



AGENCY: City Council
MEETING DATE: November 12, 2019
DEPARTMENT: City Manager/Public Works
PRESENTED BY: T. Miller/T. Varga
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Adoption of City Council Resolution Revising and Updating the City's Aesthetic Guidelines and Standards for the Deployment of Telecommunication Facilities in the City of Fort Bragg

ISSUE:

The federal government regulates wireless communication facilities. Although the federal government recognizes local zoning authority, such authority is limited. When regulating wireless communication facilities, local government regulations may not:

1. Unreasonably discriminate between providers of functionally equivalent services.
2. Explicitly prohibit or effectively prohibit the provision of personal wireless services. (A local requirement is deemed to "effectively prohibit" when it "materially limits or inhibits any competitor's or potential competitor's ability to compete in a fair and balanced legal and regulatory environment.") (47 U.S.C. Section 332(c)(7)).
3. Regulate based on environmental effects from RF emissions to the extent the emissions comply with FCC regulations. (47 U.S.C. Section 332(c)(7)(B)(iv)).

On September 26, 2018 the Federal Communications Commission (FCC) adopted the Declaratory Ruling and Third Report and Order in the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (the "FCC Regulations"), regarding small cell wireless facilities deployment. On October 15, 2018 the FCC published the declaratory ruling.

Among other things, the FCC Regulations confirmed that local governments may regulate the aesthetics of small cell wireless telecommunication facilities¹ ("small cells"), subject to certain limitations. Additionally, the FCC Regulations established new shot clock permit processing timeframes for small cells, as well as new tolling time periods for the shot clock. The FCC Regulations also include limitations on the allowable fees that the City can charge for small cells in the public right-of-way.

In a special meeting on April 12, 2019, the City Council adopted Ordinance No. 947-2019, which provided for the adoption of Aesthetic Guidelines for the Deployment of Wireless Communications in the City of Fort Bragg. That Ordinance was adopted as an Urgency Ordinance in order to establish the mechanism to adopt the Guidelines through a Resolution at the same meeting. To ensure that the City preserved its rights to have some control of

¹ Small cell wireless facility or small wireless facility is a cellular network that delivers high transmission data transfer speed at a lower range, typically 500 to 1,000 feet. Small refers to the range, not its physical size.

the aesthetics and public safety concern for small cells in the public right-of-way, guidelines had to be in place by April 15, 2019. Acknowledging that the adopted guidelines were a place holder, Resolution No. 4158-2019 requires the City Council to review and confirm or revise the Aesthetic Guidelines by April 12, 2020.

On August 12, 2019, the City Council approved the FCC safe harbor fees and rents that reasonably approximate the City's cost of licensing and permitting small wireless facilities and rental of municipally-owned structures for placing equipment. The FCC's established fees are presumptively reasonable and provide the City protection from claims that the City is creating a barrier by application of unreasonable fees. Those fees were effective October 11, 2019.

ANALYSIS:

Based on the FCC Regulations, all City permits and authorizations for small cells placed on an existing structure must be issued within 60 days from submittal of the application materials. The total processing time for small cells placed on a new or replacement structure is 90 days from submittal. If the City does not meet the shot clock timelines, the City will not have complied with federal law. The City's current entitlement process for all required permits for small cell wireless telecommunication facilities, including both Community Development and Public Works permitting processes, may exceed the FCC shot clock timeframes.

To comply with the FCC Regulations and the shot clock requirements, City staff and a consultant developed revised and updated Aesthetic Guidelines along with a new small cell wireless facilities permitting process, which will provide a streamlined, uniform and comprehensive set of rules for the development, siting and installation of wireless and other telecommunication facilities in the public right-of-way.

Revised Aesthetic Guidelines

The Aesthetic Guidelines have been significantly revised and expanded from those adopted by the City Council on April 12, 2019, which were limited in scope as applied to small cell wireless facilities, including those used for the rollout of 5G wireless infrastructure deployment in public rights-of-way in communities across the country. In order to ensure that deployment of small cell wireless infrastructure is treated in the same manner as the deployment of other telecommunication infrastructure, the Aesthetic Guidelines have been expanded to cover more types of infrastructure and equipment.

City staff and consultants are proposing Aesthetic Guidelines that are organized into ten sections, which discuss equipment preferences, site preferences, and configuration preferences. Sections 3 and 4 provide guidelines and standards that apply to all small cell wireless facilities. Sections 5 through 7 cover the three different types of small cell wireless facilities that would be permitted in the City of Fort Bragg within the public right-of-way: (5) small cells on existing utility poles and utility lines, (6) small cells on streetlights and traffic signal control poles, and (7) small cells on new freestanding poles and monopoles. Section 8 provides additional guidelines and standards that apply to telecommunication facilities that are not small cell wireless facilities. Section 9 includes examples of installations that are

acceptable and meet the guidelines and standards. Section 10 includes examples of unacceptable installations that do not meet the guidelines and standards.

The Aesthetic Guidelines list preferred attachment types and site locations in the order from most preferred locations to least preferred. City staff and the consultant are proposing this list of preferences, rather than an outright prohibition of small cells within certain zoning districts, because a city's local legal requirements may not "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." (47 U.S.C. section 253(a)). Due to the City's size, geography, and zoning map combined with the technical limits of 5G technology, if the City were to prohibit small cell wireless facilities in residential zones, or other entire zoning districts, it could significantly limit the provisions of wireless communication services in the City. However, the Aesthetic Guidelines will restrict small cell wireless in areas that are visible from schools, parks, libraries, recreation centers, historic buildings, and other public gathering places, which are the areas that frequently generate the most concern from members of the public. The Aesthetic Guidelines also prefer locations in alleys rather than street frontages and areas outside the City's Coastal Zone. The Public Facilities zoning district remains the most preferred location to maintain consistency with the City's Land Use and Development Code Chapters 17.44 and 18.44 governing traditional cell towers. Locations in residential zoning districts are only permitted if there are not technically feasible locations in Public Facilities, industrial, or commercial zoning districts. Council may want to consider the suggested hierarchy of preferences and provide direction about any changes in the order of preferences or other restrictions (see page 8, Section 4. A of Guidelines, Att. 2a).

Small Cell Wireless Permit Form & Permit Guidelines

The Small Cell Wireless Permit form provides a new permit that will be used for small cell wireless facilities permits in place of the City's current permit forms for other types of permit applications. The *Small Cell Wireless Facilities Permit Application Guidelines* ("Permit Guidelines") describe the various standards and required application materials for obtaining a Small Cell Wireless Facilities permit and provide the process and details for issuing permits applicable to small wireless facilities in the public right-of-way and public and private utility easements. Under the Permit Guidelines, the Public Works Department will review all applications for Small Cell Wireless Facilities Permits. The Council is not required to formally adopt administrative procedures and City staff may modify or amend the permit form or Permit Guidelines, as needed, to implement or comply with changing technical requirements or other legal or regulatory developments.

Prior to the application submittal, an applicant is required to notify by mail all residents and property owners within 300 feet of the sites where small cells are proposed to be installed. The applicant must also provide public notice of proposed small cell projects and post the notification in three locations at the project site. Additionally, the Permit Guidelines encourage and recommend the applicant to hold a voluntary neighborhood informational meeting to discuss the proposed project, and to receive feedback from nearby residents and interested parties.

City staff and the consultant elected to make the neighborhood meeting voluntary, rather than a requirement in order to help meet the 60 or 90 day shot clocks. The FCC Order states that “mandatory pre-application procedures and requirements do not toll the shot clocks,” however, the FCC does “encourage voluntary pre-application discussions.” A mandatory neighborhood meeting could be considered a pre-application requirement and the shot clocks would continue and not be tolled. Therefore, City staff and the consultant recommend a voluntary neighborhood meeting and Public Works will strongly encourage applicants to hold such a meeting.

The application review includes a radio frequency (“RF”) exposure compliance report to ensure consistency with FCC regulations and guidelines for human exposure to RF emissions, as well as visual and aesthetics, noise, access, and public convenience considerations. The RF exposure compliance report must be prepared by a State of California licensed RF engineer who certifies that the proposed facility and any cumulative emissions from adjacent areas, will comply with applicable federal RF human exposure standards and limits.

The new City review process shall ensure compliance with the City’s adopted Aesthetic Guidelines, Engineering Standards, and Permit Guidelines for small cells in the public right-of-way. Upon completion of the review process, the Director of Public Works will approve or deny the Small Cell Wireless Facilities Permit. The decision of the Director of Public Works may be appealed by any interested party. Due to the current federal law, appeals will not be permitted to the extent that the appeal is based on environmental effects from RF emissions that are compliant with all applicable FCC regulations.

The City will also require the applicants to provide information to enable the City to make a CEQA assessment and determine whether the proposed project is categorically exempt under CEQA, or whether the proposed project will require a Negative Declaration, Mitigated Negative Declaration or an Environmental Impact Report. Many small cell wireless facilities being deployed in the public right-of-way will likely be categorically exempt from CEQA review.

Engineering Design Standards & Permit Conditions

The *Engineering Design Standards and Permit Conditions for Telecommunication Facilities* (“Engineering Standards”) provide technical engineering design standards as well as permit conditions for Small Cell Wireless Facilities Permit applications. The Director of Public Works is authorized to modify or amend the Engineering Standards, as needed, to implement or comply with Fort Bragg Municipal Code, or with other applicable rules, policies, laws, and regulations.

Health Concerns and an Update on FCC Rulemaking

Local concerns about the possible hazards of RF exposure were raised with the adoption by City Council of fees for services related to processing applications for small wireless facilities and discussion of this proposed update to the *Aesthetic Guidelines and Standards for the Deployment of Telecommunication Facilities*. This is driven by the association of

small wireless facilities and the imminent roll out of 5G cellular network service. There is a local, national and international movement to ban 5G networks because of health concerns relating to RF exposure. Those arguing the harms of 5G, point out the fact that 5G differs from other wireless signals by using millimeter waves at the top of the radio spectrum, whereas prior generations used a lower wavelength. This is what allows for faster transfer of data. The long-term health impacts from the new “high band” are relatively unknown and the reason some argue for additional research.

As a recap, the decisions that local authorities can make are limited to placement, construction and modification of the wireless communication systems. Local authorities cannot discriminate among providers, which means that local regulations cannot favor 3G or 4G over the high band 5G. Local agencies cannot prohibit personal wireless services. Finally, local agencies cannot regulate based on RF emissions, they can only require that facilities comply with the FCC RF standards. Many opposing 5G, assert that the FCC RF standards have not been updated since 1996.

Staff is not qualified to evaluate the health impacts of small wireless facilities or 5G network technologies. Even so, the proposed Guidelines push the legal limits of the controls on Small Wireless Facilities currently available to the City and are certainly more stringent than those adopted on April 12, 2019. Developments from the FCC and new health and safety studies of RF emissions may prompt additional updates and revisions to the Guidelines over time.

The FCC has already stripped local control of small wireless. In response, local agencies are pushing and even exceeding the limits set by the FCC. In an effort to preempt what is left of local control, the wireless communications industry has filed three petitions² with the FCC to further eliminate these abridged powers. Based on recent rule making and support of 5G in the Federal Administration, it is likely the FCC will grant the requests. The City sent comments to the FCC expressing our recommendation to deny the requests. The petitions cite a variety of complaints where local agencies have passed regulations running counter to the FCC’s rulings in an attempt to limit, control and even ban small wireless facilities. A few examples of what the wireless communications industry considers overreaching regulation by local agencies:

- Hercules, California requires a \$10,000 deposit for plan and building review.
- Rio Vista, California requires a \$510 pre-planning application fee, plus a \$5,000 planning application fee.
- Portland, Oregon requires a non-refundable \$697.50 pre-application intake fee regardless of whether the application is ultimately accepted.
- Beaverton, Oregon will charge fees up to \$7,282 for height increases even when they are exempted by Section 6409 of the Spectrum Act of 2012 (the act that recent FCC rulings are applied to).
- Thurston County and Mercer Island, Washington charge a fee of \$1,880.49/\$1,680.49 respectively for every antenna equipment addition or swap.

² Petitions are available at <https://docs.fcc.gov/public/attachments/DA-19-913A1.pdf>

- East Hampton, New York requires a \$6,500 plan review fee plus building permit fees.
- Saluda County, South Carolina requires the creation of an \$8,500 escrow account and payment of a \$2,500 zoning/consultant fee.
- Woodfin, North Carolina requires a \$10,000 fee for a zoning application for new towers as well as co-location on an existing tower.

In addition:

- Santa Cruz County, California imposes stringent requirements well in excess of those in Section 6409. The proposed update to the City's Guidelines modeled a significant portion after the Santa Cruz regulations. If the FCC grants the petitions and issues further rulemaking or declaratory rulings, the City's proposed Guidelines would not be compliant.
- Marin County, the Cities of Mill Valley, San Anselmo, and Fairfax (among others) have outright banned Small Wireless Facilities.
- Petaluma, California has also taken a stance against Small Wireless Facilities.

Critics of 5G continue to seek ways for local governments to maintain control over local rollout; these efforts include linking RF and EM sensitivities to ADA complaints and accommodations and local control based on health and safety concerns.

RECOMMENDED ACTION:

Adopt Resolution Revising and Updating the City's Aesthetic Guidelines Applicable to the Deployment of Telecommunication Facilities in the City of Fort Bragg.

ALTERNATIVE ACTION(S):

1. Provide direction to staff concerning additional or future revisions to the Aesthetic Guidelines and adopt the Resolution, with a revised Exhibit A, Aesthetic Guidelines.
2. Do not adopt the Resolution and direct staff to draft a resolution which confirms the Aesthetic Guidelines adopted on April 12, 2019, which would eliminate the April 12, 2020 expiration.

FISCAL IMPACT:

Future costs are unknown. There will be staff time and other implementation costs related to the review, processing, and administration of small cell wireless applications and permits, which will be partially offset through fees received from applicants. If Council elects to pursue additional revision of the draft resolution and guidelines, doing so will also involve additional staff and consultant time and associated expenses.

GREENHOUSE GAS EMISSIONS IMPACT:

Deployment of small cell wireless facilities in the public right-of-way in the City will cause increased greenhouse gas emissions due to construction activity including exhaust from vehicles and equipment. The extraction of raw materials used in and the manufacture of components of small wireless facilities that will be deployed in the City will also cause greenhouse gas emissions.

CEQA ANALYSIS:

The adoption or revision of aesthetic guidelines and standards for the deployment of telecommunication facilities is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(2) and 15308 of the CEQA Guidelines, in that doing so is an action by the City Council that will assure the maintenance, restoration, enhancement, and protection of the environment because the guidelines and standards will protect and preserve the visual character and context of City neighborhoods and the existing environment by reducing the risk of subsequent deployment of small cell wireless telecommunication facilities in the public right-of-way creating or contributing to visual blight and clutter from excessive, concentrated, or unsightly conditions. Further, the guidelines and standards require the protection, restoration, and maintenance of existing environmental features in the public right-of-way and protect the integrity of historic resources and cultural landscapes from visual blight and aesthetic degradation due to unsuitable configuration or installation of telecommunication facilities.

Even if Section 15308 of the CEQA Guidelines did not apply, the adoption of aesthetic guidelines and standards is not subject to environmental review pursuant to Section 15061(b)(3) of the CEQA Guidelines, the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. 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, the activity is not subject to CEQA. Since the guidelines and standards will protect and preserve the visual character and context of City neighborhoods and the existing environment, and require the protection, restoration, and maintenance of existing environmental features in the public right-of-way, it can be determined with certainty that there is no possibility adopting them has the potential to cause a significant effect on the environment because they will protect the environment from potential harm. Therefore, no further environmental review is necessary at this time.

Moreover, subsequent applications for Small Cell Wireless Facilities Permits will be subject to environmental review at that time, although exemptions pursuant to Section 15301 for minor additions to existing facilities, Section 15305 for minor encroachment permits, and Section 15303 for the installation of small equipment and facilities in small structures may apply to individual small cell wireless telecommunication facilities.

CONSISTENCY:

The Aesthetic Guidelines are consistent with the Quality of Life priority area in the City Council's Priority Work Areas and Goals, including Goal No. 1, Beautification of Streets and Sidewalks. The Aesthetic Guidelines are intended to reduce visual clutter and aesthetic degradation due to inappropriate or unattractive configuration and installation of small wireless facilities in the public right-of-way. To further this goal, the Aesthetic Guidelines prioritize sites in alleys rather than in locations along streets and require the highest quality materials and most unobtrusive installation methods. They also require the installation of ancillary equipment underground to the greatest extent that is technically feasible and permitted by law.

The Aesthetic Guidelines and related standards are consistent with the City's General Plans because there are specific provisions that further the goals underlying each of the following

applicable polices. Adopting the Aesthetic Guidelines and related standards regulating the design and placement of small cell wireless facilities within the City also ensures that the deployment of this infrastructure does not hinder the City's ability to achieve the objectives of the following policies. The Aesthetic Guidelines also require small cell installations to meet all applicable noise exposure requirements in the Noise Elements of the Coastal and Inland General Plans (Policies N-1.1 through N-1.6).

Coastal General Plan Policies:

Policy LU-6.3 – Pipeline, Electrical, and Telecommunications Transmission Corridors: Consolidate new pipeline, electrical, and telecommunications transmission corridors within existing pipeline or electrical and telecommunications transmission corridors, wherever feasible, unless there are overriding technical constraints or significant social, aesthetic, environmental, or economic concerns.

Consistency: The Aesthetic Guidelines specifically address the balance of technical constraints and aesthetic concerns and require deployment of new telecommunication infrastructure along existing utility and communication corridors in the public right-of-way that aligns, and is spaced proportionally, with existing infrastructure.

Policy LU-6.4 – Electrical and telecommunications transmission rights-of-way and pipelines shall be routed to minimize impacts to scenic resources and to Environmentally Sensitive Habitat Areas according to the following standards:

- a) Require underground installation of electrical and telecommunication lines where technically and economically feasible, unless it can be shown that other options are less environmentally damaging.
- b) Scarring, grading, or other vegetative removal shall be minimized and construction areas shall be revegetated with plants native to the area.
- c) Where above-ground electrical or telecommunications transmission lines are necessary, the design and color of the support towers shall be compatible with the surroundings to the extent feasible. Avoid locating above-ground transmission lines along the crests of hills, bluffs, and in scenic resource areas.

Consistency: The Aesthetic Guidelines require undergrounding of all components to the greatest extent technically feasible and to the extent that the City can legally require components to be installed underground. They also require protection of existing landscaping and trees during installation and the restoration or replanting of trees and landscaping that were removed during installation. There are provisions requiring visually compatible design, including colors and materials that match the support structure and surrounding area.

Policy CD-1.1 – Visual Resources: Permitted development shall be designed and sited to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance scenic views in visually degraded areas.

Consistency: The Aesthetic Guidelines discourage sites in the Coastal Zone and other scenic resource areas and require the least visually intrusive design and configuration that is technically feasible.

Policy CD-2.5 – Scenic Views and Resource Areas: Ensure that development does not adversely impact scenic views and resources as seen from a road and other public rights-of-way.

Consistency: The Aesthetic Guidelines require installation of small cells in alleys rather than in street frontages wherever feasible and discourage sites in the Coastal Zone and other scenic resource areas. Installation is restricted in locations that are visible from public gathering spaces, including parks, schools, libraries, and recreation centers.

Policy CD-3.5 – Strengthen the Distinctive Identity of the Central Business District: Strengthen the distinctive identity and unique sense of place of the Central Business District.

Consistency: The Aesthetic Guidelines restrict installation of small cells in locations that are visible from sidewalks in the Central Business District and require any small cells that may be installed there to be contained in a replacement decorative streetlight that matches the style, color, and materials of the existing decorative streetlights. Installation of small cell components in front of business windows or entryways is prohibited and alley locations are prioritized.

Policy CD-7.1 – Protect and Preserve Buildings and Sites with Historic and Cultural Significance to the Community.

Consistency: The Aesthetic Guidelines restrict installation of small cells in locations that are visible from historic buildings or districts and require design and configuration that is compatible with design elements and features of the historic resources.

Policy SF-9.2 – Siting of Schools and Other Sensitive Uses: Minimize and reduce EMF radiation levels near sensitive uses such as schools, hospitals, and playgrounds.

Consistency: The Aesthetic Guidelines and the Permit Application Guidelines require applicants to provide RF exposure compliance reports as part of the application. The deployment of all small cells are required to meet the applicable FCC thresholds for RF exposure and the Aesthetic Guidelines restrict installation of small cells in locations that are visible from schools, parks, and playgrounds for aesthetic reasons rather than concerns about EMF exposure. However, this will likely result in installation sites that are further away from schools and playgrounds, or shielded by buildings and structures in the viewshed between the small cell site and the school or playground, which will reduce the RF radiation levels near these sensitive uses consistent with the FCC Regulations.

Inland General Plan Policies:

Policy LU-3.1 – Central Business District: Retain and enhance the small-scale, pedestrian-friendly, and historic character of the Central Business District (CBD).

Consistency: See analysis for Coastal General Plan Policies CD-3.5 and CD-7.1.

Policy OS-8.2 – Protect and Restore Open Space: During the development review process, protect and restore open space areas such as wildlife habitats, view corridors, and watercourses as open and natural.

Consistency: The Aesthetic Guidelines restrict installation of small cells in view corridors and discourage installation of small cells in locations within the Open Space zoning district unless other preferred locations are not technically feasible. Any technically necessary installation in these areas would be concealed within unobtrusive monopoles or support structures designed to mimic trees that are compatible and blend with existing trees on the site.

Policy CD-6.1 – Protect and Preserve Buildings and Sites with Historic and Cultural Significance to the Community.

Consistency: See analysis for Coastal General Plan Policy CD-7.1.

Policy SF-8.2 – Siting of Schools and Other Sensitive Uses: Minimize and reduce EMF radiation levels near sensitive uses such as schools, hospitals, and playgrounds.

Consistency: See analysis for Coastal General Plan Policy SF-9.2.

IMPLEMENTATION/TIMEFRAMES:

The revised Aesthetic Guidelines and other standards will go into effect upon adoption of the Resolution by the City Council. Small Cell Wireless Facilities Permits will be reviewed and processed as they are received by the City in accordance with the shot clock timelines established by the FCC.

ATTACHMENTS:

1. Resolution No. 4158-2019, Aesthetic Guidelines adopted April 12, 2019
2. Draft Resolution Revising and Updating the City's Aesthetic Guidelines
- 2a. Exhibit A – Aesthetic Guidelines and Standards
3. Small Cell Wireless Facilities Permit Application Guidelines
- 3a. Appendix A – Small Cell Wireless Facilities Permit Form
- 3b. Appendix B – Engineering Standards & Permit Conditions
4. Small Wireless Communication Facilities Guidelines PowerPoint
5. Public Comment

NOTIFICATION:

1. Annemarie Weibel