

# Agenda Report

December 17, 2018

**TO:** Honorable Mayor and City Council

**THROUGH:** Municipal Services Committee on December 11, 2018

**FROM:** Department of Public Works

**SUBJECT: PROPOSED AMENDMENTS TO MUNICIPAL CODE CHAPTER 12.22 - TELECOMMUNICATION FACILITIES IN PUBLIC RIGHT-OF-WAY**

## **RECOMMENDATION:**

It is recommended that the City Council direct the City Attorney to prepare an amendment to Chapter 12.22 of the Pasadena Municipal Code (PMC) to streamline permit processing for wireless sites in the public right-of-way (ROW), as well as to address certain state and federal legal requirements.

## **MUNICIPAL SERVICES COMMITTEE:**

At the Municipal Services Committee Meeting of December 11, 2018, staff made several additional recommendations based upon further consultation with City's outside legal counsel to ensure City meets the new federal 'shot clock' requirements:

1. Reduce Residential Districts Comment Period (PMC 12.22.080) from 30 days to 14 days;
2. Reduce Decision Appeal Period (PMC 12.22.100) from 14 days to 7 days; and
3. Change "Appeal the decision of the director to" (PMC 12.22.100) from City Council to City Manager, for Tier 3 of the proposed Permit Processing.

The revisions are shown on the respective tables on pages 5 and 6 of the report.

## **EXECUTIVE SUMMARY:**

There are several key factors related to wireless telecommunication facilities prompting this staff request. They include new federal and state regulations; evolution of cellular design and technologies; and, the growing demand for expansion of small-cell site deployments citywide.

**BACKGROUND:**

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.

Prior to 2009, wireless telecommunications facilities in the public ROW were permitted by the City by means of individual license agreements between the City and the applicants. These licenses were associated with corresponding and subsequent Public Works construction permits for installation of the facilities.

The installation of telecommunications facilities in the public ROW is currently governed by Pasadena Municipal Code Chapter 12.22 (PMC 12.22), Telecommunications Facilities. That section was codified through Ordinance 7164 in May 2009. PMC 12.22 includes regulations for application requirements, design and installation guidelines, public notices and site posting, decisions and appeals, permitting, applicable fees, conditions of approval, insurance, licenses, and maintenance standards. Also in May 2009, the City Council adopted a corresponding set of regulations for wireless facilities on private property, which are regulated through the Zoning Code. This recommendation only seeks to address wireless facilities in the public ROW, and does not seek revisions to the Zoning Code for installations within private properties.

Most commonly, PMC 12.22 applies to wireless telecommunications facilities used by carriers such as Verizon, T-Mobile, AT&T, and Sprint to provide wireless services to their customers. PMC 12.22 also applies to those third-party firms that build and operate wireless telecommunications facilities for the various wireless carriers. Those third party firms include Crown Castle, ExteNet, Mobilitie, and others.

The Department of Public Works (PW) reviews telecommunications facility applications in the public ROW, in coordination with various City's departments such as Transportation, Water and Power, and Planning and Community Development. Since 2000, the City has contracted with two consulting firms for the review of telecommunications permit applications: Telecom Law Firm P.C. and KOA Corporation provide specialized services and special technical expertise not available through staff in Public Works or other City departments.

**New Federal and State Regulations:**

The City's procedures for processing wireless facility applications in the ROW are primarily dictated by the federal and state regulations.

On September 26, 2018, the Federal Communications Commission (FCC) approved Order WT Docket Number 17-79 restricting local government authority over the deployment of small cell facilities within the public ROW. This Order will become effective January 14, 2019 and shorten several key time frames controlling the City's

review and approval of a wireless site application via dictated 'shot clocks'. The shot clocks in FCC's Order will require that the City not only process the application within a fixed timeframe (as short as 60 days for most sites), but also address any administrative appeals that may be requested, all the way through the issuance of Public Works construction permits.

Under existing and new regulations of the FCC, the City is subject to several different shot clocks, each with their own requirements and differing results should the particular shot clock be violated by the City. Per FCC Order, should the City fail to respond timely and violate a 'shot clock', the applicant can sue the City for presumptive prohibition. Under current PMC 12.22, City's telecommunication application review process (including for small cell sites) requires a 30-day public noticing and commenting period, and that all appeals be made to City Council; as such, FCC's new shot clock requirements for small cell facilities may be compromised and open-up the City to certain penalties.

### **Expansion of Small Cell Deployments Citywide:**

Given current and forthcoming small cell technologies, industry projections on site deployments for metropolitan and urban areas like Pasadena are estimated to be up to 60 small 5G cell sites per square mile per carrier to maximize coverage based on growing cell use and demand. Also, approximately eight miles of new underground fiber optics would be required in each square mile. Growing cell use per household is also placing a demand to site small cell facilities within residential neighborhoods.

Over the past five years, 43 small cell sites have been installed citywide. And currently, the City is processing 50 applications. Based on information provided by the various telecommunication carriers and site builders servicing Pasadena, staff is anticipating submittals of several hundred applications for new wireless sites in the public ROW over the next three to five years. There is currently no limit on the maximum number of applications that can be submitted at any one time. If a high number of applications are submitted at a single time, PW would need to process all of the applications under the same shot clock period. Currently, other Southern California municipalities have received dozens of simultaneous cell site applications at any one time.

### **Less-Impactful Small Site Deployments:**

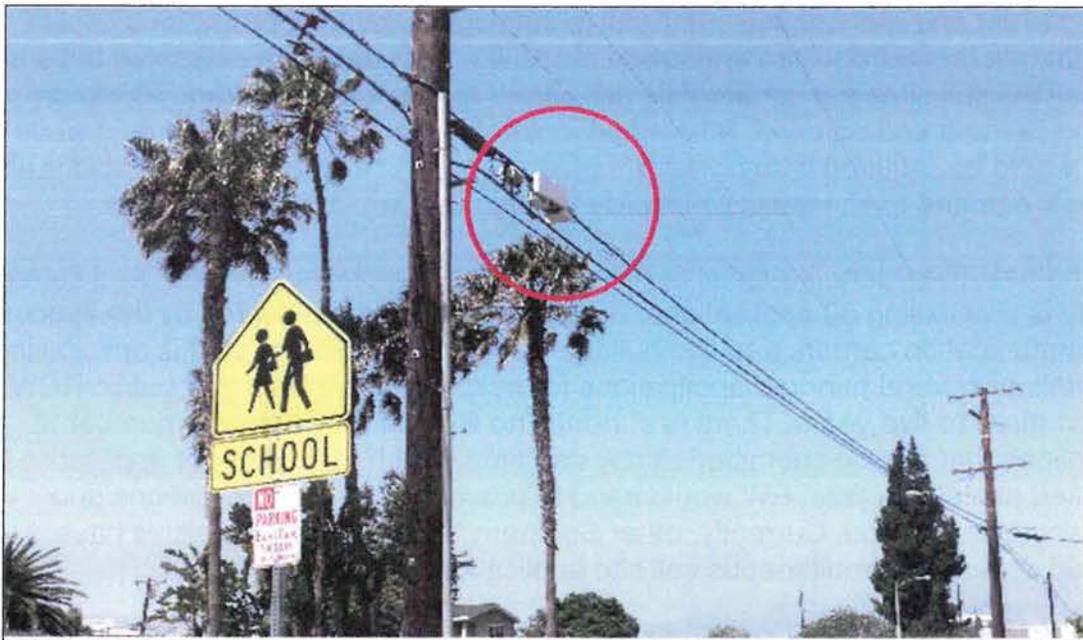
Under the FCC's September 2018 Order as abovementioned, a small cell is defined as, in summary:

- Mounted on structures less than or equal to 50 feet tall, including strand mount;
- Total equipment volume less than or equal to 28 cubic feet, not including antennas;
- Antenna volume less than or equal to 3 cubic foot each;
- Compliance with FCC radio frequency emission safety standards.

Currently, telecommunications facilities in the public ROW must be mounted on existing poles or replacement poles – i.e., streetlights, utility poles, or other poles owned by the City. The PMC also sets forth design and installation standards, as well as site selection criteria. There have been substantial changes in the size of wireless site configurations since the Council adopted these standards in 2009. Staff proposes to amend the PMC to incentivize wireless carriers to deploy ‘smaller foot-print’ small cell installations with substantially less visual impact.

#### **A. Strand-Mount Small Cell Sites**

One preferable alternative to installations on existing poles is the installation of small cell sites on steel cables stranded between poles (called “strand-mount”). Installation of strand-mount small cell sites in the public ROW was not considered back in 2009 and therefore not currently permitted by the PMC. A strand-mount small cell equipment deployment has one of the smallest footprints as shown in Figure 1, below. This type of design is similar in appearance to existing cable TV amplifier boxes installed on aerial cables throughout the City in areas with wood utility poles.



**Figure 1:** Small Cell (in red circle) mounted on a pole-to-pole strand located in the City of Torrance.

**B. Small Cell Sites Mounted On Light Standards**

Some types of smaller cell designs can be deployed on replacement light standards. See Figure 2.



**Figure 2:** Small cell (in red circle) mounted on an existing light standard [Close up on right].

**Proposed Volumetric Permitting Process:**

To encourage the deployment of small cell facilities with the smallest footprint, staff recommends amending the PMC to adjust permit processing steps and the appeal process to approve these smaller cell sites on a more streamlined level. Staff recommends that the PMC be amended to allow for the following three tiers of permitting process:

	<b>Size of Small Cell in Public ROW (all antennas and equipment)</b>	<b>Permit Processing</b>
Tier 1	Strand or pole mounted attachment(s) totaling less than or equal to one (1) cubic foot	<ul style="list-style-type: none"> <li>• No Special Notice</li> <li>• No Appeal</li> <li>• Twenty (20) applications maximum at one time</li> </ul>
Tier 2	Totaling more than one (1) cubic foot and less than or equal to five (5) cubic feet	<ul style="list-style-type: none"> <li>• No Special Notice</li> <li>• Appeal to City Manager</li> <li>• Ten (10) applications maximum at one time</li> </ul>
Tier 3	Totaling over five (5) cubic feet	Follow PMC 12.22 <ul style="list-style-type: none"> <li>• Special Notice</li> <li>• Appeal to City Manager</li> <li>• Five (5) applications maximum at one time</li> </ul>

Proposed key incentives for permit applicants include the following staff recommended amendments to the Municipal Code:

- Remove the special public notice and/or comment period requirement (PMC 12.22.080) for the installation of small cells less than or equal to five cubic feet, as described in Tiers 1 and 2 above. For larger small-cell site applications in the public ROW, staff proposes to keep the existing requirements of PMC on special notice to the public.
- Streamline the appeals process based on the proposed volumetric tiers, as noted above. Currently, all applicants must appeal Public Works staff's review decision to City Council, which takes additional weeks to agendaize and be heard. As such, meeting the FCC's shorter 60-day 'shot clock' requirements for review and permit issuance of small cell sites may be comprised.

**Additional Proposed Amendments To PMC 12.22:**

Staff proposes that the following PMC sections summarized below be amended to achieve the goals set out above:

PMC Section	Description/ Key Words	Recommended Changes
12.22.050(B)(5)	Hold harmless agreement	Re-word to "Standard term permit" or delete the word "agreement" as there is no such document in this type of permit processing
12.22.050(B)(7)	Agreement to conform	Delete as there is no such document in this type of permit processing
12.22.070(B)	Applicant has posted a "performance bond"....	Move this requirement to 12.22.180 and add a phrase to the effect of "based on the Director's determination"
12.22.080(B)(1)	Residential Districts Comment Period	Reduce from 30 to 14 days
12.22.080(D)<new>	Small cells	Special Notice not applicable if application complies with tiered volumetric requirements
12.22.110	Appeals	<ul style="list-style-type: none"> <li>• Change from City Council to City Manager per tiered volumetric permitting process</li> <li>• Reduce from 14 days to 7 days</li> </ul>
12.22.120(A)	Pole height	Change from 25 to 21 feet
12.22.120(B)	Antenna array height	Categorize in two different sections: small cells and others

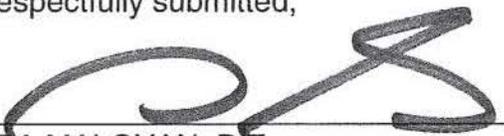
PMC Section	Description/ Key Words	Recommended Changes
12.22.120(G)<new>	Strand-Mount	Include strand-mount facilities on aerial cables as allowable siting option for small cells
12.22.140	Hold harmless agreement	Re-word to "Standard term permit" and move to merge into 12.22.180
12.22.180	Additional conditions of approval	These are the detailed conditions for a "Standard term permit". Re-word to include in the title.
12.22.210E<new>	Effect on other ordinances	Cross-reference to PMC Section 13.04.085 Unmetered Rates

Upon City Council's direction, City Attorney will prepare an ordinance amending Pasadena Municipal Code Chapter 12.22 per the recommended changes above and return to City Council for approval.

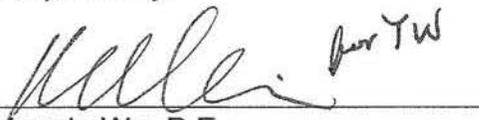
**FISCAL IMPACT:**

Funding for this action will be addressed by the revenue budget account No. 702900-30122013-74413, where all annual public ROW wireless facility license fees are currently deposited.

Respectfully submitted,

  
ARA MALOYAN, P.E.  
Director of Public Works

Prepared by:

  
Yannie Wu, P.E.  
Principal Engineer

Approved by:

  
STEVE MERMELL  
City Manager