

ORDINANCE NO. 2020-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING TITLES 17 AND 18 OF THE TEMECULA MUNICIPAL CODE RELATED TO SMALL CELL WIRELESS FACILITIES LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTION 15061 (B)(3).

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Procedural Findings. The City Council of the City of Temecula does hereby find, determine and declare that:

A. City staff identified the need to amend Titles 17 and 18 of the Temecula Municipal Code to relocate the existing Section 17.04.260 (“Small Wireless Facilities in the Public Right-of-Way”) to a new Chapter of Title 18 of the Temecula Municipal Code to be named Chapter 18.13 (“Small Wireless Facilities in the Public Right-of-Way”).

B. The Planning Commission considered the proposed amendments to Title 17 Zoning of the Temecula Municipal Code (“Ordinance”) on February 5, 2020, at a duly noticed public hearing as prescribed by law, at which time the City staff and interested persons had an opportunity to and did testify either in support of or opposition to this matter.

C. At the conclusion of the Planning Commission hearing and after due consideration of the testimony, the Planning Commission adopted Resolution No. 2020-01, recommending that the City Council approve the Title 17 and Title 18 amendments.

D. The City Council, at a regular meeting, considered the Ordinance on March 10, 2020, at a duly noticed public hearing, as prescribed by law, at which time the City Staff and interested persons had an opportunity to and did testify either in support or opposition to this matter.

E. Following the public hearing, the City Council considered the entire record of information received at the public hearings before the Planning Commission and City Council.

Section 2. Further Findings. The City Council, in approving the proposed Ordinance, hereby makes the following additional findings as required by Section 17.01.040 (“Relationship to General Plan”) of the Temecula Municipal Code:

1. The proposed use is allowed in the land use designation in which the use is located, as shown on the land use map, or is described in the text of the General Plan.

The proposed amendments to Title 17 and of the Temecula Municipal Code do not propose any land use that is inconsistent with the Temecula General Plan. The proposed amendments do not change any uses or the intensity of uses. The proposed amendments relocate an existing section of Title 17 Temecula Municipal Code to Title 18 of the Temecula Municipal Code. The proposed amendments are a re-organization of one section of the Temecula Municipal Code and do not propose any land use changes contrary to the adopted General Plan.

2. The proposed use is in conformance with the goals, policies, programs and guidelines of the elements of the General Plan.

The City of Temecula's General Plan Community Design Policy 2.1 states, "Establish and consistently apply design standards and guidelines for both residential and non-residential development." Community Design Policy 4.2 states, "Establish a comprehensive streetscape program for the major streets in the City, including unified landscaping, lighting, paving patterns, and other public improvements." The proposed amendments will continue to allow the City to establish unified streetscape standards, including aesthetics, within the constraints of federal law for small cell wireless facilities. The proposed amendments would relocate one section from Title 17 to Title 18 which would not change the City's ability to apply design standards.

3. The proposed use is to be established and maintained in a manner which is consistent with the General Plan and all applicable provisions contained therein.

The proposed amendments to the Temecula Municipal Code are a minor reorganization of the existing Temecula Municipal Code and will not impact the City's ability to comply with the adopted General Plan.

Section 3. Environmental Findings. The City Council hereby finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed ordinance would have a significant impact on the environment pursuant to State CEQA Guidelines Section 15061(b)(3). The proposed Municipal Code amendments are a simple reorganization, which do not result in a significant increase in the intensity or density of any land use above what is currently allowed. A Notice of Exemption has been prepared and will be filed in accordance with CEQA and the State CEQA Guidelines.

Section 4. Section 17.40.260 (Small wireless facilities in the public right-of-way) of Chapter 17.40 (Telecommunications Facility and Antenna Ordinance) of Title 17 (Zoning) of the Temecula Municipal Code is hereby deleted in its entirety.

Section 5. Title 18 (Construction, Grading, and Encroachments) is amended to add a new Chapter 18.13 (Small wireless facilities in the public right-of-way) which reads as follows:

"Chapter 18.13 Small Wireless Facilities in the Public Right-of-Way.

Section 18.13.010 Permit Application.

Section 18.13.020 Fees.
Section 18.13.030 Severability.

Section 18.13.010 Permit Application.

Notwithstanding any other provision of this chapter as provided herein, all small wireless facilities as defined by the Federal Communications Commission (“FCC”) in 47 C.F.R. § 1.6002(1), as may be amended or superseded, must submit an application and obtain a permit as specified in the City Council Policy on Small Wireless Facilities in the Public Right-of-Way, which shall be adopted and may be amended by City Council Resolution. All small wireless facilities shall comply with the City Council Policy on Small Wireless Facilities in the Public Right-of-Way. A standard City encroachment permit may also be required as a condition of small wireless facility permit approval.

Section 18.13.020 Fees.

Small wireless facilities shall pay the following fees, as applicable:

- A. \$500 for non-recurring fees, including a single up-front application fee that includes up to five small wireless facilities, with an additional \$100 for each small wireless facility beyond five, or \$1,000 for non-recurring fees for a new pole (i.e., not a collocation) intended to support one or more small wireless facilities; and
- B. \$270 per small wireless facility per year for all recurring fees, including any possible right-of-way access fee or fee for attachment to municipally-owned structures in the right-of-way.
- C. The establishment of the above-referenced fees does not in any way affect the right of the City to (1) adopt a resolution amending any of the fees adopted in this Section if the City finds that the fees are insufficient to compensate the City for its reasonable costs related to the permitting and administration of small wireless facilities; or (2) enter into an agreement with any wireless provider with respect to the deployment of small wireless facilities, which provides for the payment of fees that exceed the amounts established in this Section; or (3) adopt an entirely different fee structure, including a market-based fee structure, in the event that any FCC Order is invalidated or modified in any way with respect to fees related to small wireless facilities.

Section 18.13.030 Severability.

In the event that any FCC Order regarding small wireless facilities is invalidated by a court of competent jurisdiction or repealed and not replaced, the provisions set forth in Chapter 17.40 shall control over the Policy on Small Wireless Facilities in the Public Right-of-Way.”

Section 6. Severability. If any section or provision of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this Ordinance shall remain valid. The City Council hereby declares that it would have adopted this Ordinance, and each section or provision thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.

Section 7. Certification. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

Section 8. Effective Date. This Ordinance shall take effect thirty (30) days after passage.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula this 28th day of April, 2020.

James Stewart, Mayor

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 2020-03 was duly introduced and placed upon its first reading at a meeting of the City Council of the City of Temecula on the 10th day of March, 2020, and that thereafter, said Ordinance was duly adopted by the City Council of the City of Temecula at a meeting thereof held on the 28th day of April, 2020, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Randi Johl, City Clerk