



COUNTY OF SAN DIEGO

LAND USE AGENDA ITEM

BOARD OF SUPERVISORS

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DATE: August 7, 2019

06

TO: Board of Supervisors

SUBJECT

SMALL CELL WIRELESS FACILITIES – ZONING ORDINANCE UPDATE (POD-19-003) (DISTRICTS: ALL)

OVERVIEW

This is a request for the County of San Diego Board of Supervisors (Board) to consider and adopt amendments to the Zoning Ordinance for Small Cell Wireless Facilities (Amendments).

In September 2018, the Federal Communication Commission (FCC) issued the Declaratory Ruling and Third Report and Order 18-133 (FCC Order), that limits a local jurisdiction's ability to regulate the placement of Small Cell Wireless Facilities (SCWs) and establishes maximum permit fees and permit processing timelines of 60 to 90 days. The FCC Order became effective on January 14, 2019. On February 27, 2019 (2) the Board amended the Zoning Ordinance to comply with the FCC Order. At that hearing, staff was directed to return to the Board within 180 days with additional requirements to reduce cluttering, avoid certain sites, encourage co-locating SCWs within existing infrastructure, establish distance requirements between poles, limit the placement of equipment on poles, establish preferred locations, require undergrounding of equipment, and require additional public noticing.

County staff has conducted additional outreach to stakeholders and Community Planning and Sponsor Groups, evaluated other jurisdictions' SCW ordinances, met with wireless industry representatives and evaluated SCW operational characteristics, and developed additional requirements for SCWs within the unincorporated county. The proposed Amendments contain several modifications to the Wireless Telecommunications Facilities section of the Zoning Ordinance to address the Board's direction. Options to the proposed Amendments are included for the Board's consideration.

On July 19, 2019, the Planning Commission considered the proposed Amendments and recommended the Board adopt the staff recommendation, with six modifications. Staff concurs with three modifications made by the Planning Commission: comply with maximum permissible exposure requirements for radiofrequency (RF) emissions set by the FCC; submit an annual RF report by each carrier; and require signs with SCWs warning of RF emissions. Staff does not concur with the following recommendations made by the Planning Commission: require SCWs in the public right-of-way to have a 100-foot setback from all residential buildings; reduce the

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proposed setback of SCWs within the public right-of-way from 1,000 feet from the property line to 100 feet from the nearest building for sites containing schools, religious facilities, daycare centers, and hospitals; and require wireless carriers to submit master plans for placement of SCWs.

**RECOMMENDATION(S)
PLANNING COMMISSION**

On July 19, 2019, the County of San Diego’s Planning Commission considered the proposed amendments to the Zoning Ordinance for Small Cell Wireless Facilities (Amendments); and information contained in the Final Program Environmental Impact Report (EIR), dated August 3, 2011; the Addendum, dated January 30, 2019; and the Environmental Review Update Checklist Form dated January 30, 2019. The Planning Commission made the following recommendations to the Board of Supervisors (Board):

1. Find that it reviewed and considered the information contained in the Final Program EIR, dated August 3, 2011, on file with Planning & Development Services (PDS) as Environmental Review Number 02-ZA-001, the Addendum thereto, dated January 30, 2019, on file with PDS as PDS2017-POD-17-004, and the Environmental Review Update Checklist Form, dated January 30, 2019, on file with PDS as Environmental Review Number PDS2017-POD-17-004, prior to making its recommendation on the Amendments.
2. Adopt the attached Form of Ordinance: AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ZONING ORDINANCE RELATED TO SMALL CELL WIRELESS FACILITIES (POD 19-003) (Attachments A-1 and A-2, on file with the Clerk of the Board).

DEPARTMENT OF PLANNING & DEVELOPMENT SERVICES

Planning & Development Services concurs with Recommendation 1 of the Planning Commission and recommends that the Board take the following action:

1. Adopt the attached Form of Ordinance: AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ZONING ORDINANCE RELATED TO SMALL CELL WIRELESS FACILITIES (POD 19-003) (Attachments B-1 and B-2, on file with the Clerk of the Board).

FISCAL IMPACT

There is no fiscal impact associated with today’s requested actions. There will be no change in net General Fund costs and no additional staff years in Fiscal Year (FY) 2019-2020.

Funds for the establishment of a ministerial process for Small Cell Wireless Facilities permits, including a new inspection deposit and annual fee consistent with the September 26, 2018 FCC Small Cell Wireless Report and Order (FCC-18-133) were adopted as part of the actions by the Board on February 27, 2019 (2). The funding source is fees paid by applicants. Actual costs will be monitored and included in future fee updates.

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BUSINESS IMPACT STATEMENT

N/A

ADVISORY BOARD STATEMENT

Staff presented the draft information on the draft Zoning Ordinance amendments (Amendments) to the Community Planning and Sponsor Group (CPSG) chairs on May 18, 2019. Upon request, staff also presented to the Sweetwater Community Planning Group (CPG) on June 4, 2019; Crest CPG on June 10, 2019; Spring Valley CPG on June 11, 2019; Fallbrook CPG on June 17, 2019; Campo-Lake Morena CPG on June 24, 2019; Jamul-Dulzura CPG on June 25, 2019; and Bonsall CPG on July 2, 2019.

BACKGROUND

The Federal Telecommunications Act of 1996 (Act) applies to all applications for “personal wireless services facilities.” The Act established the Federal Communication Commission (FCC) as the national authority in setting radiofrequency limits. It also preempted state and local governments from regulating the placement, construction, and modification of personal service wireless facilities based on the environmental and health effects of radiofrequency emissions if the wireless facilities comply with the set emissions standards.

In September 2018, the FCC issued the Declaratory Ruling and Third Report and Order 18-133 (FCC Order), that limits a local jurisdiction’s ability to regulate the placement of Small Cell Wireless facilities (SCWs), and establishes maximum permit fees and permit processing timelines. The FCC Order became effective on January 14, 2019 and required local jurisdictions to process applications for SCWs on existing poles within 60 days and applications for SCWs on new poles within 90 days. The FCC Order established a maximum application fee amount of \$500 for up to five SCWs and \$100 for each additional SCW installed on existing poles, and \$1,000 for a new pole supporting one or more SCW(s). The FCC Order also established the maximum amount of recurring fees that a local jurisdiction could collect at \$270 per SCW per year for right-of-way access or attachment to a County-owned structure in the public right-of-way. Additionally, the FCC Order placed restrictions on a local jurisdiction’s ability to regulate the placement of SCW.

In response to the FCC Order, on February 27, 2019, the Board of Supervisors (Board) adopted amendments to the Zoning Ordinance for Small Cell Wireless Facilities to establish a definition for SCWs and a ministerial process to comply with the new FCC fee and processing regulations. At that hearing, staff was directed to return to the Board within 180 with additional requirements to reduce cluttering, avoid certain sites, encourage co-locating SCWs within existing infrastructure, establish distance requirements between poles, limit the placement of equipment on poles, establish preferred locations, require undergrounding of equipment, and require additional public noticing.

To address the Board’s direction for additional requirements, County staff analyzed over 50 wireless telecommunication ordinances from jurisdictions within the region, California, and across the United States. Nearly every ordinance that staff reviewed had requirements addressing height limits, co-location, noise, and removal of antennae if a facility was no longer in use. Staff included similar requirements in the amendments to the Zoning Ordinance for Small Cell Wireless Facilities proposed in this Board letter (Amendments).

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In addition, the proposed Amendments also incorporate input provided by the public and stakeholders. Public outreach was a key component of the proposed Amendments. Staff worked with various organizations and stakeholders to receive input on the proposed ordinance. On May 31, 2019, a draft ordinance, application form, and submittal checklist were made available to interested stakeholders for review and comments for a 30-day public review period. Staff met with individuals, organizations, and industry representatives during and immediately after the public review period. Staff held a meeting with wireless telecommunication providers on June 13, 2019, to understand the technical requirements and capabilities of SCW technology and answer questions about the proposed ordinance.

Additionally, the Board directed staff to support other jurisdictions in challenging the FCC Order and, on June 24, 2019, the County of San Diego (County) filed a letter in support of the following three actions, Petitioner Local Governments' Joint Opening Brief (Case No. 18-72689, et al.) (Docket No. 62); the Joint Brief for Intervenors the City of New York and National Association of Telecommunications Officers and Advisors (Case No. 19-70123, et al.) (Docket No. 93); and the Amicus Brief of the Association of Washington Cities Supporting Petitioners (Case No. 19-70144) (Docket No. 88-2), Sections I, II., and III. Staff will monitor these actions as they proceed through the legal process.

Project Description, Analysis, and Discussion

The purpose of the Amendments is to implement the Board's direction to include additional requirements while maintaining compliance with state and federal law. The draft Amendments include recommendations to reduce clutter; avoid physical obstructions within the right-of-way; establish location preferences for the placement of facilities in commercial and industrial areas, over residential areas; provide public notification of proposed facilities; and limit the County's liability. Descriptions and purpose for each section of the Amendments are provided below. Attachment A-1 and A-2 include clean and strikeout versions of the proposed Amendments recommended by the Planning Commission. Attachment B-1 and B-2 include clean and strikeout versions of the proposed Amendments recommended by staff. Attachment D includes maps and illustrations of the options to amend the Zoning Ordinance for Small Cell Wireless Facilities that were requested by members of the public and the Planning Commission, as well as an analysis of the proposed Amendments.

1. Reduce Clutter

- a. *Configuration Preferences (6992.A.8.i)*: This section establishes configuration preferences to reduce the number of new poles erected in the public right-of-way. The configuration preferences are listed below in order of priority to encourage co-location and installation on existing infrastructure.
 - i. Existing telecommunications facility;
 - ii. Existing or replacement utility poles;
 - iii. Existing or replacement structure on industrial or commercial buildings;
 - iv. County-owned street light poles;

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- v. County-owned traffic signals; and
- vi. New utility poles.

- b. *Encouraging Co-location (6992.A.8.iii.):* This section encourages the co-location of SCWs belonging to more than one provider on a single structure. The proposed ordinance sets a limit of two facilities per pole because each added SCW requires an additional 10 feet of height and increased pole diameter due to weight and spacing requirements. For example, three co-located antennae could require a 40-foot pole and four would require a 50-foot pole. A typical streetlight is 23 feet tall.
- c. *Pole Separation (6992.A.9.):* This section establishes separation requirements for SCWs on new poles operated by the same provider to minimize visual clutter. Minimum spacing requirements range from 500 feet in most preferred locations to 1,000 feet in the least preferred areas. This restriction only would apply to new poles. Installations on existing poles minimize visual clutter by limiting the number of new structures within the right-of-way. This section encourages co-location with existing facilities to reduce the need for new structures in the public right-of-way.

2. Avoid Physical Obstructions within the Public Right-of-Way

- a. *Support Structure Placement (6992.A.10, 11 & 12.):* This section establishes standards that prohibit obstructions within the public right-of-way to ensure open access and maintain community character. The installation of radios or other support equipment on poles must be above seven feet in all areas and above ten feet in areas that allow equestrian activities. Any support structures, such as equipment cabinets that support the SCW's antenna, must be clear of the path of travel and set back from the right-of-way.
- b. *Undergrounding (6992.A.15.):* This section establishes undergrounding requirements for all new ground-mounted equipment, as technically feasible. Based on information from the wireless industry, antennas, radios, and electrical meters are the only components that must be above ground to function. All other related equipment such as batteries and fiber optics must be placed underground to minimize obstructions within the public right-of-way. If undergrounding is technically infeasible in specific locations, the applicant must provide a statement explaining why it would not be technically feasible to underground the related equipment.

3. Emphasize Placement of Facilities in Commercial and Industrial Areas, Over Residential Areas

- a. *Priority Locations (6992.A.2.):* This section establishes location preferences to guide the development of wireless telecommunication services within the unincorporated area. The proposed ordinance includes language to encourage installation within the right-of-way as listed below in order of preference.

Most preferred locations include:

Least preferred locations include:

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- | | |
|-------------------------------------------------------------------------------------------------------|-------------------------------|
| T. Industrial Zones | 1. Rural Zones |
| 2. Special Purpose Zones | 2. Residential Zones |
| 3. Commercial Zones (except C34 & C35,
mixed-use zones that allow commercial
p and residential) | 3. Commercial Zones C34 & C35 |

Proposed location preferences are similar to the current requirements for other wireless telecommunication facilities, such as cellular towers.

- b. *Site Avoidance (6992.A.3.):* This section identifies specific sites to avoid. The proposed ordinance establishes a 1,000-foot distance requirement from schools, childcare centers, hospitals, and religious facilities. This 1,000-foot distance would ensure public safety from falling structures but does not prohibit service based on technological capabilities provided by the wireless industry. During the public review period, comments were received explaining that owners of hospitals, religious facilities, or schools may want this service and utilize site agreements with the wireless industry for revenue. These sites are not prohibited from installing an SCW within their property. However, it would not be allowed in the right-of-way within 1,000 feet.

4. Public Notification

Public Notification (6992.C.6.): This section expands public noticing requirements beyond the current Zoning Ordinance, which requires notification of Community Planning Groups, Community Sponsor Groups (CPSGs), and owners of property within 300 feet of development projects. The current Zoning Ordinance for SCWs does not require any public noticing. The proposed Amendments require noticing to CPSGs and neighbors within 500 feet to ensure public awareness of incoming SCW infrastructure. After submission of an application, the proposed Amendments require the applicant to provide proof of public noticing prior to the ten days given by the FCC Order to deem an application complete. Staff does not recommend noticing requirements before application submittal. Any pre-application requirement starts the permit processing timelines required under the FCC order (60 days and applications for SCWs on new poles within 90 days), regardless of the submittal of an application. If public noticing were required as a pre-application requirement, it would reduce the time available for the County to review the application.

5. Reduction of Risk in the Public Right-of-Way

Annual Reporting (6993.E.): The proposed Amendments require the submittal of annual reports by wireless carriers prior to July 1st of each year. The annual report shall include a list and location of active and non-operating SCWs, as well as those permitted but not yet installed within the unincorporated area. The annual report will be used to identify abandoned facilities, and the County will notify carriers to remove abandoned facilities within 90 days. If the carriers do not remove the facilities, the County reserves the right to remove the facility and require reimbursement from the owner. Annual reports will also include a current certificate of insurance for the list of active SCWs to ensure coverage is up to date for all facilities. Currently, an applicant must provide a certificate of insurance for

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General Liability with a \$500,000 minimum. The document must also name the County Department of Public Works as a certificate holder to protect the County. This insurance requirement applies to any project which requires an excavation permit for construction within the right-of-way.

Planning Commission Recommendation

On July 19, 2019, the Planning Commission considered the proposed Amendments and recommended the Board adopt the staff recommendation, with six modifications. Staff concurs with three modifications made by the Planning Commission: comply with maximum permissible exposure requirements for radiofrequency (RF) emissions set by the FCC; submit an annual RF report by each carrier; and require signs with SCWs warning of RF emissions. Staff does not concur with the following recommendations made by the Planning Commission:

1. Require SCWs in the public right-of-way to have a 100-foot setback from all residential buildings;
2. Reduce the proposed setback of SCWs within the public right-of-way from 1,000 feet from the property line to 100 feet from the nearest building for sites containing schools, religious facilities, daycare centers, and hospitals; and
3. Require wireless carriers to submit master plans for placement of SCWs.

Public Input and Options

This section summarizes recommendations that were received by the public but not incorporated in the proposed Amendments. The FCC Order limits local governments to considering primarily aesthetic and visual impacts when adopting regulations for wireless facility placement. SCW requirements cannot prohibit the utilities from providing service and must be (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance. All of the proposed staff recommendations would comply with FCC regulations and the Telecommunications Act while providing more direction to the industry and lessening the anticipated aesthetic and visual impacts that deployment of this technology may cause.

Comments received were divided into three categories: 1) Location and Design, 2) Compliance and Monitoring, and 3) Public Noticing.

1. Location and Design

Comments in this category focused on the location and placement of a SCW within the unincorporated area to minimize visual clutter and impacts.

- a. *Residential Areas:* Members of the public requested that a setback, ranging from 50 feet to 500 feet, be required from SCWs to residential property lines to minimize or avoid impacts from radiofrequency (RF) emissions, aesthetics, and loss of property value. The majority of privately owned land in the unincorporated county is zoned for residential development. Because SCWs would be located in the right-of-way, typically adding a setback from a property line in residentially zoned areas would put the SCW in the travel way. SCWs are not allowed in the travel way, and application of this requirement could

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be an effective prohibition on SCWs. The Planning Commission recommended modifying the proposed Amendments to require a 100-foot setback from SCWs to residential buildings. An evaluation of setbacks from residential buildings found that any distances over 25 feet in Village Areas, or over 50 feet in Semi-Rural Areas could similarly be an effective prohibition of SCWs. Additionally, the County is prohibited by federal law from considering the impacts of RF emissions when regulating the placement of SCWs.

- Planning Commission Recommendation: Modify the proposed Amendments to require a 100-foot setback from SCWs within the public right-of-way to all residential buildings. The application of any distance requirements to residential buildings could be an effective prohibition of SCWs because approximately 92% of the unincorporated county is residentially zoned and village areas with smaller parcel sizes would restrict the placement of SCWs entirely.
 - Staff Recommendation: Staff does not recommend establishing a distance requirement from residential property lines as this would be an effective prohibition of service as defined in the FCC Order based on the current residential zoning within the unincorporated county.
- b. *Site Avoidance (6992.A.3.):* Members of the community have requested to include fire stations, sheriff stations, shopping centers and County parks in the list of sites that require a 1,000-foot setback to minimize or avoid impacts from radiofrequency (RF) emissions and aesthetics. Requiring a setback from fire stations, sheriff stations, shopping centers and County parks would conflict with location preferences that encourage SCWs in commercial areas and most preferred locations. For operational purposes, fire stations, sheriff stations and County parks would like to maintain the opportunities for wireless communications connectivity. In addition, comments were received from the wireless industry requesting that this requirement be removed in its entirety.
- Option 1: Modify the proposed Amendments to remove site avoidance requirements as requested by the wireless industry.
 - Option 2: Modify the proposed Amendments to include fire stations, sheriff stations, shopping areas, and County parks in the list of sites that require a 1,000-foot distance requirement for SCW installed within the right-of-way. Staff does not recommend including these sites, as this would be an effective prohibition of service as defined in the FCC Order.
 - Planning Commission Recommendation: Reduce the proposed setback of SCWs within the public right-of-way from 1,000 feet from the property line to 100 feet from the nearest building for sites containing schools, religious facilities, daycare centers, and hospitals. Application of this requirement would not prohibit telecommunication facilities from being installed within private or public property.
 - Staff Recommendation: Adopt the proposed Amendments to establish a 1,000-foot distance requirement from schools, childcare centers, hospitals, and religious facilities for SCW installed within the right-of-way, as technically feasible.

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Application of this requirement would not prohibit telecommunication facilities from being installed within private or public property.

c. *Encouraging Co-location (6992.A.8.iii.):* Comments received on this topic range from allowing more than two SCWs on a single pole to limiting one SCW to a pole. Co-locating more than one SCW on a single pole would reduce the need for additional poles in the right-of-way; however, concerns were raised that co-location would increase the height of poles. The proposed Amendments encourage co-location of up to two SCWs and a pole height, which is similar to other structures within the right-of-way.

- Option 1: Modify the proposed Amendments to prohibit the co-location of facilities.
- Option 2: Modify the proposed Amendments to increase the number of SCW allowed to co-locate on a pole to three or more facilities. Staff does not recommend allowing three or more SCWs per pole as this would likely increase the height of the poles.
- Staff and Planning Commission Recommendation: Adopt the proposed Amendments to encourage carriers to co-locate up to two SCWs on a single pole when possible. Co-location will minimize the need to construct new structures within the right-of-way and minimize visual impacts.

d. *Pole Separation (6992.A.9.):* The proposed Amendments establish spacing requirements for new structures with SCW operated by the same wireless carrier at 500 feet in most preferred locations and 1,000 feet in least preferred locations. The wireless industry has expressed a maximum separation preference of 300 feet in most preferred locations and 500 feet in least preferred locations.

- Option 1: Modify the proposed Amendments to be more restrictive by requiring all new SCWs, regardless of carrier, to be separated by 500 feet in most preferred locations and 1,000 feet in least preferred locations. Staff does not recommend establishing distance requirements for all SCWs, regardless of provider, as this would be an effective prohibition of service as defined in the FCC Order.
- Option 2: Modify the proposed Amendments to reduce distances required for new structures to 300 feet in most preferred and 500 feet in least preferred locations as requested by wireless industry representatives.
- Staff and Planning Commission Recommendation: Adopt the proposed Amendments requiring that a SCW owned by the same provider be separated by 500 feet in most preferred locations, and 1,000 feet in least preferred locations, when feasible. Greater separation between new poles will minimize visual clutter in the public right-of-way.

2. Compliance and Monitoring

Comments in this category focused on continuous compliance with federal, state, and County requirements.

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- a. *Informational Signage (6992.B.4.):* Members of the public have requested signage with RF emission levels to be posted at each SCW. The proposed ordinance does not require facility information to be posted on a SCW; however, carriers are not precluded from posting warning and safety information.
- Option: Modify the proposed Amendments to require signage with RF emission levels to be posted on SCW. Staff does not recommend this signage requirement because it would require testing and confirmation of RF emissions, which goes beyond what the County currently requires for similar types of utilities.
 - Staff and Planning Commission Recommendation: Adopt the proposed Amendments requiring signs with SCWs warning of RF emissions.
- b. *Bonding:* Members of the public have requested the County include bonding requirements for the duration of the permit to cover any costs the County may incur due to the abandonment of facilities. The current language on the permit application states that financial responsibility for removal falls on the owner of an SCW to reimburse the County if the facility is abandoned during or post-construction. Staff does not recommend bonding requirements for the installation of an SCW. Staff has contacted several local bond providers and determined that bond issuers do not typically provide bonding beyond the time it takes to construct a project. The County has authority under the existing encroachment permit and indemnification to remove abandoned equipment and receive reimbursement from the owner.
- Option: Modify proposed Amendments to require minimum bonding assurances. Based on staff's outreach, bonds are not likely to be issued for the length of the permit term.
 - Staff and Planning Commission Recommendation: Staff does not recommend bonding requirements because insurance requirements are already in place.
- c. *Master Plan Incentive:* Members of the public have requested master plans be required for all unincorporated communities to coordinate the placement of SCW proposed by all carriers. The intent of a master plan is to set the long-term siting, design coverage and implementation of sites within certain areas, rather than limited to individual or multi-pole implementation of SCW Facilities. This would be more practical in defined commercial districts or neighborhood areas. This could be more difficult for community planning areas due to their large size, large number of variables, and length of time to implement. Wireless carriers indicated that they do not have established long term plans and implement individual SCWs based on the number of wireless users, customer complaints, and existing facility capacity, and this could reveal their propriety information and business strategies.
- Option: A master plan could be voluntarily negotiated between the County and an interested provider through a master license agreement. The master license agreement could establish the number of SCW Facilities, separation between them and detailed SCW Facilities, streetscape and design guidelines. The Board would be the decision-maker for the master license agreement unless delegated.

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Each location would be approved by an individual ministerial license and subject to the FCC processing timelines. Board direction would be required to initiate negotiations with carriers for master license agreements.

- Planning Commission Recommendation: Modify the proposed Amendments to require wireless carriers to submit a master plan with permit applications. Staff does not recommend this because submission of a master plan would begin the processing timeline and require permit issuance for any SCW identified within it.
 - Staff Recommendation: Staff does not recommend requiring a master plan because it goes beyond what is required for other similar infrastructure facilities. If a master plan requires identification of the location of SCWs' the FCC permit processing timelines of 60- and 90-days would begin. Wireless providers object to this because it is burdensome compared to how other infrastructure facilities are processed, which is not allowed the FCC Order.
- d. *RF Emissions Check:* Members of the public have requested that wireless carriers be required to submit an RF emissions report with the permit application. The proposed Amendments require continuous compliance with all FCC regulations for all SCWs. The Planning Commission took action to require annual reporting of RF emissions but took no action on requiring a submission at the time of application. Staff recommends requiring an RF emissions report at the time of application, and will make it available to the public online.
- Staff and Planning Commission Recommendation: Adopt the proposed Amendments requiring an RF emissions report at the time of application to provide greater transparency and information to the public.
- e. *Annual Reporting (6993.E.):* Members of the public have requested the County establish requirements to include reporting of RF emissions for each location within the annual report. The Planning Commission recommended that carriers submit an annual report with a list of current facilities, and an RF emissions report. Staff evaluated and concurs with that requirement. Staff will require the report prior to July 1st and will make it available to the public online.
- Staff and Planning Commission Recommendation: Adopt the proposed Amendments to require carriers to submit an annual report with a list of current facilities and RF Emissions Reports.

3. Public Noticing

Comments in this category focus on providing information for the public to better understand the implementation of SCWs in the unincorporated communities.

Public Noticing (6992.C.6.): Some members of the public have requested notification up to one mile from a proposed SWC facility. The proposed Amendments would require public notification to property owners and residents within 500 feet of the proposed SCW facility, and the applicable CPSG. The wireless industry has asked for shorter distances or no notification, as these requirements are longer than distances required in current practice for

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other permit types, such as the 300 feet from the property line required for major use permits or subdivisions.

- Option: Modify the proposed Amendments to require public notification at a greater distance and different public notice times. While there is not a limit on the distance the Board could require, greater distances beyond 500 feet are not recommended because that would extend beyond the range of a typical SCW facility.
- Staff and Planning Commission Recommendation: Adopt the proposed Amendments requiring wireless carriers submit a notice of intent to install to the corresponding CPSG and property owners within 500 feet within ten days of application submittal.

Several items suggested by the public for inclusion in the ordinance were not found in the other jurisdictions' ordinances and not included in the proposed Amendments. These items include shielding requirements, deposits to compensate for reduced property value resulting from the installation of an SCW nearby, using a fiber-optic network as an alternative to SCW, and language to nullify an ordinance if the FCC Order were repealed or overturned. Some members of the public requested the County provide a central location for individuals to communicate concerns regarding the compliance of SCW. A public hotline would provide a central location for the public to express concerns regarding compliance of an SCW with any local, state, or federal regulations. Staff would then redirect the caller to the appropriate compliance agency. Staff does not recommend the establishment of a hotline; there is existing staff available to respond to public inquiries.

Ongoing Legislation

There are three bills in the United States Congress that would impact the current FCC Order. The first, H.R. 530, authored by California Congresswoman Anna Eshoo, would repeal the FCC's regulations and would restore the authority of local governments to regulate small cell wireless infrastructure deployment that was limited under the FCC Order. Additionally, a second bill introduced by California Senator Dianne Feinstein, S. 2012, proposes to repeal the FCC Order. The County is on record in support of H.R. 530. If H.R. 530 or S. 2012 are signed into law or the FCC Order is overturned by litigation, the proposed Zoning Ordinance Amendments includes a requirement that any Small Cell Wireless Facilities permit issued would expire 12 months from the date the FCC Order is repealed or overturned. Any SCW installed after the effective date of the proposed Zoning Ordinance Amendments would need to be removed at the expiration of the SCW permit.

The third is S. 1699 by Senator John Thune from South Dakota. This measure would incorporate the main components of the FCC Order into the Telecommunications Act. The County will continue to monitor all federal and state legislation that would impact the County's regulations.

ENVIRONMENTAL STATEMENT

There are no substantial changes in the proposed amendments to the Zoning Ordinance for Small Cell Wireless Facilities (project) from the information contained in the Final Program Environmental Impact Report (EIR), dated August 3, 2011; the Addendum, dated January 30,

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2019; and the Environmental Review Update Checklist Form dated January 30, 2019. There are no substantial changes in the circumstances under which the project will be undertaken that will require major revisions to the previous Environmental Impact Report due to the involvement of significant new environmental effects or a substantial increase in the severity of previously identified significant effects. Also, there is no "new information of substantial importance" as that term is used in the California Environmental Quality Act Guidelines Section 15162(a)(3). Therefore, the previously certified Program EIR dated August 3, 2011, on file with PDS as Environmental Review Number 02-ZA-001, and Addendum dated January 30, 2019, can be relied upon without modification.

PUBLIC INPUT

As part of the Zoning Ordinance Amendments for Small Cell Wireless Facilities (Amendments), staff published a public hearing notice on July 26, 2019, in the Daily Transcript in accordance with Government Code Section 65090 and sent notices to all 26 Community Planning and Sponsor Groups (CPSG). Staff held meetings with and sought input from the Planning Commission, seven Community Planning and Sponsor Groups (CPSG), the general public, and the wireless industry. The public review period began on May 31, 2019. An email notice was sent to the general Planning & Development Services (PDS) delivery list, which includes all individuals who have requested updates on PDS projects. All public comments were tracked and responded to as appropriate.

On May 18, 2019, staff presented a brief overview of the ordinance update to the CPSG Chairs meeting and were available to answer questions. On May 24, 2019, staff notified the CPSG Chairs that the ordinance would be available for public review on May 31, 2019.

On May 31, 2019, the public draft of the Amendments was sent to the CPSG Chairs and all stakeholders who requested email notification for updates related to the Amendments and to the Zoning Ordinance Update in general. This email included a link to the Amendments website, which contained the draft ordinance, draft application and checklist, the configuration preferences, and the implementation options summary.

In June and July 2019, staff attended CPSG Meetings in the communities of Sweetwater, Crest/Dehesa, Spring Valley, Fallbrook, Campo/Lake Morena, and Jamul/Dulzura, and Bonsall. Staff also had several meetings with stakeholder groups to answer any questions and provide clarification on the approach that was taken to determine the specific requirements included in the Amendments. The Jamul-Dulzura and Descanso CPSG were in support of allowing an SCW in residential and rural areas for the benefit of residents. The other five CPSG were generally opposed to extensive SCW deployment.

Staff also received input from the Center for Electrosmog Prevention (Center), a group concerned with SCW impacts. The Center provided comments related to various topics such as spacing standards, bonding, distance from residential, denial of incomplete applications, signage, fire prevention, radiofrequency (RF) emissions, and many others. Staff worked with the Center to accommodate their requests, but several of their requests were beyond what is allowed in the Federal Communications Commission (FCC) Declaratory Ruling and Third Report and Order 18-133 (FCC Order). Telecommunications Act of 1996 and California law. Staff sought to

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maintain a balance between the technical requirements of the infrastructure and the requests from the Center to ensure that the Amendments can be implemented and properly serve customers that seek to utilize the technology.

The Center also requested accommodation through the Americans with Disabilities Act (ADA) by asserting discrimination against electrically sensitive people. Since the County of San Diego does not offer cellular phone programs or services, the ADA Act does not apply to approval of the Small Cell Wireless Ordinance.

Staff received input from the wireless industry as well. In May 2019, a questionnaire was sent to Verizon Wireless, AT&T, Cox, and Crown Castle. The questionnaire included 15 questions regarding the technological capabilities, requirements, and restrictions of Small Cell Wireless Facilities. The wireless telecommunication providers were also asked to elaborate on their design and location preferences. This information was collected and analyzed to ensure the ordinance update takes into consideration the technical limitations of small cell wireless technology and remains consistent with the FCC Order.

County staff held a meeting with wireless telecommunication providers on June 13, 2019, to understand the technical requirements and capabilities of Small Cell Wireless Facilities, technology and answer questions about the proposed ordinance. The wireless industry providers recommended the removal of the requirements for minimum distance from schools, childcare centers, hospitals, and religious facilities in the ordinance. In addition, the wireless industry also recommended reduced distance or removal of notification to property owners and Community Planning and Sponsor Groups. Finally, the wireless industry expressed concerns with the priority locations, mentioned that co-location might be technically infeasible in some circumstances, and commented that the antenna, meter, and radio are equipment that is technically infeasible to underground.

DEPARTMENT REASONS FOR RECOMMENDATION

The proposed amendment to the Zoning Ordinance for Small Cell Wireless Facilities (Amendments) is consistent with the General Plan goals and policies for wireless telecommunication facilities because the changes will facilitate construction in desired locations, encourage co-location of facilities, minimize obstructions, reduce visual clutter, and expand the notification to property owners.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today's proposed action support the Strategic Initiative of Sustainable Environments/Thriving in the County of San Diego's 2019-2024 Strategic Plan by balancing the FCC direction, planning for infrastructure that improves the quality of the built environment and strengthens the local economy with community concerns about the deployment of this infrastructure in residential and scenic areas.

Respectfully submitted,

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SARAH E. AGHASSI
Deputy Chief Administrative Officer

ATTACHMENT(S)

- Attachment A-1 PLANNING COMMISSION RECOMMENDATION: AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ZONING ORDINANCE RELATED TO SMALL CELL WIRELESS FACILITIES (POD 19-003) (CLEAN COPY)
- Attachment A-2 PLANNING COMMISSION RECOMMENDATION: AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ZONING ORDINANCE RELATED TO SMALL CELL WIRELESS FACILITIES (POD 19-003) (INFORMATIONAL STRIKE-OUT/UNDERLINE COPY)
- Attachment B-1 STAFF RECOMMENDATION: AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ZONING ORDINANCE RELATED TO SMALL CELL WIRELESS FACILITIES (POD 19-003) (CLEAN COPY)
- Attachment B-2 STAFF RECOMMENDATION: AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ZONING ORDINANCE RELATED TO SMALL CELL WIRELESS FACILITIES (POD 19-003) (INFORMATIONAL STRIKE-OUT/UNDERLINE COPY)
- Attachment C Implementation Options Summary Report
- Attachment D Analysis of Recommended and Requested Requirement *[Note: Due to the large size of this attachment, it will only be available online through the Clerk of the Board’s website as a supporting document for this agenda item.]*
- Attachment E Environmental Documentation
- Attachment F Community Planning/Sponsor Group Recommendations
- Attachment G Correspondence *[Note: Due to the large size of this attachment, it will only be available online through the Clerk of the Board’s website as a supporting document for this agenda item.]*

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AGENDA ITEM INFORMATION SHEET

REQUIRES FOUR VOTES: Yes No

WRITTEN DISCLOSURE PER COUNTY CHARTER SECTION 1000.1 REQUIRED

 Yes No

PREVIOUS RELEVANT BOARD ACTIONS:

February 27, 2019 (2) ZONING ORDINANCE UPDATE NO. 31 AND COUNTY CODE AMENDMENTS (POD 17-004; REZ 18-008)

BOARD POLICIES APPLICABLE:

B-29 – Fees, Grants, Revenue Contracts – Department Responsibility for Cost Recovery

BOARD POLICY STATEMENTS:

Board Policy B-29 generally mandates that departments seek to recover the full cost of all services provided to agencies or individuals outside the County organization. Reimbursement by fees, contracts and grants will be for the full cost of all services, with certain exceptions approved by the Board of Supervisors. New permit fees for Small Cell Wireless Facilities have been estimated in an amount sufficient to recover full cost as required by Board Policy B-29. Accordingly, there is no projected unrecovered cost, and a waiver of Board Policy B-29 is not needed

MANDATORY COMPLIANCE:

N/A

ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION NUMBER(S):

N/A

ORIGINATING DEPARTMENT: Planning & Development Services

OTHER CONCURRENCE(S): Department of Public Works

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