



Agenda Item

City Council

Item #: 7.3.

9/14/2021

File #: 21-0498

TO: Honorable Mayor and Members of the City Council

FROM: Rick Otto, City Manager

1. SUBJECT

Adoption of a policy regulating small wireless telecommunications facilities and related structures in the public rights-of-way. Resolution No. 11348.

2. SUMMARY

The proposed City Council Policy on Small Wireless Facility Installation in the public rights-of-way creates a clear, objective process for reviewing applications for small cell facilities that complies with federal law.

3. RECOMMENDED ACTION

Adopt Resolution No. 11348. A Resolution of the City Council of the City of Orange adopting a policy regulating small wireless telecommunications facilities and related structures in the public rights-of-way.

4. FISCAL IMPACT

None.

5. STRATEGIC PLAN GOALS

Goal 3: Enhance and promote quality of life in the community
c: Support and enhance attractive, diverse living environments.

6. DISCUSSION AND BACKGROUND

Background

At its meeting on February 12, 2020, the City Council directed staff to prepare a policy to address the deployment of small cell facilities in the City. This direction was in response to the growing interest in deploying small cell facilities, as well as recent federal regulatory decisions that are intended to speed up local approvals of these facilities. The Council considered the proposed policy at its meeting on October 13, 2020. At that time, the Council declined to adopt the policy pending further discussion of various topics. This item was on the August 10, 2021 City Council meeting agenda, but was continued to allow staff time to discuss the policy with AT&T who had submitted a letter raising concerns about the proposed policy.

Small Cell Facilities

Small cell facilities are wireless facilities that are much smaller than macro-cell installations, with a typical size of three to six cubic feet. They are generally placed on existing streetlight and utility poles

and have a low aesthetic impact when properly screened. Wireless carriers use small cell facilities to improve and densify their networks. Because small cell facilities only cover a small area, a 500-foot radius or less, they are mostly deployed in high traffic areas such as commercial corridors and major intersections.

Federal Regulations

The Federal Communications Commission Order issued on September 27, 2018 (FCC Order) has the purpose of streamlining the approval of small cell facilities. A key provision of the FCC Order is the establishment of “shot clocks” that require local agencies to review and either approve or deny any small cell facility application within a certain time frame: 60 days for facilities on existing structures, and 90 days for facilities on new structures.

The FCC Order also limits local government restrictions on small cell facilities such as minimum spacing requirements and aesthetic regulations. Below is a summary of those limits:

- Aesthetic requirements, including spacing, must be reasonable, no more burdensome than those applied to other types of infrastructure deployments, objective, and published in advance. Reasonable regulations are defined as technically feasible and designed to mitigate out-of-character deployments.
- Local jurisdictions may not prohibit small cells within specific neighborhoods or other areas within the jurisdiction.
- Local jurisdictions cannot ban new wireless facilities or put a cap on the number of providers.

The FCC Order seeks to limit fees that cities can charge wireless carriers for processing applications for small cell facilities as well as recurring fees for using the public right-of-way. The Order accomplishes this by establishing “safe harbor” limits that, if cities charge at or below that amount, they will not be challenged as unreasonable. The safe harbor limits in the Order are:

- \$500 application fee for up to five facilities
- \$270 per facility per year for all recurring fees

While the FCC Order does limit local control over the deployment of small cell facilities, there is still some ability to regulate small cell facilities should the City choose to adopt requirements that meet the criteria outlined above. It is also important to note that the FCC Order was challenged in the Ninth Circuit Court of Appeals by a group of cities and other local governments, and was ultimately upheld by the court.

Policy in Other Cities

A few cities in California, such as Encinitas, San Bruno, and San Diego, have moved forward with policies they believe are consistent with the FCC Order. Encinitas adopted an urgency ordinance and policy that establishes standards and procedures for siting, aesthetics, construction, operation, modification, and removal of small cell facilities. Telecom Law Firm assisted the City of Encinitas in preparing the ordinance and policy with the following provisions:

- Outlines the application, permit review, and approval process
- Includes provisions for public notices, decisions and appeals, and conditions of approval
- Details location standards that are a ranked preference of ten options from Prime Arterials in

Industrial, Commercial, or Office/Professional Zones (Most Preferred) to Any Location Within 500 Feet from Any Structure Approved for Residential Use (Least Preferred)

- Design standards, including pre-approved designs

These cities adopted urgency ordinances because of concerns that cell carriers would submit large numbers of applications for small cell facilities that under the FCC Order they would be compelled to process in 60 or 90 days. Our experience with cell carriers under the FCC Order is that they have been willing to respect our established practice of requiring a master license agreement before submitting an application for a small cell facility.

Current Small Cell Facilities

With the merger of T-Mobile and Sprint, there are now three major cell carriers in Orange: Verizon, AT&T, and T-Mobile. The City has a master license agreement with Mobilitie, a third-party operator of cell facilities that operates six small cell facilities for T-Mobile (formerly Sprint). The City also has a master license agreement with AT&T, which has 60 small cell facilities in various stages of operation or construction.

Proposed Council Policy

Based on previous Council direction and the requirements of the FCC Order, staff has prepared a proposed City Council Policy on Small Wireless Facility Installation. The purpose of the policy is to create a clear, objective process for reviewing applications for small cell facilities that complies with federal law while maintaining the highest degree of local control over the placement of small cell facilities. The proposed policy has the following provisions:

- Outlines the approval process for a small cell facility, which includes a master license agreement, encroachment permit, and staff design review.
- Details the documentation requirement for each application along with conditions of approval.
- Establishes location preferences to encourage the placement of small cell facilities in preferred locations, such as industrial and commercial zones, when feasible.
- Creates simple design standards to minimize the aesthetic impact of small cell facilities and streamline the design review process.

The Council considered the proposed policy at its meeting on October 13, 2020. At that time, the Council declined to adopt the policy pending further discussion of the following topics:

- **Acoustic Analysis** - the proposed policy included a requirement that an acoustic analysis be submitted with the application for a small wireless facility. Staff has determined that this is not a necessary part of the application and that the City's noise ordinance can address the unlikely scenario where a small wireless facility would create a noise disturbance. This section has been deleted from the proposed policy.
- **Sensitive Site Locations** - the proposed policy initially identified sensitive site locations such as residential areas and open space areas that are the least preferred locations for small cell facilities and required that the applicant demonstrate to staff why a less sensitive location would not meet the needs of their infrastructure deployment. Staff determined that while the ranked location preferences conform to the FCC Order, the additional review process for sensitive site locations is overly burdensome and so was deleted from the proposed policy.

- **Historic Districts** - locations in Historic Districts will be subject to an alternate review process. The policy states that facilities shall not be located on decorative poles and that the City prefers locations in an alley rather than along street frontage. Also, the encroachment permit process requires review by the Historic Planner for all above ground infrastructure deployments in historic districts, which includes small cell facilities. This process allows the Historic Planner to work with the applicant to identify suitable locations and develop proper screening to minimize aesthetic impacts to our historic districts.
- **Noticing** - the proposed policy does not include noticing requirements regarding the approval of applications for small cell facilities. Staff is recommending that there be no noticing of application review as federal law is clear that this is not a discretionary action by the City, and providing a notice to surrounding properties would create the expectation that the City can reject applications based on their input. The encroachment permit does require construction noticing for installation of small wireless facilities.

This item was on the August 10, 2021 City Council agenda however; the City Council continued the item to allow staff time to discuss AT&T's concerns with the proposed policy and its compatibility with the FCC Order. In subsequent discussions with AT&T, staff was able to address the any concerns (see attached email from AT&T). As such, no additional changes were made to the proposed Policy. AT&T also noted that the City has expeditiously processed over 60 AT&T applications for small wireless facilities since its Master License Agreement was approved by City Council in 2018.

Staff recommends adopting Resolution 11348 to establish a clear policy for reviewing and processing application for small wireless facilities.

7. ATTACHMENTS

- Resolution No. 11348
- Small Wireless Facility Installation Policy
- Email from AT&T