

Status Update on City's Wireless Communication Facilities Regulations and Compliance with FCC Order Regarding Small Wireless Facilities (5G Implementation)

City Council
April 10, 2019



Background

- In 2014 and 2015, the City undertook a comprehensive review of its wireless facilities regulations in light of preemptive federal regulations imposed by rules adopted by the Federal Communications Commission (“FCC”).
- This resulted in adoption of a new code chapter (19.76 - Wireless Communication Facilities).
- The FCC has recently adopted additional regulations directed at “small wireless facilities,” for the next “Fifth generation” of deployment (5G).
- Staff has reviewed these updated rules and determined that our existing Chapter 19.76 is consistent with these new rules and the adopted regulations will allow the City to continue to appropriately regulate small wireless facilities.

2015 Code Update Regarding Wireless Communication Facilities

- The Wireless Communication Facilities ordinance included many months of work in 2014 and 2015 by Community Development Department staff, City Attorney's office, and outside counsel from Telecom Law Firm (Johnathan Kramer).
- This effort was undertaken in response to then recent FCC Orders that, among other things, limited local discretionary regulation of wireless communication facilities and established time limits or "shot clocks" for the processing of applications.
- The result was the City's adoption of Wireless Communication Facilities ordinance, codified in Camarillo Municipal Code Chapter 19.76.
- The ordinance was adopted by emergency ordinance 1108 on March 11, 2015 and ordinance 1109 on March 25, 2015.

Prior Public Outreach

- Extensive public outreach was conducted for preparation of the Wireless Communication Facilities ordinance to present the draft ordinance, receive comments, and answer questions, as follows:
 - July 23, 2014 – City Council Study Session
 - January 14, 2015 – City Council Study Session
 - February 2, 2015 – Public Informational Meeting at Camarillo Library
 - February 3, 2015 – Industry Representatives Meeting
 - February 17, 2015 – Planning Commission Public Hearing
 - March 11, 2015 – City Council Public Hearing
 - March 25, 2015 – Adopted the Wireless Communication Facilities Ordinance

Continued Monitoring

- Since the City's adoption of its updated Wireless Communication Facilities ordinance in 2015, staff has continued to carefully monitor changes in FCC regulations, in order to:
 - 1) ensuring that the City's wireless communication facilities regulations are in conformance with FCC regulations;
 - 2) implementing necessary changes to the City's internal administrative procedures relative to shot clock limits and other permit processing matters; and,
 - 3) maintaining as much control over the development and operation of wireless communication facilities within the City, including within the public right-of-way, to the extent permitted by state and federal law.

Recent Actions by Other Jurisdictions

- The City of Thousand Oaks and City of Simi Valley have recently amended their wireless communication facilities ordinances, which had not been updated since 1997 and 2006, respectively.
- These updates appear to be in reaction to the recent FCC Order directed at the regulation of small wireless facilities, and to also catch up with the prior FCC Orders that led our City to adopt CMC Chapter 19.76 in 2015.

Wireless Communication Facilities in the City

The City's ordinance regulates the siting, design, development, and operation of wireless communication facilities throughout the City, including the public right-of-way, which is a preferred location for 5G small wireless facilities for coverage and the availability of existing structures (e.g., light poles).

- CMC Section 19.76.010(A)(6) states the purpose of the Wireless Communication Facilities ordinance, is to:
- Regulate wireless communication facilities within the public right-of-way consistently with the rights conferred on telephone corporations and municipalities under California Public Utilities Code sections 7901 and 7901.1, while addressing aesthetic and safety concerns unique to being located in the public right-of-way, which is an area that is highly visible and is shared with pedestrians, motorists, municipal facilities, and other utility infrastructure.

Wireless Communication Facilities in the Right-of-Way

Facilities in the City's right-of-way, are permitted under an administrative permit and must either be stealth or camouflaged.

- "Stealth wireless communication facility" means a wireless communication facility that is architecturally integrated into a building or other concealing structure, or located such that no portion of any transmission equipment or base station, or any other part of the facility is visible from publicly accessible spaces.
- "Camouflaged wireless communication facility" means a wireless communication facility that is designed to mask or blend with the surrounding environment in such a manner to render it generally unnoticeable to the casual observer. These types of facilities may include antennas located on light poles and power poles, ground mounted or building mounted antennas that blend with the surroundings, and base station equipment screened by landscaping.

Wireless Communication Facilities in the Right-of-Way

The City's aesthetic regulations for small wireless facilities in the right-of-way are in CMC section 19.76.060.E, and have objective regulations to minimize aesthetic impacts, some of which are outlined as follows:

- Wireless communication facilities are prohibited in all center street medians.
- No wireless communication facility may be located or constructed in a manner that would interfere with the use of city property or the public right-of-way by the city, by the general public.
- All wireless communication facilities must be built in compliance with the Americans with Disabilities Act (ADA).
- All facilities may only have subdued colors and non-reflective materials that blend with the surrounding area.
- Conduits must be concealed within the support pole to the maximum extent feasible.

Radio Frequency

Safety regarding Radio Frequency (RF) emissions is an item the City considers as part of a wireless facility application.

- The 1996 Federal Telecommunications Act prohibits a city from considering RF issues when reviewing an application for a wireless facility if the applicant shows proof that the proposed facility meets the federal RF emissions regulations.
- This means that the City cannot create a lower emissions standard than set forth by the FCC. It also means that the City cannot deny a wireless facility application that meets the emissions regulations on the basis of concern over RF emissions.
- CMC Chapter 19.76 requires that wireless service providers submit radio frequency compliance reports during the application permitting process to ensure that facilities are consistent with controlling federal regulations.

2019 FCC Order Regarding Small Wireless Facilities

The FCC's recent Order ("Small Wireless Facilities Order") went into effect January 14, 2019 and primarily addressed the regulation of small wireless facilities in public rights-of-way with respect to: (1) the shot clock for processing applications; (2) permitted levels of processing fees and recurring fees for the use of the right-of-way absent specific findings allowing higher amounts; and (3) permissible aesthetic requirements.

- The City's Attorney's office and Community Development staff reviewed the Order and determined that the new regulations are already addressed in CMC Chapter 19.76 and no changes to the local ordinance are required, specifically for the following reasons:
- The current FCC shot clocks are not codified in Chapter 19.76, but, are implemented as part of the City's internal administrative procedures. Small wireless facilities located within the right-of-way are permitted under an administrative permit, which are subject to the review and approval by the Director of Community Development and staff is capable to comply with the FCC's new shot clocks for small wireless facilities.
- The City currently has an adopted fee for administrative permits and modifications to administrative permits. Staff is currently reviewing the City's existing fee schedule that would be applicable to a small wireless facility for compliance with the FCC Small Wireless Facilities Order.
- CMC sections 19.76.020 and 19.76.060.E provide for regulations on aesthetic requirements of wireless communication facilities within the right-of-way, which are consistent with the FCC Small Wireless Facilities Order and do not require any ordinance changes at this time.

Conclusion

The City has not received any applications for new small wireless facilities in the public right-of-way since the recent FCC Order went into effect in January 2019.

- Since 2015, only one administrative permit for wireless facilities has been proposed and permitted in a City right-of-way area. This permit was for the installation of data collector units on 13 marblemite poles and street lights to support Southern California Gas Company's Advanced Meter communication devices.
- Some wireless providers have indicated that they will be seeking to install such new facilities in the future but, City staff is not expecting an immediate increase in applications or facilities in the City's right-of-way until Edison, which owns most light poles in the City's right-of-way, adopts a new light standard that can structurally accommodate the attachment of a small wireless facility. A representative from Edison indicated they anticipate it would take approximately twelve months to create a new standard for street light poles that could support additional facilities.

SUGGESTED ACTION

- Receive and file report.

