



REPORT TO CITY COUNCIL

DATE: October 27, 2020

TO: Mayor Esquivias and Members of the City Council

SUBMITTED BY: Robert Reber, Community Development Director
Patrick Tang, City Attorney

SUBJECT: Zone Text Amendment #20-02—City Ordinance Updates to Hercules Municipal Code, Title 10, Chapter 16—Wireless Telecommunications Facilities, regarding small wireless equipment

RECOMMENDED ACTION:

Open the public hearing, receive staff report, take public testimony, close the public hearing, and consider waiving the first reading and approving introduction of the draft zone text amendments to the City's wireless telecommunications regulations.

FISCAL IMPACT OF RECOMMENDATION:

There are no direct fiscal impacts associated with this item.

BACKGROUND:

Small cell wireless communication facilities, also called “5G,” are a type of wireless infrastructure. Existing wireless facilities are typically large antennas (also referred to as “macrocells”) placed high above the ground that service a wide area, measured in square miles. Conversely, the 5G antennae (“small cells”) provide spot coverage to a relatively small area up to several hundred feet away. Because of the very limited coverage areas associated with small cells, many more antennae are necessary and need to be relatively closer to the ground (compared to macrocells) and closer to homes and businesses. The telecommunications industry plans to install the vast majority of these antennae in public rights-of-way, affixed to existing pole infrastructure (streetlights, traffic signals, and utility poles), or on new purpose-built small cell poles.

On October 15, 2018, the Federal Communications Commission (FCC) issued a Final Rule (FCC-18-133, “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment” and referred to as the “FCC Order”), which implements industry demands to remove barriers and accelerate the transition to 5G deployment, accelerating the United States’ transition to 5G cellular networks. The FCC Order, which took effect on January 14, 2019, provides guidance and rules to streamline the wireless infrastructure siting review process to facilitate the deployment of next-generation wireless facilities. The Order addresses state and local consideration of aesthetic concerns, specific fee levels, and limits on review time (“shot clocks”) related to the deployment of small wireless infrastructure.

The City's own telecommunications regulations (Hercules Municipal Code Title 10, Chapter 16) were last updated on September 8, 2015, when the City Council approved Ordinance No. 487. Subsequently approved Federal regulations, including the FCC Order described above, require additions to the City's existing ordinance to address small wireless facilities. Working with the City's telecommunications consultants Rusty Monroe, Senior Partner, and Robert Ross, Technical Expert, from The Center for Municipal Solutions, City staff have incorporated all the changes that are required for the ordinance to both comply with FCC regulations and be effective immediately.¹

The City's existing ordinance is not structured to deal with small cell infrastructure, in part because the regulations do not provide guidance regarding how to best conceal equipment in the public right-of-way and attached to existing poles. Staff has determined that the specific changes shown in Attachment 1 and summarized below are needed and would be in the best interest of the City. The proposed changes would add the following subsections to Title 10, Chapter 16 of the Municipal Code ("Wireless Telecommunications Ordinance):

- Administrative Use Permit Applicability for Modifications that Qualify as Eligible Facilities
- Application Requirements for an Administrative Special Use Permit
- Design, Visibility, and Aesthetics
- Small Cell and Small Wireless Facilities (covering both existing and new structures, on both private property and public right-of-way)

At a public hearing during its regular meeting on October 5, 2020, the Planning Commission unanimously voted to approve a resolution that the City Council adopt the draft Ordinance, with only several minor clarifying edits.

ENVIRONMENTAL DETERMINATION

The adoption of the below Ordinance amendments are categorically exempt from the California Environmental Quality Act (CEQA) pursuant to §15378 and California Public Resources Code § 21065, as this ordinance is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment; and that, even if this ordinance qualified as a "project" subject to CEQA, pursuant to CEQA Guidelines §15061(b)(3), this Ordinance does not have the potential for causing a significant effect on the environment as it does not allow for any new or expanded uses not otherwise permitted under existing federal, state, and local regulations. The wireless communications facilities themselves are exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines.

¹ The proposed changes do not address FCC-19-126 which will not be implemented until December 2021 and which will address additional regulations regarding human exposure to radiofrequency electromagnetic fields.

ATTACHMENTS

1. Draft Ordinance with proposed changes to Municipal Code Title 10, Chapter 16—
Wireless Telecommunications Facilities (redlined with tracked changes)
2. Draft Ordinance with proposed changes to Municipal Code Title 10, Chapter 16—
Wireless Telecommunications Facilities (clean with changes incorporated)
3. Staff presentation