

**CITY OF TEMECULA
AGENDA REPORT**

TO: City Manager/City Council

FROM: Luke Watson, Director of Community Development

DATE: May 14, 2019

SUBJECT: Approve Issuance of Report in Compliance with Government Code Section 65858(d), Adopt Interim Urgency Ordinance Extending Term of Ordinance No. 19-03 Pertaining to Small Wireless Facilities Within the Public Right-Of-Way, and Adopt Resolution Establishing a Design Policy for Small Wireless Facilities

PREPARED BY: Dale West, Associate Planner II

RECOMMENDATION: That the City Council:

1. Issue this report in compliance with Government Code Section 65858(d);
2. Adopt by a 4/5th vote an ordinance entitled:

ORDINANCE NO. 19-

AN INTERIM URGENCY ORDINANCE EXTENDING THE TERM OF ORDINANCE NO. 19-03, AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING CHAPTER 17.40 OF THE CITY OF TEMECULA DEVELOPMENT CODE (TELECOMMUNICATIONS FACILITY AND ANTENNA ORDINANCE) TO ADD A NEW SECTION 17.40.260, SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY, ENACTED PURSUANT TO GOVERNMENT CODE SECTION 36934, 36937, AND 65858 DECLARING THE URGENCY THEREOF, AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

3. Adopt a resolution entitled:

RESOLUTION NO. 19-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA ADOPTING A POLICY IMPLEMENTING

DESIGN REQUIREMENTS FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

SUMMARY OF

ORDINANCE: The proposed Ordinance adds Section 17.40.260 to the Temecula Municipal Code to recognize small wireless facilities and regulate those facilities through the adoption of a City Council Policy overseeing the permitting of these facilities. Section 17.40.260 defines small wireless facilities and specifies that small wireless facilities shall comply with the Policy on Small Wireless Facilities in the public right-of-way.

BACKGROUND ON A TIME EXTENSION TO THE URGENCY ORDINANCE:

On April 9, 2019 the City Council adopted an interim urgency Ordinance and Design Policy to address Small Wireless Facilities within the public right-of-way. Government Code section 65858(a) provides in part that an “interim ordinance shall be of no further force and effect 45 days from its date of adoption.” The City may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one additional year. The interim urgency ordinance will expire on May 24th unless extended by the City Council.

GOVERNMENT CODE SECTION 65858(D) REPORT:

Government Code section 65858 (d) requires that at least ten days prior to the expiration of an interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance. This report is issued in compliance with this statutory requirement.

The City is in the process of engaging a consultant to prepare a permanent ordinance regulating small wireless facilities, and staff has been researching appropriate aesthetic standards for small wireless facilities. Staff is confident that Chapter 17.40, Telecommunication Facility and Antenna Ordinance can be updated within the one-year timeframe afforded by the extension of the Urgency Ordinance.

In addition, Staff has reviewed the Policy for Small Wireless Facilities in the Public Right-of-Way, and is recommending a revisions to the Policy to allow Master License Agreements to supersede the requirements of the design policy. Master License Agreements allow for a more in-depth review and negotiation, which allows the City to establish more specific standards. The policy would serve as a framework, but allow more flexibility in the details by including in a Master License Agreement.

GENERAL BACKGROUND:

On September 27, 2018, the Federal Communications Commission (“FCC”) issued a Declaratory Ruling and Third Report (“FCC Ruling”), which became effective January 14, 2019. The purpose of the FCC Ruling was to simplify the proliferation of next generation small wireless site facilities required for the expansion of 5G networks by removing state and local government barriers. The issue for jurisdictions is that the small wireless technology that will support next generation wireless networks require many more small wireless sites in closer proximity to create a network.

This is a departure from macro wireless sites that can cover a much larger area.

The three key methods the FCC Ruling uses to accomplish its goal of increasing the deployment of next generation wireless networks are:

- Allow only objective reasonable fees that local agencies are able to charge wireless carriers for placement of small wireless facilities in the public right-of-way;
- Place a time limit on jurisdictions to consider and approve small wireless facilities applications; and
- Limit non-fee regulations that impede new small wireless facility sites, including regulating aesthetics.

The FCC Ruling reiterated Congress' intent to preempt state and local regulations that prohibit or have the effect of prohibiting telecommunications services, while acknowledging that Congress preserved state and local authority over the placement, construction, and modification of certain wireless facilities. Local jurisdiction regulations cannot discriminate among providers and, again, cannot prohibit or have the effect of prohibiting the provision of service. It is the City's intention to work closely with the carriers to develop solutions beneficial to all, while maintaining our local control of City right of way.

Amendment to Chapter 17.40 Telecommunications Facility and Antenna Ordinance

Because small wireless technology is relatively new, the City's existing wireless ordinance (Chapter 17.40) does not explicitly address small wireless facilities. Consequently, staff is recommending a new section to be added to Chapter 17.40 of the Temecula Municipal Code ("TMC") to recognize small wireless facilities and regulate those facilities by adopting a City Council Policy overseeing the permitting of these facilities. The new Section (17.40.260) defines small wireless facilities and specifies that small wireless facilities shall comply with the Policy on Small Wireless Facilities in the public right-of-way.

On April 9, 2019, the City Council adopted Ordinance No. 19-03, an interim urgency ordinance of the City of Temecula that regulated small wireless facilities in the public right of way and temporarily prohibited all small wireless facilities commercial and that established a moratorium on the issuance of permits for small wireless facilities unless they complied with the requirements set forth in the urgency ordinance. Interim Ordinance No. 19-03 was effective immediately upon its adoption and remains in effect for a period of forty-five (45) days, pursuant to Government Code section 65858(a). If the City Council does not extend the interim urgency ordinance, the City will not have any aesthetic standards or fees in place that would apply to small wireless facilities located in the public right of way. Therefore, unless the interim urgency ordinance is extended and its regulations are immediately put in place, the public health, safety and welfare will be at risk.

City Council Policy on Small Wireless Facilities

Current language in the TMC, Section 5.12.160, gives the City broad authority to impose reasonable regulations on telecommunication facilities in addition to what is codified in the TMC, as long those conditions are consistent with federal and state law. In the same vein, existing permit requirements under Section 5.12.160 allow for reasonable placement, operation, and aesthetic

restrictions on facilities within the right-of-way. With that in mind, staff developed a City Council Policy on Small Wireless Facilities in the Public Right-of-Way (“Policy”) for its consideration at the April 9, 2019 City Council meeting. The City Council adopted the Policy pursuant to Resolution 19-22. Staff has revised the Policy that was included as Attachment A to Resolution 19-22 to address Master License Agreements. The intent is to comply with the FCC Ruling and have reasonable and objective aesthetic regulations in place in compliance with the FCC Ruling.

At a later date, after staff has been able to fully research all the pertinent language in the TMC, staff will propose changes to the TMC that will support a streamlined application and permitting process.

FISCAL IMPACT: None

ATTACHMENTS:

1. Ordinance
2. Resolution
3. City Council Policy