



Planning Commission Agenda Report



FROM: Kimberly Cole, AICP, Community Development Director

SUBJECT: Consider Recommending an Ordinance to the City Council Amending City Code Chapter 38 Article 17 Section 112.4 Related to Wireless Communication Facilities (Exempt from CEQA Article 19, Sections 15305 and 15308, Classes 5 and 8)

RECOMMENDATION:

That the Planning Commission adopt a resolution recommending an Ordinance to the City Council amending City Code Chapter 38, Article 17 Section 112.4 related to wireless communication facilities.

ENVIRONMENTAL DETERMINATION:

The City of Monterey Planning Office determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines (Article 19, Section 15305, Class 5) because the project consists of a zoning ordinance amendment to modify existing regulations affecting wireless communication facilities, which would not result in any changes in density or traffic patterns. Additionally, the project is exempt from CEQA pursuant to CEQA Guidelines section 15308 (Class 8) as an action taken by a regulatory agency to assure the enhancement and protection of the environment, which includes the visual environment of the City.

Furthermore, the project does not qualify for any of the exceptions to the categorical exemptions found at CEQA Guidelines Section 15300.2.

Exception a - Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located - a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. The environment is not particularly sensitive because the project is purely a zoning ordinance amendment. Therefore, impacts would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception b - Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. No cumulative impact would occur because the project is purely a zoning ordinance amendment that would regulate the visual appearance of communications structures in the City right-of-way with uniform, objective standards. Therefore, cumulative impacts would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception c - Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. There are no unusual circumstances with this project because the project is purely a zoning ordinance amendment and the land use limitations imposed by the amendment are commonplace under Class 5 and Class 8 categorical exemptions. Therefore, significant impacts would not occur. Any subsequent discretionary projects resulting from this action will be assessed on a project-by-project basis for CEQA applicability.

Exception d - Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified Environmental Impact Report (EIR). The project is purely a zoning ordinance amendment, which would not damage scenic resources, but rather, assure their protection. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception e - Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. The project is purely a zoning ordinance amendment regulating the visual effect of communications structures. Therefore, impacts to hazardous waste sites would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception f - Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. The project is purely a zoning ordinance amendment that would regulate the visual effect of communications structures in the City, and not any historic resources. Therefore, impacts to historic resources would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

ALTERNATIVES CONSIDERED:

The purpose of the meeting is to review proposed amendments to the City Code regarding personal wireless services. The Planning Commission could choose not to recommend these amendments to the City Council or recommend modifications to the draft ordinance.

DISCUSSION:

Background

The City Council appointed a Wireless Subcommittee that met for two years regarding personal wireless service regulations. During these months, the subcommittee discussed and revised an ordinance developed by a citizen's group. Due to COVID-19, other programs took precedence over the wireless ordinance during the emergency situation. Staff has now been able to complete its legal and administrative review of the subcommittee's draft ordinance. The

ordinance attached to the Resolution is the revised document. A mark-up of the subcommittee draft is included as Attachment 2. Staff's goal was to keep as much of the subcommittee's substantive portions of the ordinance intact as possible, while addressing court decisions, FCC rules and airport land use restrictions that had developed since the subcommittee's draft was completed.

Proposed Ordinance

The proposed ordinance includes the following sections:

- A. Purpose
- B. Applicability
- C. General Requirements
- D. Planning Applications and Approvals Required
- E. Applications and Submittals
- F. Location, Design and Development Standards
- G. Eligible Facilities Requests
- H. Abandoned or Decommissioned Facilities
- I. Transfer of Ownership
- J. Notices-Findings-Decisions
- K. Independent Consultant Review
- L. Additional Conditions of Approval for Wireless Use Permits
- M. Post Construction Reporting
- N. Municipally Owned or Controlled Property and Supporting Structures
- O. Pre-Approval of Designs
- P. Definitions

Key takeaways include:

The proposed ordinance continues to require use permits for all new wireless applications and changes to existing facilities (Section 38.112.4.B.1) with the only exception being temporary facilities. This approach is consistent with the community's goal to achieve a transparent and public process for wireless facilities. The Community Development Director can approve temporary facilities needed on a temporary or emergency basis pursuant to specific requirements.

The ordinance includes a detailed list of submittal requirements (38-112.4.E.3.a-u). Applicants are encouraged to schedule and attend a voluntary pre-submittal conference with City staff to review the application (38.112.4-E.4). After the application is submitted, the Community Development Director can determine whether the application is incomplete. If the application is complete, it will be referred to the Planning Commission. If it is not complete, the Director shall issue in writing a denial of the application without prejudice to re-filing specifying the reasons for the denial. This denial may be appealed to the Planning Commission but the appeal is limited to consideration of whether the application was properly denied for incompleteness (38.112.4.E.5). The City is tasked with posting all applications online within five working days of filing or soon thereafter as practical (38.112.4.E.6). One of the key changes between the subcommittee draft and proposed ordinance is the elimination of the mock-up installations. It has been determined to be almost impossible to meet this requirement with extensive engineering, permitting and installation.

Location, design and development standards are specified in the ordinance (38.112.4.F). Different standards are specified for the following facilities and are summarized below:

1. Off the Public Right-of-Way (38.112.4.F.4)

- Concealment elements are incorporated to camouflage or limit the visual impacts of the facility
- Height shall not exceed the height limit for structures in the zoning district
- Cannot encroach into setbacks
- Facilities should permit collocation
- Shall comply with noise standards in City Code
- Install only timed or motion sensitive light controllers and lights
- Limitations on signage
- Limitations on fencing
- Landscaping may be required
- Use flat rate electric metering
- Conceal ground mounted equipment with opaque fences or landscape features

2. Building Mounted Facilities (38.112.4.F.5)

General Preferences

- Concealed and architecturally integrated into the facade or rooftop-mounted base stations with no visible impacts (including shadowing) from any publicly accessible areas at ground level
- Concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys, and water tanks), subject to height limits applicable to the area where the facility is located, and subject to standards that apply for similar modifications that do not involve wireless communications facilities.

Rooftop-Mounted Equipment

- The City will not approve unscreened rooftop wireless communications facilities if the applicant has the right to increase the facility height so that the equipment would become visible to public view from ground level on adjoining properties or from the public rights-of-way, or unless the applicant shows that because of the design proposed, or the location, approval of a different design will be no more intrusive and consistent with the goals of the ordinance.

Facade-Mounted Equipment

- Conceal all facade-mounted transmission equipment behind screen walls as flush to the facade as practicable. The City may not approve any "pop-out" screen boxes unless such design is architecturally consistent with the original support structure. The City may not approve any exposed facade-mounted antennas, which includes exposed antennas painted to match the façade, unless the applicant shows that because of the design proposed, or the location approval, of a different design will be no more intrusive and consistent with the goals of the ordinance.

3. Freestanding Towers outside of Public Rights-of-Way (38.112.4.F.6)

All applicants shall, to the extent feasible and appropriate for the proposed location, design wireless communications facilities on new towers according to the following preferences, ordered from most preferred to least preferred:

- Faux architectural stealth structures including, but not limited to, sculptures, clock towers, and flagpoles of a size, type, and proportions, and with design features consistent with the neighborhood and adjacent structures; then
- Faux trees in a stealth design of a size, type, and proportions consistent with nearby trees, and landscaped and located near other vegetation to blend in and appear part of the natural environment.

4. Public Rights-of-Way (38.112.4.F.7)

- Locate antennas on existing or replacement light poles and other vertical structures owned or controlled by City that City chooses to make available for placement of wireless communications facilities; then
- Locate antennas on existing or replacement supporting structures; then
- New support structures, or towers in the public rights-of-way.

Most importantly, the ordinance establishes the following placement preferences for wireless facilities:

1. City owned or controlled parcels outside of open space, residential or historic overlay districts. Within these areas, preferred designs are placement on:
 - a) existing towers or similar large vertical structures or within or upon existing supporting structures other than buildings in a stealth configuration;
 - b) building mounted facilities with rooftop mounted antennas;
 - c) building mounted facilities with façade mounted antennas;
 - d) new towers or supporting structures in stealth design;
 - e) existing or replacement supporting structures where the facility can be camouflaged;
 - f) placement on existing or replacement supporting structures (other than buildings) where the wireless communications facility is not stealth or camouflaged or a new non-stealth small wireless facility whose height above ground level is the lower of 35' or the height of the closest utility poles.
2. Parcels and public rights-of-way in industrial districts:
(same a-f as above)
3. Parcels and public rights-of-way in commercial districts:
(same a-f as above)
4. City-owned or controlled parcels others than listed above:
(same a-f as above)
5. If the provider shows it must be permitted to place the wireless communications facility in a non-preferred area, the preferred designs in order of preference is the same as listed above.

During the various subcommittee meetings, the public expressed concerns about wireless facility emissions. Wireless facilities must comply with Federal Communications Commission

standards for radiofrequency emissions (Section 38.112.4.C.1.a) as well as all other local, federal, and state laws. Applicants are required to submit RF reports evaluating emissions of all proposed and modified facilities. The ordinance also requires peer review of these calculations by an independent consultant (38.112.4.K). This process continues the City's current practice and appears to successfully ensure the project's conformance with FCC requirements and to allay some public concerns as projects are reviewed.

The ordinance also establishes requirements for post construction reporting (Section 38.112.4.M). Requirements include that the permittee shall provide as-built plans showing all elements of the facility and RF compliance report.

Staff published the agenda report and attachments early so the public could have additional time to review the proposed changes. Staff has amended the ordinance since its original publication to include a revised Section 38-112.4.C.3 to address wireless communication facilities located within airport safety zones. Additionally, submittal requirement E.3.t was amended to address airport issues as well.

In summary, the ordinance provides a comprehensive permitting process for wireless facilities. Staff recommends the Planning Commission adopt a resolution recommending an Ordinance to the City Council amending City Code Chapter 38, Article 17 Section 112.4 related to wireless communication facilities.

Attachments: 1. Draft Resolution and Exhibit A: Ordinance
 2. Track Changes Version of the Committee's Ordinance

e: All Neighborhood and Business Associations
 Former Wireless Subcommittee Members
 Verizon
 AT&T
 Comcast
 T Mobile