



Ordinance Fact Sheet

TO: CITY COUNCIL **DATE:** January 14, 2019
FROM: CITY ATTORNEY
SUBJECT: PROPOSED AMENDMENTS TO TELECOMMUNICATIONS FACILITIES ORDINANCE

TITLE OF PROPOSED ORDINANCE

ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 12.22 OF THE PASADENA MUNICIPAL CODE (TELECOMMUNICATIONS FACILITIES)

RECOMMENDATION

It is recommended that the City Council:

1. Find that this action is exempt from review under the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines Section 15061(b)(3), the "general rule" that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and pursuant to CEQA Guidelines Section 15303 (Class 3 - New Construction or Conversion of Small Structures), and that there are no features that distinguish this project from others in the exempt class and, therefore, there are no unusual circumstances; and
2. Introduce an ordinance amending Chapter 12.22 of the Pasadena Municipal Code (Telecommunications Facilities), and conduct first reading of the ordinance.

PURPOSES OF THE ORDINANCE

The purpose of this ordinance is to amend the process for considering wireless facilities proposed in the public right-of-way.

REASONS WHY LEGISLATION IS NEEDED

At its December 17, 2018 meeting, the City Council directed the City Attorney to prepare this ordinance. This ordinance became necessary as a result of the Federal

MEETING OF 01/14/2019
AGENDA ITEM NO. 13

Communications Commission's Declaratory Ruling and Report and Order, which seeks to accelerate deployment of 5G wireless infrastructure. The FCC adopted its decision in September 2018 and, following publication in the Federal Register, the decision becomes effective this month. The FCC's decision is currently being challenged in the U.S. Court of Appeals for the Tenth Circuit, but the decision still remains effective, even though litigation is pending.

Significant features of this ordinance include the following amendments to Chapter 12.22 of the Municipal Code:

1. Provides for a definition of small cells to conform to the Federal Communications Commission's September 2018 Declaratory Ruling and Report and Order accelerating deployment of 5G wireless infrastructure, and the creation of three separate tiers for the processing of small cell applications. Since the time of the December 17, 2018 Council meeting, Public Works staff has communicated with wireless carriers and their representatives about the volume limitations for each of the three tiers. Staff has concluded that the volume limitations should remain intact, and as originally proposed.

	Size of Small Cell (antennas & equipment)	Permit Processing
Tier 1	No more than one (1) cubic foot	<ul style="list-style-type: none"> • No special notice • No appeal • Maximum 20 applications
Tier 2	One (1) to five (5) cubic feet	<ul style="list-style-type: none"> • Special notice tracking non-residential zoning districts • Appeal to City Manager • Maximum 10 applications
Tier 3	More than five (5) cubic feet	<ul style="list-style-type: none"> • Special notice • Appeal to City Manager • Maximum 5 applications

2. Provides that incomplete applications not re-submitted 90 days after an incomplete notice are deemed withdrawn;
3. Clarifies the appeal process for the City Manager and City Council (which is proposed to only hear non-small-cell appeals); and
4. Makes technical and conforming changes.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED

The Public Works Department will be affected by this ordinance.

FISCAL IMPACT

The actual fiscal impact associated with enforcement of the ordinance is currently unknown, but is not expected to be significant.

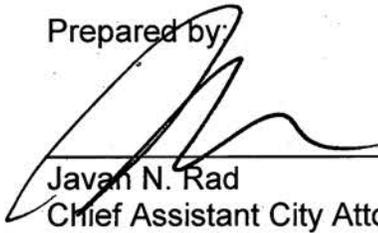
ENVIRONMENTAL DETERMINATION

The Council is asked to find this proposed action exempt from environmental review before taking action on the ordinance. The proposed action is exempt from review under the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines Section 15061(b)(3), the "general rule" that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and pursuant to CEQA Guidelines Section 15303 (Class 3 - New Construction or Conversion of Small Structures), and that there are no features that distinguish this project from others in the exempt class and, therefore, there are no unusual circumstances.

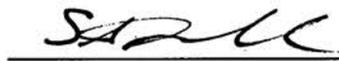
Respectfully submitted,


Michele Beal Bagnaris
City Attorney

Prepared by:


Javan N. Rad
Chief Assistant City Attorney

Concurred by:


Steve Mermell
City Manager

Introduced by _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 12.22 OF THE PASADENA MUNICIPAL CODE (TELECOMMUNICATIONS FACILITIES)"

WHEREAS, the City Council originally adopted Chapter 12.22 of the Pasadena Municipal Code in 2009, which regulates telecommunications facilities in the public right-of-way;

WHEREAS, due to the proliferation of new telecommunications facilities within the City and the City has received numerous applications and inquiries regarding the development of new or modification to existing telecommunications facilities within the City and, given the strong desire of the wireless industry to continue expanding and enhancing their coverage, the City anticipates that it will receive additional applications and inquiries in the near future;

WHEREAS, as a result of laws and regulations passed in recent years, local governments are now required to approve certain wireless telecommunications facilities within various time periods;

WHEREAS, the City Council wishes to update Chapter 12.22 of the Pasadena Municipal Code based on current telecommunications trends and updates in applicable laws and regulations, in order to protect and promote public health, safety and welfare

to the extent permitted by law, while, at the same time, balance the legal rights of carriers.

NOW, THEREFORE, the People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and corresponding cost of publication, will be published by title and summary as permitted by Section 508 of the Pasadena City Charter. The approved summary of this ordinance is as follows:

“Summary

This ordinance amends Chapter 12.22 of the Pasadena Municipal Code (Telecommunications Facilities). The ordinance establishes a definition of small cells to conform to a recent Federal Communications Commission decision, and makes other amendments to conform to laws and regulations passed in recent years that require local governments to approve certain wireless telecommunications facilities within various time periods.

Ordinance no. _____ shall take effect upon publication.”

SECTION 2. Pasadena Municipal Code, Title 12, Chapter 12.22, Section 12.22.020 (Definitions), subdivisions (N) and (O) are repealed and replaced with the following subdivisions (N) through (S):

“N. “Small cell” means a wireless telecommunications facility that meets the definition of a small wireless facility, as that term is used by the Federal Communications Commission in FCC 18-133, as may be amended from time to time.

- NO.** "Support structure" means a freestanding structure designed and constructed to solely support an antenna array and that may consist of a monopole, a self-supporting lattice tower, a guy-wire support tower, or other similar structure.
- OP.** "Telecommunications facility" means and includes any wire or line, antenna, pipeline, pipe, duct, conduit, converter, cabinet, pedestal, meter, tunnel, vault, equipment, drain, manhole, splice box, surface location marker, pole, structure, utility, or other appurtenance, structure, property, or tangible thing used to provide telecommunications and/or video service to the public.
- Q.** "Tier 1 small cell" means a small cell mounted to an existing support structure or wire or line, where the size of a telecommunications facility (as defined by subdivision (P)) is no greater or equal to one cubic foot.
- R.** "Tier 2 small cell" means a small cell mounted to an existing support structure or wire or line, where the size of a telecommunications facility (as defined by subdivision (P)) is greater than one cubic foot, but less than or equal to five cubic feet.
- S.** "Tier 3 small cell" means a small cell mounted to an existing support structure or wire or line, where the size of a telecommunications facility (as defined by subdivision (P)) is greater than five cubic feet."

SECTION 3. Pasadena Municipal Code, Title 12, Chapter 12.22, Section

12.22.050 (Permit required) is hereby amended as follows:

"12.22.050 - Permit required.

- A.. No person shall install or maintain any telecommunications facility which in whole or in part rests upon, in or over the public right-of-way without first obtaining a permit from the director under this chapter.
- B. Applications for permits for telecommunications facilities shall be made to the director and shall contain the following:
1. The name, address and telephone number of the owner of the telecommunications facility;
 2. The name, address and telephone number of the responsible person whom the city may notify or contact at any time concerning the telecommunications facility;
 3. A site plan containing the exact proposed location of the facility (including a description of the location in a format compatible with the city's geographic

information system database), and detailed plans created by a qualified licensed engineer and in accordance with requirements set by the director;

4. A photograph and/or model number of the type of telecommunications facility being used;
 - ~~5. A hold harmless agreement pursuant to Section 12.22.140;~~
 - ~~6.~~ A certificate of insurance pursuant to Section 12.22.150; and
 - ~~7. Agreement to conform to the requirements of this chapter; and~~
 - ~~8.~~ An application and processing fee, as established by resolution of the city council.
- C. Applications will not be accepted for geographic locations which are then unavailable due to current or proposed public improvements as specified in the current Capital Improvement Program.
- D. An applicant shall not submit applications for permits seeking in excess of twenty (20) Tier 1 small cell sites, ten (10) Tier 2 small cell sites, and/or five (5) Tier 3 small cell sites at any one time, without the prior written approval of the director.**
- E. If the applicant is notified in writing that an application is incomplete, the applicant shall have no more than 90 days from the date of notification to revise and resubmit the application. If the applicant fails to revise and resubmit the application within that time, the application shall be deemed withdrawn. Thereafter, an application resubmitted for the same site shall constitute a new application for all purposes.**
- DF.** This section does not apply to the terms and conditions of any agreement or permit (or extension thereof) pertaining to telecommunications facilities (issued by the city or of which the city is a party) that is already in existence at the effective date of this ordinance, provided that the agreement or permit (or extension thereof) does not result in a material change (including, but not limited to, changes in size, shape, color, or exterior material) of the telecommunications facilities covered by such existing agreement.”

SECTION 4. Pasadena Municipal Code, Title 12, Chapter 12.22, Section 12.22.070 (Additional findings required for wireless telecommunications facilities), subdivision (B) is hereby amended as follows:

"B. The applicant has posted a performance bond or other security in an amount rationally related to the cost of removal, **based on the director's determination.**"

SECTION 5. Pasadena Municipal Code, Title 12, Chapter 12.22, Section 12.22.080 (Special notice), is hereby amended as follows:

"12.22.080. - Special notice.

- A. Notice of Application Submittal.
1. Residential Districts **(Excluding Tier 2 Small Cells)**. Notice that the application has been submitted shall be provided pursuant to Section 17.76.020 of this Code in the same form and manner as the notice requirements for minor variances and minor use permits. Additionally, notice that the application has been submitted shall be mailed to occupants of buildings within 300 feet of the site boundaries and registered neighborhood associations whose boundaries fall within 300 feet of the site boundary.
 2. All Other Zoning Districts, **and Tier 2 Small Cells in Residential Districts**. Notice that the application has been submitted shall be posted pursuant to Section 17.76.020(B)(2) of this Code in the same form and manner as the posting requirements for minor variances and minor use permits. Additionally, notice that the application has been submitted shall be mailed to abutting property owners.
- B. Comment Period. Written comments received by the director during this period shall be considered as part of the staff review.
1. Residential Districts. For proposed uses located in residential zoning districts, the comment period shall be **30-14** days from the date notice is provided.
 2. All Other Zoning Districts, **and Tier 2 Small Cells in Residential Districts**. For proposed uses located all other zoning districts, the comment period shall be 10 days from the date notice is provided.
- C. Notice of Installation. After issuance of a permit, and no later than 48 hours prior to installation, written notice shall be provided to the same persons who originally received notice pursuant to subdivision (A) of this section.
- D. This section shall not apply to applications for Tier 1 small cells."**

SECTION 6. Pasadena Municipal Code, Title 12, Chapter 12.22, Section 12.22.100 (Appeals), is hereby amended as follows:

"12.22.100 - Appeals.

- A. Any interested person may appeal the decision of the director pursuant to this chapter, with the exception of decisions on Tier 1 small cell applications, which may not be appealed, to the city council. The**
- B. Any appeal shall be filed with the city clerk director within 14 7 days after the decision by the director from which the appeal is being taken by filing a written statement of appeal, clearly setting forth all facts upon which the appellant believes the appeal should be granted.**
- C. The city manager (or designee) shall consider all appeals of decisions of the director on Tier 2 and Tier 3 small cell applications. The appellant may request a conference with the city manager (or designee) prior to the rendering of a decision, during which the appellant (and applicant, if applicable) may present any information relevant to the appeal. Unless the applicant, agrees to a longer period of time, the conference (if any) shall occur within seven (7) days of the director's receipt of the appeal. The appeal shall be resolved by way of the city manager (or designee) issuing a written decision containing the resolution of the matter and the reasons therefor.**
- D. All other appeals shall be heard by the city council, which shall hear from the appellant (and applicant, where applicable), staff, and all relevant evidence, and shall determine the merits of the appeal.**
- E. Appeals shall be decided in accordance with time periods and procedures established by applicable laws and regulations, including, but not limited to, decisions of the Federal Communications Commission."**

SECTION 7. Pasadena Municipal Code, Title 12, Chapter 12.22, Section

12.22.140 (Hold harmless agreement), is hereby amended as follows:

"12.22.140 ~~Hold harmless agreement~~ Permittee indemnification.

The holder of any A condition of issuance of a permit issued under this chapter shall is that every permittee, and person on a shared permit, agrees to defend, indemnify, and hold harmless the city of Pasadena, its city council, officers, and employees to the maximum extent permitted by law, from any loss or liability or damage, including expenses and costs, for bodily or personal injury, and for property damage sustained by any person as a result of the installation, use, or maintenance of the applicant's permittee's facilities subject to this Subdivisionchapter."

SECTION 8. Pasadena Municipal Code, Title 12, Chapter 12.22, Section 12.22.210 (Effect on other ordinances), is hereby amended as follows:

“12.22.210 - Effect on other ordinances.

- A. Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of the Pasadena Municipal Code.
- B. In the event of a conflict between any provision in this chapter and chapter 12.24 of this Code (Excavations), this chapter shall control.
- C. Nothing contained in this chapter shall be deemed to supersede or modify the **following:**
 - 1. ~~S~~standards and size limitations (and exemptions thereon) for sign displays in chapter 17.48 (Signs) of the Zoning Code;
- ~~D. Nothing contained in this chapter shall be deemed to supersede or modify~~
 - 2. ~~S~~section 17.50.310 of the Zoning Code, which regulates wireless telecommunications facilities located outside of the public right-of-way; **and/or**
 - 3. **Fixed electric rates available for unmetered wireless telecommunications facilities available through Sections 13.04.085 (Unmetered rates – Non demand) and 13.04.087 (Unmetered rates – Demand).**

SECTION 9. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 10. This ordinance shall take effect upon publication.

Signed and approved this _____ day of _____, 2019.

Terry Tornek
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this _____ day of _____ 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Date Published:

Mark Jomsky
City Clerk

Approved as to form:



Javan N. Rad
Chief Assistant City Attorney