

Agenda Report Reviewed by:
City Manager: 

**CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: October 30, 2018
To: Honorable Mayor and City Councilmembers
From: Kari Svanstrom, Planning Director
Subject: Urgency Ordinance Establishing a Moratorium on New Small Cell Wireless Facilities and Telecommunications Facilities in the Public Right-of-Way

Recommendation: That the City Council adopt the Urgency Ordinance

Funding: Currently Budgeted: Yes No N/A
Net General Fund Cost: N/A Amount: N/A

Introduction:

This report recommends that the Council adopt an urgency ordinance to establish a moratorium on new “small cell wireless facility” applications and placement of new telecommunications facilities in the public right-of-way pending completion of the review and adoption of a permanent ordinance.

Background:

On March 20, 2018, the City Council adopted Resolution 6180, approving an update of the City’s Telecommunications Ordinance (Sebastopol Municipal Code Chapter 17.100). This work was scheduled pending the finalization of the Planning Department’s major work product underway at that time (the comprehensive update to the City’s Zoning Ordinance and Zoning Map). The Planning Commission received a preliminary report on this update at their April 24, 2018, meeting and received a brief overview of telecommunication issues at that time.

Simultaneously, the Federal Communications Commission (FCC) has been developing regulations pertaining to “small cell wireless facilities.” “Small wireless facilities” as defined by the FCC are facilities that include an antenna of no more than three cubic feet and equipment totaling no more than 28 cubic feet, placed on a structure that is either no more than 50 feet in height, no more than 10 percent taller than adjacent structures, or no more than 10 percent taller than the structure’s preexisting height after the new antenna is placed. These small cell facilities are used in relation to the “5G” technologies that telecommunication companies are developing and starting to deploy. These facilities are often affixed to light poles and other smaller, lower utility poles within the public right-of-way.

The FCC adopted new regulations on September 27, 2018, with a 30-day grace period prior to their being effective, which includes provisions for small cell wireless facilities related to the following items:

- Regulations and limits on what a city can define as a ‘significant gap’ in coverage (in relation to requirements of distances between installations, etc.). This is sometimes known as the “significant gap test”.
- Fees that can be charged for applications as well as recurring fees for installations on public property (such as public streets).
- Limits and new standards related to aesthetic requirements. All such rules must be: (1) reasonable; (2) no more burdensome than applied to other infrastructure deployments; and (3) published in advance.
- New, stricter timelines for processing of both individual and multiple applications (also known as the “shot clock”).
 - Any application for an attachment to any existing structure is a “collocation” – whether the existing structure has been previously approved for a wireless use or not.
 - Small cells must be reviewed and approved within 60 days for collocations and 90 days for new structures.
 - The shot clock includes all phases in the interaction between the applicant and the local public agency, which includes any lease or franchise negotiations, the permit review and decision process and any appeals.

The last major update to Sebastopol’s existing Telecommunications Ordinance was in 1996, long before “smart phones” and the current 3G, 4G, and now 5G technologies. While it includes regulations for “minor antenna”, the ordinance provisions were focused on the larger “cell towers” that telecommunication companies were implementing at that time. The current ordinance does not address the newer technologies and related small cell telecommunications facilities. It also does not include provisions for telecommunication facilities of any kind in the public right-of-way, or the new shot clock regulations.

The purpose of the urgency ordinance is to institute a moratorium for new applications for small cell wireless facilities and telecommunication facilities that propose installations in the public right-of-way until adoption of a permanent ordinance. The urgency is to allow for thoughtful discussion and deliberations, given the newly adopted regulations, prior to accepting applications. Unless specifically regulated or banned, there is a risk that the City receives an application prior to the City’s enactment of regulations that reflect the new technologies and use of the public right-of-way. As such, the City should consider adopting the urgency ordinance to ensure the preservation of the public peace, health, safety, or general welfare until the final regulations have been developed and reviewed and adopted by Council. The FCC has allowed a 30 day grace period from their adoption on September 28, 2018, so the urgency is to have

regulations that address these rapidly-evolving Federal rules, new technologies, and telecommunications priorities.

Urgency Ordinance:

A city council may adopt an interim urgency ordinance pursuant to Government Code Section 65858, prohibiting a use in conflict with a city's contemplated zoning proposal, in order to protect the public safety, health, and welfare and must contain clauses justifying its adoption. Notice and public hearing are not required for adoption of such an urgency ordinance.

Adoption of an urgency ordinance does, however, require a four-fifths (4/5) affirmative vote of the City Council. If adopted, the ordinance would be effective immediately and would remain in effect for forty-five (45) days. Government Code section 65858 further provides that subsequently, after notice and a public hearing on the matter, the City Council may initially extend the interim ordinance for an additional 10 months and 15 days and then extend it again for an additional year, although each extension would require a four-fifths vote of the City Council. In all, with extensions, an interim ordinance may remain in force for up to two years. If approved tonight, City staff would return with a request for extension of the interim ordinance at the December 4, 2018 City Council Meeting.

Environmental Review:

The proposed ordinance is exempt from the California Environmental Quality Act (“CEQA”) based on CEQA Guidelines Section 15061(b) (3), which excludes projects 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 proposed regulations will not allow for the development of any new or expanded small cell wireless telecommunication facilities anywhere other than where they were previously allowed under existing federal, state, and local regulations.

General Plan Compliance:

Adoption of this ordinance is consistent with the City’s General Plan, as updating the Telecommunications Ordinance relates to the following adopted General Plan goals and policies:

Action CHW 4a: Explore programs and legal remedies available to the City in order to reduce unsafe EMF exposure to the greatest extent allowed by State and federal law.

Action CHW 4b: Continue to implement, and periodically update as necessary, the City’s Telecommunications Ordinance in order to reduce EMF levels within Sebastopol, while maintaining consistency with state and federal law.

Action CHW 4f: Continue to monitor best practices and approaches taken by other communities to limit unsafe exposure to EMF.

Action EV 1h: Work with telecommunications service providers to ensure the access and availability of a wide range of state-of-the-art telecommunications systems and services for households, businesses, institutions, and public agencies throughout the community and work with property owners and landlords to identify the highest and best use for properties.

Recommendation:

It is recommended that the City Council adopt the attached urgency ordinance.

Attachment:

Urgency ordinance

URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SEBASTOPOL
ADOPTING AND IMPOSING A MORATORIUM ON THE ESTABLISHMENT OF
NEW SMALL CELL TELECOMMUNICATION SITES AND TELECOMMUNICATIONS
IN THE PUBLIC RIGHT-OF-WAY

THE CITY COUNCIL OF THE CITY OF SEBASTOPOL DOES ENACT AS FOLLOWS:

SECTION 1: Purpose and findings. The purpose of this ordinance is to prohibit the development of new small cell telecommunication facilities and the placement of telecommunication facilities in the public rights-of-way (ROW) within the City of Sebastopol pending enactment of permanent regulations for such uses. The public right-of-way of the City of Sebastopol is a uniquely valuable public resource, closely linked with the City's small town character and natural beauty.

The Council finds and determines that the reasonably regulated and orderly deployment of wireless facilities in the ROW is desirable. Unregulated or disorderly deployment represents an ever-increasing and true threat to the health, welfare, and safety of the community. Unregulated installation of small cell telecommunication facilities and placement of telecommunication facilities in the ROW may be harmful for a variety of reasons, including potential adverse consequences from the unregulated placement of equipment along sidewalks and streets that could have negative impacts on both pedestrian and vehicle safety from visual cluttering and physical impediments steaming from equipment installed in the right-of-way; negative impacts on the City's goal of fostering a pedestrian-oriented environment and the City's urban design and character, including aesthetic and accessibility concerns from intrusive installations of equipment mounted on poles or at ground level; noise impacts from facilities that contain outdoor generators or other equipment.

The City of Sebastopol has previously adopted Telecommunications Ordinance regulations that address the installation of both minor and major antennas, however, these regulations do not anticipate the installation of small cell wireless facilities and do not address installation of telecommunication facilities in the ROW. The regulation of wireless installations in the ROW is necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the City, and to ensure that all wireless facilities are installed using the least intrusive means possible.

The City Council adopted Resolution 6180 at its regularly scheduled meeting of March 20, 2018, approving an update to the City's Telecommunications Ordinance, and the Planning Commission held preliminary discussions at its regularly scheduled meeting of April 24, 2018. Additionally, the Federal Communications Commission adopted new regulations for small cell telecommunication facilities and regulations regarding placement of telecommunication facilities within the public right-of-way on September 26, 2018, and published these regulations on September 27, 2018. These new regulations will require revisions to the City of Sebastopol's Telecommunications Ordinance. The City of Sebastopol, in response to changing State and

Federal law and regulations, has been diligently working on updating its telecommunications regulations.

Review of these issues and enactment of appropriate regulations by the Planning Commission and City Council cannot be accomplished without due deliberation, and it will take an indeterminate length of time to work out the substance and details of such requirements. It would be destructive to any proposed restrictions or regulations if, during the period they are being studied and considered for adoption, parties seeking to avoid their operation and effect are permitted to establish such uses and operation in a manner that might defeat in whole, or in part, the objectives of the potential requirements and regulations. As a result, it is necessary to establish a moratorium and prohibition on the establishment and operation of small cell telecommunication facilities and placement of telecommunication facilities in the public ROW in the City, pending the completion of the City's further review of their impacts and adoption of appropriate regulations.

SECTION 2. Moratorium on Applications for new small cell telecommunication facilities and placement of telecommunication facilities in the public rights-of-way. During the period this ordinance remains in effect, no application for a City of Sebastopol Use Permit, Design Review Permit, or other discretionary Planning permit, or Building Permit shall be processed or issued for telecommunication facilities within the public right-of-way.

Telecommunications applications that are not proposed in the public right-of-way may be submitted and will be processed in accordance with the existing adopted Telecommunications regulations (Sebastopol Municipal Code 17.100).

SECTION 3. Immediate Threat to Health, Safety and Welfare. Based on the findings and conditions set forth and described in Section 1 of this ordinance, the City Council of the City of Sebastopol, declares this ordinance is necessary as an urgency measure to address existing threats to the public health, safety and welfare as described in Section 1. The Council determines that the establishment of telecommunication facilities within the public right-of-way in the absence of adopted allowances or appropriate standards and procedures would result in a further threat to the public health, safety and welfare.

SECTION 4. Conflicting Laws. During the continuation of the effectiveness of this ordinance, the provisions of this ordinance shall govern. If there is any conflict between the provisions of this ordinance and any provisions of the Sebastopol Municipal Code, or any City ordinance, resolution or policy, the provision of this ordinance shall control. If there are any conflicts between the provisions of this ordinance and any provisions of State or Federal law in effect during the same time as this ordinance, the provisions of this ordinance shall be null and void.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 6. Effective Date. This ordinance is declared to be an urgency measure and if adopted by the affirmative date of at least four councilmembers, shall become effective upon its adoption.

This ordinance shall be in full force and effect for a period of forty-five (45) days from the date of its adoption unless extended by the City council in accordance with the provisions of California Government Code 65858.

IN COUNCIL DULY PASSED AND ADOPTED this 30th day of October, 2018.

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED: _____

Mayor Patrick Slayter

ATTEST: _____

Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM: _____

Larry McLaughlin, City Attorney