floor to public comment
{please refer to the audio recording for details}
- No comments were made.
- The Vice Chair closed the floor to public comment.
- The Commission discussed the project.
{please refer to the audio recording for details}
- **On a motion by Commissioner Byrne, seconded by Commissioner Murphy, the Commission voted 6-0-1 (Chair Fredrickson absent) to approve the project with the understanding that the ARB meetings would be held on the second Tuesday of the Month and that the Traffic and Safety Commission’s meeting would be conducted on the fourth Tuesday of the month. Motion passed.**

b. Zoning Map corrections

Location: Citywide

CEQA Status: Does not constitute a “Project” as defined by CEQA Guidelines § 15378

Staff Reference: Anastazia Aziz, AICP, Principal Planner

Recommended Action: Discuss and provide staff direction.

- Principal Planner, Anastazia Aziz, gave a presentation and answered Commissioners’ questions.
{please refer to the audio recording for details}
- The Vice Chair opened the floor to public comment.
{please refer to the audio recording for details}
- Trish Grave, a member of the Monarch Pines Board of Directors, voiced concerns that the proposed zoning change to Open Space on portion of property owned by Monarch Pines, would allow unrestricted public access to the Pnarch Pine’s private open space.
- Judy Cole, a previous secretary to the Monarch Pines Board of Directors, voiced her concerns with the proposed zoning change to Open Space on portion of property owned by Monarch Pines for the same reason as Trish Grave.
- The Vice Chair closed the floor to public comment.
- The Commission discussed the project and provided direction to Staff.
{please refer to the audio recording for details}

c. Zoning Modifications to Off-Street Parking Requirements in Residential Districts

Location: R-1 and R-2 residential zoning districts

CEQA Status: Exempt per CEQA Guidelines, Section 15301, Class 1, Existing Facilities

Staff Reference: Mark Brodeur, Director of Community & Economic Development
Department

Recommended Action: Forward a recommendation to the City Council to modify the Zoning Code under PGMC §§ [23.16.070](#) and [23.20.080](#) to modify the off-street parking regulations in the referenced residential zoning districts.

- CEDD Director, Mark Brodeur, gave a presentation and answered Commissioner's questions.

{please refer to the audio recording for details}

- The Chair opened the floor to public comment

None

- The Chair closed the floor to public comment

- The Commission discussed the project

{please refer to the audio recording for details}

On a motion by Commissioner Byrne, seconded by Commissioner Aeschliman, the Commission voted 6-0-1 (Chair Fredrickson absent) to approve the item with recommended corrections as stated by Commissioner Byrne. Motion passed.

9. Items to be Continued

None

10. Reports of Council Liaison

Councilmember Rudy Fischer provided an update on key developments from City Council's most recent meeting.

11. Reports of PC Subcommittees

Subcommittees of the PC will provide a summary report of their recent activities.

12. Reports of PC Members

{please refer to the audio recording for details}

- Commissioner Byrne raised the issue of smaller lot sizes, and how the City still has several small size vacant lots. She recommended that the Planning Commission should review this issue about allowing smaller lot sizes. She also thanked Principal Planner Aziz for the challenging work in sorting out the City's zoning issues.
- Commissioner Aeschliman raised the topic of the new Cell Tower Ordinance for the City of Monterey, and asked when the Planning commission could expect to hear something about it. She also asked about when a commercial project goes through the approval processes, and it involves landscaping approval, is there any provision for follow-up regarding maintenance?

- The Planning commission officially welcomed new Assistant Planner, Alex Othon.

13. Director's Report

- Principal Planner Aziz started the report with an update, and answered Commissioners' questions about the Local Coastal Plan Workshops and the status of the Historic Resources Inventory work being done by Pahe & Turnbull.
- Director Brodeur provided an update on the initiative to develop Architectural Design Guidelines for downtown with the HRC and the ARB. In addition, the Director noted that the Economic Development commission would consider recommending possible density limits on Antique Stores in the Downtown. Finally, the Director provided a status and way-ahead for the City's planned Wireless Telecommunications Facility ordinance; and answered questions by Commissioners.

14. Adjourned at 7:31pm. Next meeting is scheduled for October 18th, 2018.

APPROVED BY PLANNING COMMISSION:

Mark Chakwin, Secretary

Date



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Planning Commission
FROM: Mark Brodeur, Community and Economic Development Director
MEETING DATE: October 18, 2018
SUBJECT: Conceptual Review of Ordinance for Wireless Telecommunications Facilities in Public Rights-of-Way
CEQA: Not a “Project” under the California Environmental Quality Act (CEQA) Section 15378

RECOMMENDATIONS

Receive report from Assistant City Attorney and provide general policy guidance regarding a “wireless telecommunications ordinance”. Discuss and provide comment. Direct staff to initiate environmental review.

DISCUSSION

The City Council and the Planning Commission directed staff to develop a wireless telecommunications ordinance. The City retained attorney Joseph Van Eaton, a partner in the law firm of Best Best and Krieger, who is also assisting the City of Monterey to amend its wireless ordinance. Mr. Van Eaton is a leading advocate for local governments before the FCC. His practice focuses on representing cities on a broad range of communications issues.

Although the City originally anticipated adopting a set of interim guidelines in advance of enacting an ordinance, recent developments and Mr. Van Eaton’s current recommendation is for the City to immediately move forward with a wireless ordinance regarding facilities in the public rights-of-way. The proposed ordinance can offer greater protection to the City. An ordinance governing use of public rights-of-way would be a placeholder to allow more comprehensive regulations to be developed.

The proposed ordinance would amend the City’s Municipal Code to create a new chapter. These materials are presented for conceptual review, and to clarify the environmental process that is proposed.

ATTACHMENTS

1. Draft Wireless Ordinance

RESPECTFULLY SUBMITTED:

Mark Brodeur
Community and Economic Development Director

ORDINANCE NO. 18-____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
ADDING CHAPTER 15.26 OF THE PACIFIC GROVE MUNICIPAL CODE
REGARDING WIRELESS TELECOMMUNICATIONS FACILITIES
IN THE PUBLIC RIGHTS-OF-WAY**

FACTS

1. The Pacific Grove Municipal Code (PGMC) §23.64.060 allows wireless telecommunication facilities to be permitted in any district, except the O district, subject to first obtaining a use permit under §23.70.080(a).
2. The City deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas and other structures within the City’s public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority.
3. The City by and through its Council and other officials has the authority to adopt such ordinances as it deems necessary and appropriate to assure the health, welfare and safety of its inhabitants, to protect and preserve the City’s rights, property and privileges, and to preserve peace, safety and good order.
4. This ordinance amends the Municipal Code to create a new Chapter 15.26, entitled “Telecommunications Facilities in Public Rights-of-Way” to provide for certain standards and regulations relating to the location of telecommunications towers, antennas, and other structures within the City’s public rights-of-way, consistent with federal and state law.
5. Notice of the public hearing was published or posted **in** _____ on _____ and _____.
6. In the enactment of this ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq. [*Initial Study and Negative Declaration?*]

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing Facts are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. A new Chapter 15.26, entitled “Wireless Telecommunications Facilities,” shall be created, as follows:

CHAPTER 15.26
TELECOMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY

15.26.010. Authority.

The City derives the authority for this Chapter from the City Charter Articles 4 and 5, and Pacific Grove Municipal Code Chapter 2.04 This Chapter, and any rules, regulations, specifications and agreements adopted pursuant to this Chapter, comply with all applicable federal and state law.

15.26.020 Purpose.

The purpose of this Chapter is to establish a process for managing, and uniform standards for acting upon requests for the placement of wireless telecommunications facilities within the rights-of-way of the City of Pacific Grove consistent with the City's obligation to promote the public health, safety and welfare, to manage the public rights-of-way, and to ensure that the public is not incommoded by the use of the rights-of-way for the placement of wireless telecommunications facilities. The City recognizes the importance of wireless telecommunications facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable Federal and State law regarding the placement of wireless telecommunications facilities in its rights-of-way, and this ordinance shall be interpreted consistent with those provisions.

15.26.030 Scope.

(a) In general. Unless exempted, every person who desires to place a wireless telecommunications facility in the rights-of-way or modify an existing wireless telecommunications facility must obtain a wireless placement permit authorizing the placement or modification.

(b) Exemptions. Except as to this 15.26.030 and 15.26.050, this Chapter does not apply to:

- (1) The placement or modification of wireless telecommunications facilities on supporting structures owned, or under the control of, the City, the use of which is subject to a contract for use of the facility between the City and the entity or entities that own or control the wireless telecommunications facility;
- (2) The placement or modification of wireless facilities by the City or by any other agency of the state solely for public safety purposes.
- (3) Modifications to an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work activity does not change the visual or audible characteristics of the wireless telecommunications facility. The City, by wireless regulation, may also exempt wireless telecommunications facilities that otherwise are subject to the provisions of this section from the obligation to obtain a permit to install or modify a wireless telecommunications facility where it is determined that because of the physical characteristics of the proposed facilities, and the work associated with them, such a

Attachment 1: Draft Wireless Ordinance – Public Rights-of-Way

permit is not required to protect the public health, welfare or safety, to maintain the character of a neighborhood or corridor, or to otherwise serve the purposes of this ordinance.

(4) Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement or removal of existing facilities.

(5) Installation of a wireless facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand shall not exceed 1 cubic foot and provided further that the installation does not require replacement of the strand, or excavation, modification or replacement of the utility poles.

(c) Other applicable requirements. In addition to the wireless telecommunications permit required herein, the placement of a wireless telecommunications facility in the public-rights-of-way requires the persons who will own or control those facilities to obtain the franchises and permits required by applicable law, and to comply with applicable law.

(d) Public use. Except as otherwise provided by California law, any use of the right of way authorized pursuant to this Chapter will be subordinate to the City's use and use by the public.

15.26.040 Definitions.

Terms used in this Chapter shall have the following meanings:

"Application" means a formal request, including all required and requested documentation and information submitted by an Applicant to the City for a wireless placement permit.

"Applicant" means a person filing an application for placement or modification of a wireless telecommunications facility in the rights-of-way.

"Base Station" means the term base station shall have the same meaning as in 47 C.F.R. Section 1.40001.

"Certificate of Completion" means a document that is required from and issued by the City confirming all work described in the Application, as approved: (a) was properly permitted, including, without limitation, all required permits for building, electrical work, street or curb cutting, and excavation; (b) was done in compliance with and fulfillment of all conditions of all permits, including all stated deadlines; (c) was fully constructed or placed as approved and permitted; and (d) was finally inspected by the City, and was approved by the City after said final inspection.

"Rights-of-Way" means any portion of any road or public way which the City has the responsibility to maintain or manage.

"Support Structure" means any structure capable of supporting a base station.

"Tower" means any structure built for the sole or primary purpose of supporting any

Attachment 1: Draft Wireless Ordinance – Public Rights-of-Way

Federal Communication Commission (FCC) licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

“Underground areas” means those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages more than 35,000 volts.

“Utility Pole” means a structure in the rights-of-way designed to support electric, telephone and similar utility lines. A tower is not a utility pole.

“Wireless Permit” means a permit issued pursuant to this Chapter and authorizing the placement or modification of a wireless telecommunications facility of a design specified in the permit at a particular location within the rights-of-way; and the modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.

“Wireless Service Provider” means an entity that provides wireless services to end users.

“Wireless Infrastructure Provider” means a person that owns, controls, operates or manages a wireless telecommunication facility or portion thereof within the right-of-way.

“Wireless Regulations” means those regulations, adopted pursuant to 15.26.050 and implementing the provisions of this Chapter.

“Wireless Telecommunications Facility, or Facility” means a facility at a fixed location consisting of a base station, any accessory equipment, and the tower, if any, associated with the base station.

15.26.050 Administration.

(a) City Manager. The City Manager or its designee is responsible for administering this Chapter. As part of the administration of this Chapter, the City Manager may:

- (1) Adopt regulations governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless telecommunications facilities;
- (2) Interpret the provisions of this Chapter.
- (3) As part of the foregoing, develop acceptable designs for wireless telecommunications facilities in particular corridors, taking into account the zoning districts bounding the rights-of-way;

Attachment 1: Draft Wireless Ordinance – Public Rights-of-Way

(4) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued.

(5) Develop forms and procedures for submission of applications for placement or modification of wireless telecommunications facilities, and proposed changes to any support structure consistent with this Chapter;

(6) Collect, as a condition of the completeness of any application, any fee established by resolution of the City Council;

(7) Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless telecommunications facility, and proposed changes to any support structure;

(8) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;

(9) Subject to appeal as provided herein, determine whether to grant, grant subject to conditions, or deny an application; and

(10) Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

(b) Appeal.

(1) Any person adversely affected by the decision of the City Manager may appeal the City Manager's decision to the City Council, which may decide the issues de novo, and whose written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility.

(2) Where the City Manager grants an application based on a finding that denial would result in a prohibition or effective prohibition under applicable federal law, the decision shall be automatically appealed to the City Council. Otherwise, appeals that involve eligible facilities requests, as defined in 47 C.F.R. Section 1.40001 must be filed within five (5) business days of the written decision of the City Manager; all other appeals must be filed within ten (10) business days of the written decision of the City Manager, unless the City Manager extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.

(3) Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

15.26.060. General Standards for Wireless Telecommunications Facilities in the Rights-of-Way.

Attachment 1: Draft Wireless Ordinance – Public Rights-of-Way

(a) Generally. Wireless telecommunications facilities shall meet the minimum requirements set forth in this ordinance and the wireless regulations, in addition to the requirements of any other applicable law.

(b) Regulations. The wireless regulations and decisions on applications for placement of wireless telecommunications facilities in the rights-of-way shall, at a minimum, ensure that the requirements of this section are satisfied, unless it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this ordinance and the wireless regulations manual may be waived, but only to the minimum extent required to avoid the prohibition.

(c) Standards. Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights-of-way; and ensures the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the public rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon or vacate the public rights-of-way or any portion thereof, or to cause the improvement, modification, relocation, vacation or abandonment of facilities in the rights-of-way.

(d) Concealment. Permits for wireless telecommunications facilities shall incorporate specific concealment elements to minimize visual impacts, and design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive, or placement is required under applicable law:

(1) Antennas located at the top of support structures shall be incorporated into the structure or placed within shrouds of a size such that the antenna appears to be part of the support structure.

(2) Antennas placed elsewhere on a support structure shall be integrated into the structure or be designed and placed to minimize visual impacts.

(3) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on a support structure, placed to avoid interfering or creating any hazard to any other use of the public rights-of-way, and located on one side of the utility pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed.

(4) Wiring and cabling shall be neat and concealed within or flush to the support structure, ensuring concealment of these components to the greatest extent possible.

Attachment 1: Draft Wireless Ordinance – Public Rights-of-Way

(5) Ground-mounted equipment associated with a wireless telecommunications facility shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be underground, located in alleys or otherwise shielded. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic.

(6) No permit shall be issued or effective unless it is shown that the wireless telecommunications facility will comply with FCC regulations governing radio frequency (“RF”) emissions. Every wireless facility shall at all times comply with applicable FCC regulations governing RF emissions, and failure to comply shall be treated as a material violation of the terms of any permit or lease.

(7) No towers shall be permitted in the public rights-of-way, and no wireless telecommunications facilities shall be permitted above-ground in underground areas; provided that the City may permit placements where all elements of the wireless telecommunications facility are concealed, and the facility does not appear to a casual observer to be a wireless telecommunications facility.

(8) No permit shall issue except to wireless service providers with immediate plans for use of the proposed wireless telecommunications facility; or wireless infrastructure providers with contracts with wireless service providers which require the service provider immediately to use the proposed wireless telecommunications facility.

15.26.070. Application Submission Requirements.

(a) Submission. Unless the wireless regulations otherwise provide, applicant shall submit a paper copy and an electronic copy of any application, amendments or supplements to an application, or responses to requests for information regarding an application to the City Manager.

(b) Content. An application must contain:

(1) Any information required pursuant to the wireless regulations;

(2) The name of the applicant, its telephone number and contact information, and if the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider that will be using the wireless telecommunications facility;

(3) A complete description of the proposed wireless telecommunications facility and the work that will be required to install or modify it (including but not limited to, detail regarding proposed excavations, if any; detailed site plans showing the location of the wireless telecommunications facility, and specifications for each element of the wireless telecommunications facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and describing the distance to the nearest residential dwelling unit and any historical structure within 500 feet of the facility. Before and after 360-degree photo simulations must be provided. The electronic version of an application must be in a standard format that can be easily uploaded on a web page for review by the public.

Attachment 1: Draft Wireless Ordinance – Public Rights-of-Way

(4) If the application is an eligible facilities request, within the meaning of 47 C.F.R. Section 1.40001, the application must contain information sufficient to show that the application qualifies as an eligible facilities request, which information must show that there is an existing wireless telecommunications facility that was approved by the City pursuant to this Chapter. Before and after 360-degree photo simulations must be provided; which and detailed specification of the (1) An application for a permit shall be submitted in the format and manner specified by the wireless facilities regulations, as applicable. For permits for wireless telecommunications facilities, if no form or manner has been specified, applications must contain all information necessary to show that applicant is entitled to the permit requested.

(5) If applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies in support of that claim. Applicants are not permitted to supplement this showing if doing so would prevent City from complying with any deadline for action on an application.

(6) Proof that notice has been mailed to owners of all property within 300 feet of the proposed wireless telecommunications facility.

(7) Any required fees.

(b) Fees. For wireless telecommunications facilities, applicant must provide an initial deposit and agree as part of its application to pay all costs reasonably incurred by City in reviewing the application, including costs incurred in retaining outside consultants. Fees shall be reviewed periodically and raised or lowered based on costs the City expects to incur, with a review commencing by the first anniversary of the effective date of this ordinance.

(c) Waivers. Requests for waivers from any requirement of this section shall be made in writing to the City Manager or its designee. The same may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought.

(d) Rejection for Incompleteness. For personal wireless facilities, as that term is defined under federal law, and eligible facilities requests, as that term is defined under federal law, applications will be processed, and notices of incompleteness provided, in conformity with state, and local and federal law. If such an application is incomplete, it may be rejected by a written order specifying the material omitted from the application, or the City may notify the applicant of the material omitted and provide an opportunity to submit the missing material.

15.26.080 Termination of Permit/Breach.

(a) For breach. A wireless telecommunications permit may be revoked for failure to comply with the conditions of the permit, franchise or applicable law. Upon revocation, the wireless telecommunications facility must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the

Attachment 1: Draft Wireless Ordinance – Public Rights-of-Way

right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless telecommunications facility.

(b) For installation without a permit. A wireless telecommunications facility installed without a wireless permit (except for those exempted by this Chapter) must be removed; provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless telecommunications facility.

(c) Term. A wireless permit, other than a permit issued pursuant to an eligible facilities request, shall be valid for a period of five (5) years. An eligible facilities permit shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. A person holding a wireless telecommunications permit must either remove the wireless telecommunications facility upon expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or, at least 90 days prior to expiration, must submit an application to renew the permit, which application must demonstrate that the impact of the wireless telecommunications facility cannot be reduced. The wireless telecommunications facility must remain in place until it is acted upon by the City, and any appeals from the City's decision exhausted.

(d) Municipal Infraction. Any violation of this ordinance may be enforced pursuant to PGMC Chapters 1.16 and 1.19.

15.26.090 Vertical Infrastructure Controlled By City.

The City, as a matter of policy, will negotiate agreements for use of City owned or controlled light standards and traffic signals in the public rights-of-way. The placement of wireless telecommunications facilities on those structures shall be subject to the agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for an agreement.

15.26.100 Nondiscrimination.

In establishing the rights, obligations and conditions set forth in this Chapter, it is the intent of the City to treat each applicant or public right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the public rights-of-way.

SECTION 3. The City Manager is directed to execute all documents and to perform

Attachment 1: Draft Wireless Ordinance – Public Rights-of-Way

all other necessary City acts to implement effect this Ordinance.

SECTION 4. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

DRAFT

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney



Jenny Leinen <leinen@monterey.org>

Wireless Committee check list item - addition?

1 message

Bruce Zanett

Wed, Oct 17, 2018 at 1:46 PM

Reply-To: Bruce Zanetta

To: leinen@monterey.org

Cc:

Jenny and Wireless Sub Committee members,

First - a big thank you to the committee for all its work so far on a complicated and challenging project. Looking through the currently 7 point check list, I felt there was an item that I expected to see addressed but that was not there. I feel this item and sub item are worthy of consideration and exploration as a possible one plus item addition. My primary goal here is to help make sure no stone is left un turned.

Item 1

The FCC has stated that a community can rule against wire less implementation if they can show a less obtrusive means of delivery of that same service to that community (paraphrasing). Most or all of Monterey residential and certainly Monterey Vista Neighborhood meet that criteria. Mobil service has been shown to be adequate in Monterey Vista from current delivery apparatus.

Yet mobile service is only a secondary objective in this push for cellular in R-1. This and future potential implementations of micro tower cellular was more about an end game of introducing wireless 4 and 5 G to house holds than it was about cell service to mobile devices. This ultimate goal has been verified over and over again leaving no doubt as to this primary objective. For Verizon improving cell service for mobile devices was a red herring first step to an ultimate goal of competing with the already well established "hard wire" providers.

With that in mind broad band delivered by "hard wire" infrastructure has been "more than adequate and will continue to provide a more qualitative and reliable service than wire less delivering the same service. It can be safe to assume that wireless delivery will never out perform fiber optic. So if the quality of delivery is already well established and can be assumed to always be superior then we look next at degree of obtrusiveness.

On several accounts, (safety, aesthetics, future goals, etc.) the "hard wire" current delivery methods consisting of coaxial cable, dedicated copper, satelite, and/or fiber optic, provide a less obtrusive method than wireless in most or all residential neighborhoods within the city of Monterey. Thus better service with a less obtrusive method.

I feel that this is an important line item since it actually may give AT&T enough of what they want to quietly except the ordinance revision. AT&T primarily wants wireless 5 G for rural areas where "hard wire" infrastructure does not service and is unlikely to service in the future. So if our community establishes an R-1 wireless revision that includes the less obtrusive rule / statement then that would not include service areas where there is no better choice. Thus AT&T does not have to worry about precedence - which I believe is there primary concern here.

AT&T stated they want out of the copper business. They look to a future of three main telecom delivery choices, fiber optic, wireless and satellite. All parties should agree that choice of which option or combination should be what is right and best for the community. There for the ordinance should emphasize that the **less obtrusive option** is of primary importance to the community. The many other checklist concerns will then support that objective.

Where the primary goal is wireless broad band to homes, AT&T like Verizon does have a very long term secondary goal of 5 G to mobile devises. But to be successful and to make sense, that would have to be accomplished over wide expanses far exceeding single neighborhoods. That could be a future end around the less *obtrusive rule* in a revised R-1 ordinance. But my initial feeling is that if the wireless broad band to homes option is taken away due to the *less obtrusive* choice then the end around incentive may very well dry up due to dramatically reduced return on the dollar spent.

Item 2

Hard wire infrastructure delivering 4 G and plus is well established, well tested and has stood the test of time. On the other hand Wireless delivering 4 and 5 G far less so. Some of the wireless tech options are still in design mode. That is untested and not well established technology. That should put health concerns back on the table of arguments against wireless.

If part of the responsibilities (I would argue the most important responsibility) of the FCC is to over see health and safety then they cannot ignore health and safety that is yet to be determined. The FCC current ruling can / should only apply to current technologies already established in meeting health and safety standards.

In my opinion health and safety should be back on the table of legitimate concerns for a community of the technologies to be considered are untested in health and safety. Technologies with a proven track record in health and safety should be considered as the less obtrusive choice to a community than an unproven technology proposed to accomplish the same level of delivery of service. Should this not be one of the check list items to be considered?

If you want to consider these points, I will be willing to come to the next meeting for any assistance I can provide.

Thank you,

10/23/2018

City of Monterey Mail - Wireless Committee check list item - addition?

Bruce Zanetta