



File: 18-05

DATE: April 5, 2018

TO: PLANNING COMMISSION

FROM: Brendan Ottoboni, Public Works Director-Engineering

RE: Proposed Amendment to Title 19, Chapter 19.78 of the Chico Municipal Code
– Wireless Telecommunications Facilities

REPORT IN BRIEF

At its meeting on November 7, 2017, the Chico City Council was presented with a proposal and Master Encroachment Agreement with Mobilitie, LLC. After deliberation and public input, Council directed the City Attorney to work with staff on verifying that this is in accordance with CMC Section 19.78 – Wireless Telecommunications Facilities. Through coordination with the City Attorney's office, it was determined that an appropriate path would be to include language and exemptions in the municipal code for small cell wireless telecommunications facilities and establish a method for agreements between the City and applicants.

Over the past year, a number of wireless providers have expressed a desire to deploy new wireless communications facilities located in the public rights-of-way on City-owned structures, such as utility poles, light poles and traffic signal poles. The requests are due to an increasing consumer demand for wireless capacity and faster speeds, which are anticipated to drastically increase in the near future.

The proposed amendments to the CMC would establish a method for agreements between the City and applicants.

Recommendation:

The Community Development Director recommends that the Planning Commission:

- 1) Hold a public hearing regarding the proposed amendments to Title 19, Chapter 19.78 of the Chico Municipal Code; and
- 2) Adopt Resolution 18-05 recommending City Council adoption of an ordinance to amend Title 19, Chapter 19.78 of the Chico Municipal Code as set forth therein (see **Attachment A**).

Proposed Motion:

I move that the Planning Commission adopt Resolution No. 18-05 recommending City Council adoption of amendments to Title 19, Chapter 19.78 of the Chico Municipal Code as set forth therein.

BACKGROUND

A number of wireless providers have approached the City desiring to deploy new “small cell” facilities (i.e., smaller scale cellular transmission facilities that are typically located on existing public infrastructure that differs from the more common larger, stand alone “macro cell” towers) within the City rights-of-way, which would provide enhanced services throughout the community. A small cell antenna and equipment are typically placed on existing infrastructure located within the public rights-of-way, such as street light and traffic signal poles. The providers are experiencing increased customer demand, particularly with respect to data capacity and speed. Examples abound of the rapidly expanding use of wireless capacity throughout the country, including provision of real time bus information via the internet, improvements to traffic management systems, improved emergency personnel response to 911 calls, expansion of the smartphone market, and the growing use of wireless sensors and monitoring utility distribution, parking meter technology, home security systems, shipping logistics and the potential deployment of autonomous vehicles. Collectively, this cumulative impact of use is commonly referred to as the “Internet of Things”.

Because of the increasing data consumption, wireless providers are seeking rapid investment in the necessary infrastructure to meet not only current data demands, but to prepare for consumer deployment of fifth generation wireless systems (5G) technology sometime in the coming years. Unlike in the past, when wireless communications facilities sites tended to be leased on private property, wireless providers are now more interested in locating new facilities within the public rights-of-way. Wireless providers have noted that new locations for wireless installations on private property are limited and more difficult to negotiate and permit. Given the increasing cost and frequent public concern and resulting delay associated with leases on private property, the wireless providers sought out alternatives to allow continued expansion, leading them to advocate for less expensive and more streamlined deployment on utility poles and other City-owned structures in the City’s rights-of-way.

The California Public Utilities Commission (“CPUC”) historically determined that wireless providers are a utility and, therefore, have all rights of use of public rights-of-way as any other utility. The public rights-of-way have existing infrastructure, such as utility poles, street lights and traffic signal poles, which can support wireless infrastructure.

Various types of antennas are required to deliver wireless coverage and capacity. A macro cell is used for larger coverage, with a radius of several miles. Macro cell facilities are typically located on freestanding towers, faux tree poles, tall buildings, water tanks, etc. These are the types of cell sites that have been traditional until very recently.

Now, wireless providers are proposing to place a single small cell antenna and equipment on existing infrastructure located within the public rights-of-way. Typically, a small cell antenna is attached to a street light or traffic signal pole and powered by the electrical system serving the street light or traffic signal. Small cells are placed in locations that are heavily populated and need additional network capacity, such as downtowns and around heavily used traffic corridors. The small antennas are usually deployed in areas that

cannot be effectively served by a traditional macro cell, or areas that may have coverage but not enough capacity. A small cell is not intended to replace macro cell sites, but to fill in areas that do not have sufficient capacity. A small cell antenna size is approximately six cubic feet. The associated equipment is 21 cubic feet roughly. Not included in the aforementioned size limitations is the electrical meters and pedestals, concealment elements, demarcation boxes, grounding equipment, transfer switches, cut-off switches, vertical cable runs, fiber or coax not exclusively used to provide service to the small cell.

Recent efforts by State legislature resulted in approving Senate Bill 649 for small cell telecommunication facilities, which would significantly reduce the municipalities ability to have control of these facilities. Fortunately, the Governor vetoed this bill and therefore, ordinance changes to reflect the cities desires on these facilities remains at the local level. Although vetoed, efforts by the wireless providers continue to be pushed at the State level. The demand to prepare for fifth generation wireless systems still remains and therefore, is still being pursued by these wireless providers.

ENVIROMENTAL REVIEW

The proposed Title 19 amendments would not result in an increase in development beyond that which was analyzed in the Final Environmental Impact Report (EIR) prepared and certified for the Chico 2030 General Plan update (State Clearinghouse #2008122038). The proposed Title 19 amendments represent a refinement of the General Plan adoption process, and in accordance with California Environmental Quality Act (CEQA) Guidelines Section 15162, are within the scope of the EIR.

FINDINGS: TITLE 19 AMENDMENTS

Federal law preempts cities from enacting ordinances that prohibit or have the effect of prohibition of such services, wireless included. However, municipalities retain local authority over individual zoning decisions regarding the placement, construction, and modification of wireless facilities, subject to certain limitations. Such limitations generally involve procedures that must be in place when denying requests for wireless facilities, prohibition of any discrimination between providers, and any form of prohibiting or "banning" service, none of which apply to the agreement (MEA) that is the subject of the proposed Title 19 amendments.

The agreement provides general framework for wireless providers to apply for necessary permits and install, move and/or remove telecommunications network facilities on City property located within the public rights-of-way within City limits. Chico Municipal Code Section 19.78 sets forth standards for the development of wireless telecommunications facilities within the City.

In comparing the agreement with Section 19.78, the latter imposes certain additional restrictions not mentioned in the agreement. In zoning districts where wireless telecommunications facilities are not permitted, the Code allows for such a facility to "nevertheless be permitted by use permit if the planning commission makes the findings required by section 19.78.100." The relevant findings require that based on technical

necessity, the applicant either has demonstrated that the facility must be located in one of the non-permitted districts and if the facility is proposed to be located in a residentially-zoned district, the applicant will also need to demonstrate that the service cannot be provided by locating the facility in a non-residential zone. The agreement only mentions generally that the wireless providers shall comply with all City procedures and requirements. Upon execution of the MEA, individual encroachment permits for each location will be obtained through the Public Works Department.

Pursuant to Chico Municipal Code Section 19.06.050(B), amendments to the Municipal Code may be approved only if the following findings are made:

A. The proposed amendment is consistent with the General Plan.

The proposed code amendment is consistent with the General Plan, specifically Policy ED-1.6 (Enhanced Wireless Telecommunication) which encourages enhanced wireless telecommunication services throughout the urban area and ED-1.3 (Regulatory Environment), which directs that regulations and permitting processes for the conduct of commerce and land development do not unreasonably inhibit local business activity.

B. The proposed amendment is consistent with other applicable provisions of the Municipal Code and compatible with the uses authorized in the applicable zoning districts for which it is proposed.

The proposed amendment is consistent with other provisions of the Municipal Code in that it (1) reinforces the general exemption from Title 19 requirements for utilities outlined under CMC 19.01.050.A.2.j, and (2) is narrow in scope and only applies to small cell installations on City-owned property or within the public right-of-way pursuant to a master encroachment agreement approved by City Council.

PUBLIC CONTACT

A display ad for the April 5, 2018 Planning Commission meeting to consider the proposed Title 19 amendments was published in the March 26, 2018 *Chico Enterprise Record*.

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ATTACHMENTS

A. Resolution recommending Council adoption of Ordinance to amend Chapter 19.78

1 Policy ED-1.6 (Enhanced Wireless Telecommunication) which encourages enhanced
2 wireless telecommunication services throughout the urban area and ED-1.3 (Regulatory
3 Environment), which directs that regulations and permitting processes for the conduct
4 of commerce and land development do not unreasonably inhibit local business activity;
5 and

6 B. The proposed amendment is consistent with other provisions of the Municipal Code
7 in that it (1) reinforces the general exemption from Title 19 requirements for utilities
8 outlined under CMC 19.01.050.A.2.j, and (2) is narrow in scope and only applies to
9 small cell installations on City-owned property or within the public right-of-way
10 pursuant to a master encroachment agreement approved by City Council.

11 2. The Planning Commends that the City Council approve the Code Amendment as set forth
12 in Exhibit I.

13 THE FOREGOING RESOLUTION WAS ADOPTED by the Planning Commission at its
14 meeting held on _____, by the following vote:

15
16 AYES:

17 NOES:

18 ABSENT:

19 ABSTAIN:

20 DISQUALIFIED:

21 ATTEST:

APPROVED AS TO FORM:



22
23 _____
24 Bruce Ambo,
25 Planning Commission Secretary

26 _____
27 Vincent C. Ewing, City Attorney*

28
*Pursuant to The Charter of
The City of Chico, Section 906(E)

1 A. through H. [No change]

2 I. Small Cell telecommunications facilities to be located on city-owned property, or in the
3 public rights-of-way pursuant to a master encroachment agreement (MEA) are exempt from
4 the provisions of this chapter.

5 1. In lieu of requiring payment of fair market rental, the city may accept in-kind services
6 as compensation, provided that such services are of equal value to the fair market rental.

7 2. The number of small cell telecommunications facilities shall be included in the MEA
8 per carrier.

9 3. The MEA shall include details as to the aesthetic nature of the installed wireless
10 telecommunications facilities on a proposed detail sheet as well as findings presented to the
11 city council that the proposed devices will function below minimum thresholds for human
12 interaction. Minor changes to the Council approved detail sheet may be made, as approved by
13 the director.

14 4. Upon city council approval of such MEA, applicant shall obtain individual
15 encroachment permits for each location through the public works – engineering department,
16 and approved by the director or his or her designee.

17 This Ordinance shall be effective thirty (30) days following its adoption.

18 THE FOREGOING ORDINANCE was adopted by the City Council of the City of Chico
19 at its meeting held on _____, by the following vote:

20 AYES:

21 NOES:

22 ABSENT:

23 ABSTAIN:

24 DISQUALIFIED:

25 ATTEST:

APPROVED AS TO FORM:

26
27 _____
Deborah R. Presson, City Clerk

26
27 _____
Vincent C. Ewing, City Attorney*

28 *Pursuant to The Charter of
The City of Chico, Section 906(E)