



**CITY OF SANTA CLARITA  
AGENDA REPORT**

**PUBLIC HEARINGS**

**CITY MANAGER APPROVAL:**

*Ken Stripling*

**DATE:** November 12, 2019

**SUBJECT:** FIRST READING OF AN ORDINANCE FOR THE REGULATION OF SMALL WIRELESS FACILITIES AND ADOPTION OF A SMALL WIRELESS FACILITIES POLICY (MASTER CASE NO. 19-178, UNIFIED DEVELOPMENT CODE AMENDMENT NO. 19-002)

**DEPARTMENT:** Community Development

**PRESENTER:** Mike Marshall

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**RECOMMENDED ACTION**

City Council:

1. Conduct the Public Hearing.
2. Introduce and pass to second reading an Ordinance entitled, “AN ORDINANCE OF THE CITY OF SANTA CLARITA, CALIFORNIA, AMENDING SANTA CLARITA MUNICIPAL CODE CHAPTER 17.69 FOR THE REGULATION OF SMALL WIRELESS FACILITIES AND OTHER INFRASTRUCTURE DEPLOYMENTS IN THE PUBLIC RIGHT-OF-WAY.”
3. Adopt a Small Wireless Facilities Policy regulating the deployment, construction, installation, collocation, modification, operation, relocation, and removal of small wireless facilities within the City of Santa Clarita.

**BACKGROUND**

On September 26, 2018, the Federal Communications Commission (FCC) adopted new rules (Small Cell Order) that preempted certain zoning and land-use regulations over “small wireless facilities” (or small cells) as defined by the FCC. These rules, which became fully effective on April 15, 2019, are part of a larger rulemaking that aims to reinterpret provisions in the Federal Telecommunications Act of 1996, related to actual and effective prohibitions on wireless and other telecommunications infrastructure deployments. The Small Cell Order implements industry demands for the purpose of accelerating the deployment of small wireless facilities, and to remove alleged barriers posed by local fees and zoning requirements.

In October 2018, coalitions of local governments and municipal organizations from across the country filed challenges against the Small Cell Order. These petitions for judicial review have been consolidated in the Ninth Circuit Court of Appeals, but the rules remain in effect unless the Ninth Circuit vacates all or certain portions of the Small Cell Order. At least one provider has already filed an administrative claim before the FCC and a lawsuit in federal court challenging various local practices under the provisions of the Small Cell Order.

Given that the Small Cell Order is in effect and claims are challenging its validity, staff recommends that the City of Santa Clarita (City) establish and adopt a Small Wireless Facilities Policy (Policy) consistent with the Small Cell Order through a more flexible approach. To the extent the rules change or become invalidated, regulating by policy, pursuant to a resolution, will allow the City to make changes quickly in the event of a favorable ruling in the Ninth Circuit.

The following is an overview of the applicable state and federal limits of the City's authority to regulate small wireless facilities in the public right-of-way.

#### *The Federal Telecommunications Act of 1996*

In 1996, Congress adopted the Federal Telecommunications Act to, among other things, preserve state and local land-use authority, while encouraging and facilitating the deployment of small wireless service facilities. Local governments retain all traditional zoning authority, except that local regulations cannot: (1) prohibit or effectively prohibit personal wireless services; (2) unreasonably discriminate among functionally equivalent services; or (3) regulate based on environmental impacts from radiofrequency (RF) emissions.

In addition, local decisions must be made within a reasonable time, and any denial requires a written decision based on substantial evidence in the written record. In 2009, the FCC defined a "presumptively reasonable" time for application review as 90 days for collocations and 150 days for non-collocations, after which time the applicant may seek expedited judicial review. The FCC recently adopted new rules with respect to small wireless facilities that dramatically shorten the applicable time limits, called "shot clocks," and impose new limitations on local regulations: 60 days for collocations and 90 days for non-collocations.

#### *The FCC Small Cell Order*

On September 26, 2018, the FCC adopted the Small Cell Order, which further limits local government authority to regulate small wireless facilities as defined by the FCC. The rules require the City to review applications for small cells faster and in a manner consistent with the FCC's national standard for an effective prohibition of personal wireless services.

As a general rule, a local regulation constitutes an effective prohibition if it materially inhibits or limits the ability of a competitor or potential competitor to compete in a fair and balanced legal and regulatory environment. In the context of aesthetic regulations, the FCC further provides that a local small cell regulation causes an effective prohibition, unless the regulation is: (1) reasonable; (2) no more burdensome than regulations imposed on other infrastructure deployments; (3) objective; and (4) published in advance. Reasonable regulations are those that are technically feasible and reasonably directing to avoid or remedy the "intangible public harm"

(as described by the FCC) of unsightly or out-of-character deployments. Although the FCC declared that minimum spacing or undergrounding requirements would potentially violate the new criteria, it provided little guidance as to the scope of specific local regulations that would likely be considered to be preempted. The regulations mean that the City may not prohibit placement of small cells within the public right-of-way or on publicly-owned and operated utility poles, but can prescribe reasonable standards for their placement and design.

The FCC also imposed limits on local fees for permit applications and small cell attachments on municipally owned infrastructure. The Small Cell Order requires all local fees to be a reasonable approximation of the City's objectively reasonable costs, and such fees are charged to similarly situated competitors in similar situations. The FCC established presumptively reasonable "safe harbor" fee amounts that would be safe from challenge. For one-time permit fees, the amount is equal to \$100 per site for attachments to existing structures and \$1,000 per site for attachments to new structures. For annual recurring license fees for small cell attachments to City-owned poles, the FCC provides a presumptively reasonable fee of \$270. A city that charges more than safe harbor amounts would have the burden of justifying that its fee is cost-based under the standard described above.

The new 60- and 90-day time limits for small wireless facilities require local governments to do more in less time than previously allowed prior to the Small Cell Order. The time limits now expressly encompass all siting authorizations necessary for the deployment, including the pole licensing process, all permits required for the applicant to construct the facility, and any administrative appeals. Failing to act within the applicable time limits establishes a presumption that the City intended to effectively prohibit the provision of services, the remedy for which would be an injunction to issue shovel-ready permits.

#### *Applicable California Law*

With respect to the public right-of-way, California law grants telephone corporations registered with the California Public Utilities Commission (CPUC) a limited right to use public roads in a manner that does not inconvenience the public use of the right-of-way. This right to use the public right-of-way is subject to local governments' reasonable time, place, and manner regulations. Both federal and state courts hold that California preserves local authority to regulate against both physical obstructions and aesthetic impacts. Although state law generally preserves local aesthetic authority, municipalities must reconcile their authority within the limitations of the Small Cell Order.

#### *Previous Approvals*

On September 25, 2017, the Planning Division approved five small wireless facilities similar in design and location to those outlined in the proposed Policy. These five facilities have yet to be constructed, but if built, would be located on existing streetlight standards within the public right-of-way.

#### PROJECT DESCRIPTION

The proposed Policy establishes the standards and procedures for the deployment, construction, installation, collocation, modification, operation, relocation, and removal of small wireless

facilities within the City right-of way, consistent with and to the extent permitted under federal and California state law. No changes to “macro” or traditional Wireless Cellular Facilities within the public right-of-way or on private property are contemplated within the proposed Policy.

## POLICY SUMMARY

The proposed Policy would guide the deployment of small wireless facilities in the City’s public right-of-way. Standards included in the Policy will disclose the City’s application requirements, the locations standards in preferential order, and the design standards each facility should adhere to. A summary of the areas within the proposed Policy is as follows:

### *Application Requirements and Review Process*

A variety of items must be submitted with all new applications for a small wireless facility in the public right-of-way, including but not limited to:

- Construction drawings
- Site survey
- Photo simulations
- Project narrative and justification
- Radiofrequency Compliance Report
- Pole License Agreement (if and as applicable)
- Structural analysis
- Acoustic study
- Radiofrequency study

Each application for a small wireless facility must include a submission for the approval of an Administrative Permit by the Planning Division. Due to the short review periods established by the FCC, the decision to approve or deny would be administratively made by the Director of Community Development after a review for completeness and to ensure compliance with the location and design criteria. Standard Conditions of Approval would be applicable to all deployments to ensure that the maintenance and operational requirements for all facilities are evenly applied. The Director of Community Development would have the authority to modify, add, or remove conditions as deemed necessary or appropriate and as permitted by state and federal law. A memo would be provided to the City Council detailing the facility location and design that was approved for small wireless facilities in the public right-of-way, consistent with current requirements. In addition, the City’s decision will be provided to the applicant, detailing the approval or denial. Once a decision is rendered, there would be a period of 10 days (as revised by the Planning Commission) to allow for an appeal to be made. The proposed Policy designates the City Manager as the person responsible for making a decision on the appeal.

Upon completion of the Administrative Permit review and approval, the applicant would then need to file for a permit to install the proposed facility within the public right-of-way. The Public Works department is responsible for issuing Encroachment Permits for all facilities within the public right-of-way and any necessary approvals to physically construct the facility approved by the Planning Division.

### Location Standards

The Small Cell Order requires the adoption of location standards as a part of an approved policy. The proposed Policy sets forth ranked preferences for locations and support structures within those locations. Residential areas and new freestanding poles or similar structures are not permitted unless the applicant can demonstrate why no other preferred location within 500 feet from the proposed site is feasible. Location preferences, ranked in the following order, are found in the proposed Policy:

1. Within Industrial zones or Commercial zones on or along arterials
2. Within Industrial zones or Commercial zones on or along collectors
3. Within Industrial zones or Commercial zones on or along local streets
4. Within Public/Institutional zones, Mixed Use zones, or Open Space zones on or along arterials
5. Within Public/Institutional zones, Mixed Use zones, or Open Space zones on or along collectors
6. Within Mixed Use zones or Open Space zones on or along local streets
7. Within Residential zones on or along arterials
8. Within Residential zones on or along collectors
9. Within Public/Institutional zones or Residential zones on or along local streets

### Design Standards

In accordance with the Small Cell Order, the proposed Policy establishes a number of design standards to limit or mitigate adverse impacts an approved facility might create. The proposed Policy includes design standards for finishes, noise, lights, proximity to trees, signs, advertisements, site security measures, and health and safety regulations. The proposed design standards also include provisions for:

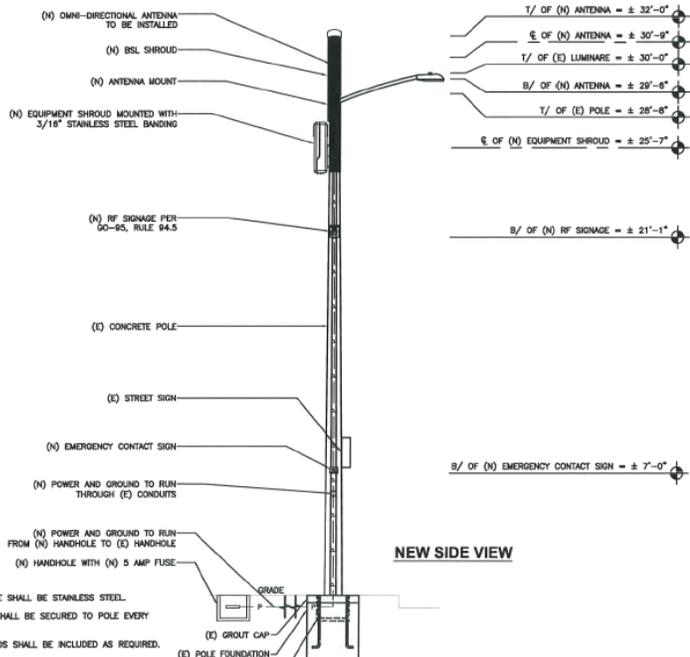
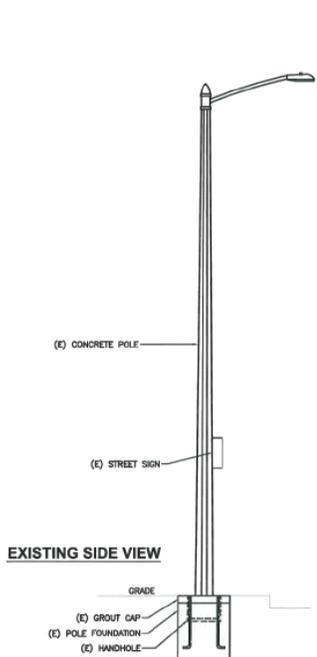
- Antennas: shrouding, volume, height, and projection
- Accessory Equipment: undergrounded, pole-mounted, and/or ground/base-mounted
- Utilities: overhead lines, vertical cable risers, spools and coils, electric meters, and existing conduit or circuits
- Undergrounded Equipment: The proposed Policy sets standards to minimize new overhead utilities whenever possible and, when not possible, to minimize the potential additional expense to the community for future undergrounding. The design standards also take into account that the City's authority to require undergrounded equipment is impacted by both technical and legal considerations. *Technically*, certain wireless equipment, such as the antennas, cannot operate underground. *Legally*, California state law places certain limits on the City's ability to require new facilities be placed underground in areas with existing overhead utilities, and the CPUC's tariff rules require the City to follow certain procedures for the undergrounding of existing overhead utilities. The CPUC has an open proceeding to consider potential changes to the tariff rules for undergrounding existing overhead telecommunication utilities. City staff and the City's outside counsel will monitor this proceeding and recommend updates to the policy as may be necessary or appropriate to bolster local authority.
- Joint Utility Poles: The design standards take into account that the City's authority to dictate certain physical sizes and equipment configurations on joint utility poles (e.g.,

wood poles) is limited by mandatory safety regulations by the CPUC. For example, while the City would prefer to limit additional height added to these poles, the CPUC requires a minimum separation of six feet between electric distribution lines and antenna equipment. The City would also prefer equipment to be mounted as flush to the pole as possible, but the CPUC requires that a certain amount of pole space be maintained for the safety and convenience of the workers. To account for restrictions like these, the proposed Policy provides an exception, available only when the applicant shows the restriction prevents strict compliance with the policy. Any exception is further limited to the minimum deviation from the policy necessary to comply with CPUC regulations.

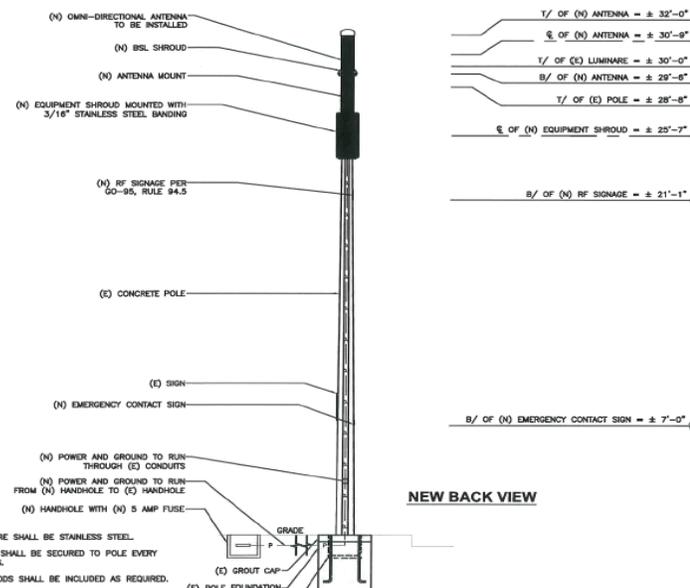
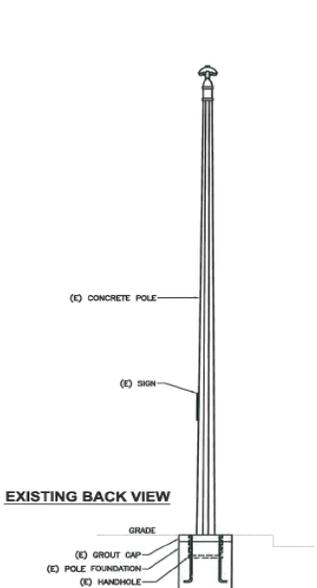
### *Preapproved Designs*

To expedite the review process and encourage collaborative designs among applicants and the City, the proposed Policy would authorize the Director of Community Development to designate one or more preapproved designs for small wireless facilities and other infrastructure deployments. This would expedite the review process, while maintaining conformance with the new time frame requirements. Section 11 of the proposed Policy sets the process to establish or repeal a preapproved design and the expedited review procedures and findings for these applications.

The following diagrams show the small wireless facilities previously approved by the City on September 25, 2017. These designs include a small equipment shroud located near the top of the existing streetlight standard and an antenna placed on top of the existing pole, with all other associated equipment located underground. If adopted, the proposed Policy would allow for the preapproval of similar designs to expedite the approval and deployment process.



- NOTES:**
1. ALL HARDWARE SHALL BE STAINLESS STEEL.
  2. ALL CABLES SHALL BE SECURED TO POLE EVERY 36\"/>



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## PLANNING COMMISSION ACTION

On October 1, 2019, the Planning Commission adopted a resolution recommending the City Council adopt: (1) an ordinance exempting small wireless facilities from the standards and procedures in Chapter 17.69, authorizing the City to regulate such facilities by a policy pursuant to a City Council resolution; and (2) a policy regulating the deployment, construction, installation, collocation, modification, operation, relocation, and removal of small wireless facilities within the City with two modifications:

1. The original policy proposed a 7-day appeal period after the Director of Community Development takes action on a complete application. The Planning Commission has recommended a modification that increases the originally proposed 7-day appeal period to a 10-day appeal period.
2. In consideration of the unique uses within the Public/Institutional (P/I) zone, the Planning Commission has recommended that locating small wireless facilities on local streets within the P/I zone be given the same lesser preference as facilities being placed on local streets within residential zones.

## ENVIRONMENTAL

A Notice of Exemption was prepared for the proposed project. The project is exempt from the California Environmental Quality Act (CEQA) under Article 5 Section 15061(b)(3), the General Rule Exemption. The activity is covered by 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, it is not subject to CEQA. All future deployments would be subject to review under CEQA to determine any potential impacts.

## NOTICING

All notices required by law were completed, which consisted of a one-eighth page legal advertisement in The Signal newspaper on September 10, 2019. In the weeks immediately prior to the public noticing date, staff received numerous emails from community members expressing their concerns regarding the deployment of small cell technology within the City and the perceived health risks associated. Since the posting, no further correspondence from the community has been received by staff.

## ALTERNATIVE ACTION

Other actions as determined by the City Council.

## FISCAL IMPACT

There is no direct fiscal impact associated with the proposed ordinance and proposed Small Wireless Facilities Policy. If approved, any future deployment would be subject to a lease between the City and the individual carrier in accordance with the Small Cell Order issued by the FCC.

ATTACHMENTS

Public Notice

Ordinance with Exhibits A and B