



MEMORANDUM

TO: Planning Commission

FROM: Brian Pedrotti, Community Development Director

BY: Andrew Perez, Planning Manager

SUBJECT: Continued Consideration of Amendments to Title 16 of the Arroyo Grande Municipal Code Regarding Wireless Telecommunication Facilities and Finding That This Action is Exempt From Review Under the California Environmental Quality Act

DATE: October 15, 2024

RECOMMENDATION:

- 1) Adopt the attached Resolution recommending City Council to adopt the proposed ordinance amending the Arroyo Grande Municipal Code (AGMC) regarding wireless telecommunication facilities; and
- 2) Find the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines and direct staff to prepare and file with the Office of Planning and Research and the Clerk of the County of San Luis Obispo a Notice of Exemption (NOE) as provided under Public Resources Code Section 21152(b) and CEQA Guidelines Section 15062.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

The proposed ordinance effort encompasses staff time, public consultations, and legal advisory services.

BACKGROUND:

The City is in the process of updating the Municipal Code related to wireless telecommunication facilities in response to the numerous federal and state laws and regulations have taken effect since the last update of the City's regulations in 2017. Many of the recent state and federal laws significantly restrict local control over the permitting and placement of wireless telecommunication facilities. The revisions to the City's local regulations are proposed with the goal of protecting residents from the adverse impacts of these facilities, including but not limited to noise, traffic, aesthetics and to preserve the visual character of the City.

**Planning Commission
Continued Consideration of Amendments to Title 16 of the Arroyo Grande
Municipal Code Regarding Wireless Telecommunication Facilities and Finding
That This Action is Exempt From Review Under the California Environmental
Quality Act
October 15, 2024
Page 2**

On September 17, 2024, staff presented a draft ordinance to the Planning Commission for consideration. Though generally supportive of the draft ordinance, Planning Commission continued the consideration of the draft ordinance to a future meeting, while directing staff to consider the following revisions to the ordinance:

- 1) Investigate the potential for including a public hearing within the permitting process;
- 2) Investigate the feasibility of requiring a certain distance between wireless telecommunication facilities and schools and residential structures; and
- 3) Clarify ambiguous language throughout the ordinance.

Each of these three discussion items are described in further detail in the following paragraphs.

ANALYSIS OF ISSUES:

Staff discussed potential revisions to the ordinance in response to comments provided by the Planning Commission and members of the community that provided public comment.

Public Hearings

The draft ordinance establishes permitting processes for wireless telecommunication facilities both in the public right-of-way and on private and public property. The permit process for the various types of applications is largely dependent on the applicable Federal Communications Commission (FCC) shot clocks, which range from 60 to 150 days. The ordinance proposes permitting small wireless facilities, applications to collocate a wireless facility on an existing structure, and eligible facility requests with a minor use permit. The Municipal Code establishes that minor use permits are administratively approved by the Community Development Director, without a public hearing.

The rationale for allowing an administrative approval process for small wireless facilities, collocation requests, and eligible facility requests, which are subject to the shortest FCC shot clocks ranging from 60-90 days, is to avoid a situation where an application is deemed approved by operation of law because the City is unable to reach a final decision within the applicable shot clock. If the City fails to act on an application within the prescribed shot clock, the City loses its opportunity to impose any project-specific conditions of approval, including project-specific concealment, screening and other design requirements. While staff already operates under a policy that prioritizes processing of wireless applications to avoid conflicts with the shot clock, adding public hearing requirements, appeals, or multiple levels of review greatly increases the time period required to review and reach a final decision on a wireless permit and adds scheduling issues to the process that are often out of staff's control. For example, quorum issues, conflicting or uncomplimentary meeting schedules by different decision-making bodies and advisory bodies, and reduced holiday schedules may limit the City's

Planning Commission
Continued Consideration of Amendments to Title 16 of the Arroyo Grande
Municipal Code Regarding Wireless Telecommunication Facilities and Finding
That This Action is Exempt From Review Under the California Environmental
Quality Act
October 15, 2024
Page 3

availability to reach a final decision within the shortest shot clocks ranging from 60 to 90 days. For these reasons, staff recommends maintaining the administrative approval process for applications requiring a minor use permit. To keep the public informed, all applications to construct, install, or modify a wireless telecommunication facility will generate a notice of pending application that is mailed to all property owners within 500 feet of the proposed project site. Additionally, all approved minor use permits are reported on the next Planning Commission agenda after the approval.

Buffer Between Wireless Facilities and Residential Uses

Subsection 16.70.070 of the proposed ordinance would establish a ranking system that requires placement of new facilities in locations with the least intrusive land use designation. Areas within the Industrial Mixed-Use, Traffic Way Mixed-Use, Regional Commercial, Public Facility, and Agricultural zones are identified as the most compatible to site a wireless telecommunication facility due to the lowest density of residential uses, and therefore a facility located in these areas is less likely to have aesthetic, noise, traffic, or other impacts on the community. To further reduce the likelihood of adverse impacts to residential uses the Planning Commission directed staff to research whether the ordinance can require a minimum distance between any proposed wireless telecommunication facility and a residential use.

Staff looked at the feasibility of both a 500-foot and a 250-foot buffer from residential parcels. Requiring a wireless telecommunication facility to locate at least 500-feet from residential parcels eliminates most of the city as viable sites. With a 500-foot buffer, the only areas where a wireless telecommunication facility could be installed is in the 5 Cities Center on West Branch Street (near In-N-Out) and in the center of the agricultural areas on Fair Oaks Avenue and Branch Mill Road. A 250-foot buffer similarly limits the availability of potential sites but affords more area within the aforementioned areas available as well as areas within the Soto Sports Complex, the Oak Park Plaza, Camp Arroyo Grande, and areas on the Paulding Middle School campus.

Due to the abundance of sites that would no longer be eligible for the installation of a new wireless telecommunication facility, including at city water tank sites where the majority of the existing facilities are located, staff does not recommend requiring a minimum distance between a new facility and residential uses. The primary concern with including this requirement would be the City's potential exposure to an effective prohibition claim by a wireless carrier or a claim that the City is attempting to regulate on the basis of RF emissions. Federal law does not allow a city to outright prohibit or effectively prohibit the provision of wireless telecommunication facilities through regulations, or institute a moratorium for these facilities at any time. Further, the City is unable regulate on the basis of RF emissions except to ensure compliance with the FCC standards for RF emissions.

**Planning Commission
Continued Consideration of Amendments to Title 16 of the Arroyo Grande
Municipal Code Regarding Wireless Telecommunication Facilities and Finding
That This Action is Exempt From Review Under the California Environmental
Quality Act
October 15, 2024
Page 4**

Clarifications of Ambiguous Language

During the previous consideration of the ordinance, the Planning Commission directed staff to evaluate whether the use of ambiguous terms such as “reasonable” and “substantial” should be replaced with more definitive terms. The most prevalent use of these terms is in the Section 16.70.090 related to standard conditions of approval. After evaluation of this section, staff determined that the subjectivity that these terms afford the City is beneficial in the application and enforcement of the conditions. For example, in Section 16.70.090.C regarding emergency inspections, the “reasonable notice” that the City must give a carrier is flexible because staff can justify what is reasonable based on the type of emergency and the degree to which health and safety are threatened. Replacing “reasonable” with a specific notice period (24 hrs, 48 hrs, etc.) could prohibit the City from accessing the site in the event of a dire emergency. Another example that was identified during the previous hearing was in Section 16.70.090.J. The use of “substantial” and “diligently” are both used in these provisions regarding the build-out period. This section has been revised by the inclusion of a checklist of items that an applicant will need to provide as evidence that build-out of the facility is being pursued and substantial progress has been made.

Next Steps

A recommendation from the Planning Commission will allow for an introduction of the draft ordinance to Council at a meeting in November. Adoption of the ordinance would occur at a subsequent meeting, then become effective 30 days after adoption by the City Council.

ALTERNATIVES:

The following alternatives are provided for the Planning Commission’s consideration:

1. Adopt the Resolution recommending City Council adopt the ordinance amending regulations for wireless telecommunication facilities;
2. Amend and adopt the Resolution recommending City Council adopt the ordinance;
3. Do not adopt the Resolution; or
4. Provide other direction to staff.

ADVANTAGES:

Adopting an ordinance to establish a new chapter 16.70 pertaining to wireless telecommunications facilities streamlines the procedure to process wireless telecommunications facility applications to avoid deemed approvals by operation of law, and enhances organizational clarity, administrative efficiency, and legal coherence by updating the City’s requirements to comport with recent changes to state and federal law and allows the City to impose updated design development and location standards.

**Planning Commission
Continued Consideration of Amendments to Title 16 of the Arroyo Grande
Municipal Code Regarding Wireless Telecommunication Facilities and Finding
That This Action is Exempt From Review Under the California Environmental
Quality Act
October 15, 2024
Page 5**

DISADVANTAGES:

Updating the City's wireless regulations represents a significant endeavor. This process entails substantial resource expenditure, encompassing staff time, public consultations, and legal advisory services.

ENVIRONMENTAL REVIEW:

The Ordinance is not a "project" subject to the California Environmental Quality Act ("CEQA"), because it has no potential to result in a direct or indirect physical change in the environment. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines Section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt from CEQA because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). This is because approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless facility, and the City would conduct preliminary review under CEQA at that time. Alternatively, the Ordinance is categorically exempt from CEQA under State CEQA Guidelines sections 15301 (existing facilities), 15302 (replacement or reconstruction), 15303 (new construction or conversion of small structures), and/or 15304 (minor alterations to land). Notably, the wireless facilities regulated by the Ordinance typically have small footprints, and there are no unusual circumstances that apply to the Ordinance or the wireless facilities that it regulates. Moreover, the eligible facilities requests ("EFRs") regulated by the Ordinance are not subject to CEQA because the City does not have discretion to deny EFRs under federal law. For all of the foregoing reasons, the Ordinance is not subject to CEQA.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

ATTACHMENTS:

1. Resolution