

2019 Municipal Code Amendments Pertaining to Small Cell Wireless Facilities



Town of Moraga Town Council
April 10, 2019

Background

- On September 26, 2018, FCC adopts “Carr Order” with aim to facilitate expansion of 5G wireless telecommunications infrastructure nationwide thru deployment of “small cell” facilities in public rights-of-way in U.S. cities & towns
- Carr Order went into effect on January 14, 2019 but gave local jurisdictions until April 15 to establish standards and procedures to regulate small cell facility installations
- Planning Commission had to review proposed Muni Code amendments prior to Council since they affect Title 8
- Town Council to consider adoption of ordinances to establish standards & procedures on April 10 prior to April 15 deadline



What the Carr Order Does

Pre-empts local control over permitting of small cell facilities by:

- **Requiring relaxed standards:** Any new aesthetic requirements must be: (a) reasonable; (b) no more burdensome than those applied to similar types of utility installations; (c) objective; and (d) published in advance
- **Requiring cities/towns to allow installations within public ROWs:** Town must make available its facilities within ROW such as street lights, traffic signals, to carriers through fair lease agreements
- **Establishing new “shot clock” deadlines:** Town will only have 60 days to process applications for installations on existing facilities and 90 days for installations on new facilities
- **Precluding prohibitions of certain types of technology:** As long as proposed technology is FCC-compliant, Town cannot ban it outright



Summary of Proposed Muni Code Amendments

- Will establish new, separate definition for “Small Cell Wireless Facilities” to differentiate those facilities covered under Carr Order from other, more traditional facilities that are still subject to more rigorous review
- Will create new permit type, application procedures & development standards for small cell wireless facilities in order to protect Town’s aesthetic character while maintaining consistency with provisions of Carr Order. Procedures would:
 1. Provide list of standard COAs applicable to all such facilities
 2. Grant approval authority ministerially to Planning Director
 3. Have all appeals go directly to Town Council to help ensure shot clock limitations are not violated



Summary of Aesthetic Standards

- Antennas & other pole-mounted equipment on street lights, traffic signals, etc., must be concealed/shrouded with screening material resembling the supporting structure
- All cables must be completely concealed within sleeves/conduits
- All other associated equipment must be located in underground vaults wherever/whenever feasible
- All venting/exhausts for underground equipment must be flush to grade and/or concealed w/ landscaping
- All above-ground equipment must be screened w/ new landscaping
- Any paving and/or landscaping disturbed by installation of a facility must be repaired/replaced & any newly-exposed soils planted to Planning Director's satisfaction



General Plan Consistency

Community Design Policy CD1.7 – Wireless Communications Facilities, states:

“Regulate the location and design of wireless communications facilities, satellite dishes and other miscellaneous antennas in accordance with the Town’s Ordinance No. 176 (now Muni Code Chapter 8.144) and the Federal Communications Act.”



Summary of Planning Commission Recommendation

Commission voted 7-0 to recommend adoption of both ordinances & asked that Council consider the following:

1. Joining other Bay Area municipalities that are challenging legality of Carr Order
2. Requiring service providers to submit plans containing anticipated town-wide rollouts of their facilities as part of their initial Small Cell Permit applications
3. Establishing individual lifespans for each new facility (*Note: State law already prohibits imposing lifespans of less than 10 years*)
4. Imposing requirement that, if service provider has existing facilities that are non-compliant w/ aesthetic standards, new permit cannot be issued
5. Directing staff to provide quarterly reports to PC and/or TC regarding trends, success stories, shortcomings, etc., related to the ordinance



Staff Recommendation

- Review proposed Muni Code amendments and PC suggestions and either adopt two proposed ordinances, or identify additional desired amendments while remaining consistent with limitations of Carr Order
- Once consent on any additional amendments is reached, then adopt two ordinances:
 1. An urgency ordinance that would go into effect immediately upon adoption; and
 2. A standard ordinance that would go into effect 30 days after 2nd reading and adoption but remain in effect even if a court found that urgency ordinance standards were not met by Town for any reason

