



City of Culver City

Staff Report Details (With Text)

File #: 19-589 **Version:** 1 **Name:** Wireless Facilities
Type: Resolution **Status:** Action Item
File created: 11/30/2018 **In control:** City Council Meeting Agenda
On agenda: 12/10/2018 **Final action:**
Title: CC - (1) Introduction of an Ordinance Amending Culver City Municipal Code Section 11.20.025 to Allow Applications for the Placement of Telecommunications Facilities in the Public Rights-of-Way to be Administratively Approved by the Public Works Director/City Engineer; (2) Introduction of an Ordinance Adding Section 11.20.065, "Wireless Facilities in the Public Rights-of-Way" to Chapter 11.20 to Establish the Regulatory Framework and Design Standards for Permitting the Installation of Wireless Facilities Within the City's Public Rights-of-Way; (3) Adoption of a Resolution Establishing Standard Conditions of Approval for Wireless Encroachment Permits to Install Wireless Facilities in the Public Rights-Of-Way Pursuant to Culver City Municipal Code Section 11.20.065.H.1; and (4) Adoption of a Categorical Exemption Relating Thereto, Pursuant to the California Environmental Quality Act.

Sponsors:

Indexes:

Code sections:

Attachments: 1. 2018-12-10_ATT 1_Ordinance Amending 11.20.025.pdf, 2. 2018-12-10_ATT 2_Ordinance Adding 11.20.065.pdf, 3. 2018-12-10_ATT 3_Resolution Establishing Standard Conditions of Approval.pdf

Date	Ver.	Action By	Action	Result
12/10/2018	1	City Council Meeting Agenda		

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Meeting Date: December 10, 2018

Contact Person/Dept: Joe Susca/Public Works-Administration
Phone Number: (310) 253-5636

Fiscal Impact: Yes No **General Fund:** Yes No

Public Hearing: **Action Item:** **Attachments:**

Commission Action Required: Yes No **Date:**

Public Notification: (E-Mail) Meetings and Agendas - City Council (12/05/18); AT&T (12/05/18); Crown Castle (12/05/18); Mobilitie (12/05/18); Mobility (12/05/18)

Department Approval: Charles D. Herbertson (11/30/18)

RECOMMENDATION

Staff recommends the City Council (1) introduce an Ordinance amending Section 11.20.025 of the Culver City Municipal Code (CCMC) to allow the Public Works Director/City Engineer to administratively review all encroachment permits involving the installation of telecommunications facilities in the public rights-of-way (PROW) rather than by the City Council (Ordinance No. 1); (2) introduce an Ordinance adding Section §11.20.065, *Wireless Facilities in the Public Rights-of-Way* to Chapter 11.20 of the CCMC to establish the regulatory framework and design standards necessary to permit the installation of wireless facilities within the City's PROW (Ordinance No. 2); (3) adopt a Resolution establishing standard conditions of approval for wireless encroachment permits to install wireless facilities in the PROW pursuant to CCMC Section 11.20.065.H.1; and (4) adopt a Categorical Exemption relating thereto pursuant to the California Environmental Quality Act.

BACKGROUND/DISCUSSION:

Wireless Carrier Networks

Traditionally, wireless carrier antennas and network equipment were primarily installed on large towers located on private property and on the rooftops of buildings that served devices within a 25 mile range. Demand for wireless services, however, has substantially increased, and with it the number of wireless devices connected to the Internet is expected to increase from one million in 1992 to an anticipated fifty billion in 2020. Accompanying the increase in wireless devices is the demand for ubiquitous and reliable high-speed connections.

Small Cell Wireless Facilities

To supplement existing large cell towers, wireless carrier networks now incorporate additional small cell sites and Distributed Antenna Systems (DAS) that support devices located within smaller coverage areas than large cell sites. Because the use of wireless services is concentrated in urban areas, many small cell sites are expected to be proposed in public rights-of-way of towns and cities.

Wireless carriers are considered "telephone corporations" under section 7901 of the California Public Utilities Code, permitting them to install equipment within the PROW. Under sections 7901 and 7901.1, however, cities maintain the ability to reasonably control the time, place, and manner in which equipment is installed, which includes the aesthetic elements of the equipment, and to ensure the use does not incommode the PROW.

The typical small cell site is comprised of one or more antennas and related equipment connected to fiber backhaul and a power source. Some small cell sites are connected to a wireless carrier's fiber

optic network, have electric meters, and/or contain batteries to operate the site in the event of a power outage. With the exception of the antennas, which must be above ground, all of the small cell site components may be housed within an underground vault, on the ground, or attached to a pole. It is anticipated that many (perhaps 100+) new small cell site locations may be required city-wide to adequately serve the City's needs and to facilitate the upcoming 5G network upgrade.

Federal Communications Commission Declaratory Order and Regulations

Recent changes in federal law have shortened the deadlines, or "shot clocks," and other requirements for local review of wireless facility applications. Under a Federal Communications Commission ("FCC") declaratory order and regulations that are expected to go into effect on January 14, 2019 (the "Order:"), if a city does not render a decision on a small wireless facility application within a specified time period (60 days for installations on existing structures, and 90 days for new structures), the failure to meet the deadline for such decision will be presumed to violate federal law (as both a failure to act within a reasonable period of time and an effective prohibition of personal wireless services).

The FCC Order also requires that all fees (including permit application fees and rental fees for use of government-owned infrastructure, such as streetlights) be based on a reasonable approximation of the local government's costs (not market rates), such that only objectively reasonable costs are factored into those fees, and fees are no higher than the fees charged to similarly-situated competitors in similar situations. The FCC Order also created "safe harbors" of presumptively reasonable fee levels that include: non-recurring fees equal to \$500 for the first five applications in a single submission and \$100 for each additional application in the submission; and \$1,000 for each new pole. Recurring fees are presumed reasonable if equal to \$270 per facility annually, including the fee for attachment to municipal infrastructure and use of the PROW. On aesthetics, the FCC declared that such requirements will not be preempted if they are reasonable, no more burdensome than those applied to other types of infrastructure deployments, objective, and published in advance. Relatedly, undergrounding requirements are permissible, but the FCC hinted that requiring all wireless facilities be placed underground could be an unlawful effective prohibition.

Another FCC order released in August 2018 prohibits cities from imposing a moratorium on wireless installations, which means that there can be no pause in accepting or processing applications, even to allow a city to study and address potential issues.

While the legal validity of both of these FCC orders is being litigated, the effectiveness of the orders has not been stayed pending resolution of the litigation. Staff therefore is taking steps discussed below to address wireless deployments in the PROW consistent with these new federal regulations, including introduction of the proposed ordinance.

Ordinance No. 1: Amendment to CCMC Section 11.20.025 Regarding Process for Obtaining Encroachment Permits

Telecommunications installations in the PROW are regulated by issuing encroachment permits. However, the City's existing CCMC contains very minimal standards or regulations designed to address the unique aesthetic, safety, operational, and locational issues in connection with the installation of wireless facilities in the PROW.

A City encroachment permit is currently required before telecommunications providers can install

equipment or other facilities on City streets, sidewalks, or other places in the PROW. Telecommunications providers must fill out a detailed application containing technical information about their proposed project. Since at least 2000, Section 11.20.025.D of the CCMC has required that the City Council review and approve all such telecommunications encroachments. Following City Council approval of these encroachments, the Public Works Department issues an encroachment permit. These requirements apply to providers installing both wireless and wireline (fiber or cable) facilities. In order to comply with the requirement of City Council review, when the City receives an application for the placement of telecommunications facilities in the PROW, staff places the item on the City Council agenda and prepares a staff report. Some City Council Members, staff, and several telecommunications carriers have questioned the value of the extra time involved in presenting these encroachments to the City Council for approval, as opposed to allowing encroachments to be reviewed and approved administratively, by the Public Works Department, without the need for review by the City Council.

Under the current provisions of Section 11.20.025, the City Council needs to review telecommunications encroachments. Under the proposed modifications of Section 11.20.025, the Public Works Director/City Engineer would review telecommunication encroachments. This approach would be consistent with the Public Works Director/City Engineer's authority to approve other permits administratively, such as applications received from franchised utilities to use the PROW.

The desirability of these amendments was raised during the City Council discussion of the Work Plans for both the Public Works Department and the City Attorney's Office. At that time, the City Council requested that the proposed amendments be included as part of both departments' Work Plans. Therefore, staff is now recommending that Section 11.20.025 be amended to allow the Public Works Director/City Engineer to review and act on all applications involving the issuance and encroachment permits for telecommunications facilities in the PROW, and thus eliminate the requirement that the City Council review these.

The proposed change to the existing CCMC would not eliminate the need for City Council review and approval of applications for the issuance of franchises involving the installation of telecommunications facilities in the PROW whenever such franchises are required and allowed by law.

Ordinance No. 2: Establishing Regulatory Framework and Design Standards for Installation of Wireless Facilities within the City's PROW

To address wireless facilities applications in the PROW, staff recommends the City Council approve Ordinance No. 2, which adds Section 11.20.065 to Chapter 11.20 of the CCMC setting more detailed requirements for all wireless facility installations in the PROW, including, among other regulations, the permit and review procedures as well as their operation and maintenance standards. Ordinance No. 2 treats wireless installations in the PROW similar to other installations in the PROW by requiring an encroachment permit. Specifically, it sets additional standards and requirements for obtaining an encroachment permit to install wireless facilities.

In addition to proposed Ordinance No. 2 (and the two future Resolutions, adopting Design Standards and Fees) presented to the City Council for approval, staff is updating its standard application form for wireless facilities, and developing contract terms applicable to the use of City-owned infrastructure such as streetlights, all of which together will serve as the City's framework for addressing applications for wireless facility installations in the PROW.

Small Cell Site Installation Design Standards

Staff has been working with the Smart City Infrastructure Guidelines Subcommittee (the "Subcommittee"), comprised of

Vice Mayor Meghan Sahli-Wells and Council Member Daniel Lee, to create design and development standards for installation of small cell sites in the PROW. The Subcommittee has been focused on aesthetics and has indicated a strong desire to underground small cell equipment whenever possible, to use integrated streetlights that support carrier collocation in lieu of attaching equipment to existing poles, and ensuring their location does not expose individuals to radiation from radio frequency emissions in excess of the standards set by the FCC. Once a final draft of the design and development standards is prepared, staff will release them for review by the wireless carrier industry to obtain their feedback.

Environmental Review

The two Ordinances and Resolution are not a “project” within the meaning of Section 15378 of the State CEQA Guidelines, because they have no potential for resulting in direct or indirect physical change in the environment. Rather, it is only once an application is filed that CEQA may be implicated. Further, even if the Ordinance and Resolution were deemed to be a “project,” any applicable wireless facility installation would likely be exempt from CEQA review in accordance with State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land).

Accordingly, staff recommends that the City Council direct that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles in accordance with CEQA Guidelines.

FISCAL ANALYSIS

Staff time required for processing permit applications for wireless facilities in the PROW is covered by the encroachment permit fees collected, which are determined by a cost study and implemented once annually by City Council Resolution.

ATTACHMENTS

1. Proposed Ordinance Amending CCMC Section 11.20.025
2. Proposed Ordinance Adding CCMC Section 11.20.065
3. Proposed Resolution establishing standard conditions of approval

MOTIONS

That the City Council:

1. Introduce an Ordinance amending Culver City Municipal Code Section 11.20.025 to allow applications for the placement of telecommunications facilities in the public rights-of-way to be administratively approved by the Public Works Director/City Engineer; and
2. Introduce an Ordinance amending Chapter 11.20, Telecommunications Regulatory Requirements, of the Culver City Municipal Code to add Section 11.20.065, Wireless Facilities in the Public Rights-of-Way, to establish the regulatory framework and design standards for permitting the installation of wireless facilities within the City's public rights-of-way; and
3. Adopt a Resolution establishing standard conditions of approval for wireless encroachment permits to install wireless facilities in the public rights-of-way pursuant to Culver City Municipal Code Section 11.20.065.H.1.
4. Adopt a categorical exemption related thereto pursuant to the California Environmental Quality Act, finding that the proposed ordinances and resolution do not constitute a project within the meaning of Section 15378; and
5. Direct the Public Works Director / City Engineer to develop, in conjunction with the Smart City Infrastructure Guidelines Subcommittee, interim design and development standards for installations of wireless facilities in the

public rights-of-way, pending approval by the City Council of the final design and development standards.