



CITY OF SALINAS COUNCIL STAFF REPORT

DATE: APRIL 2, 2019

DEPARTMENT: OFFICE OF THE CITY MANAGER

FROM: ANDREW MYRICK, ECONOMIC DEVELOPMENT MANAGER

TITLE: SMALL WIRELESS FACILITY REGULATIONS AND FEES

RECOMMENDED MOTION:

Approve the attached Resolutions establishing a regulatory structure for Small Wireless Facilities within the public right-of-way and adopting the associated fees.

RECOMMENDATION:

Staff recommends that the City Council approve the attached Resolutions establishing regulations for the installation of Small Wireless Facilities within the right-of-way and establishing fees to cover the City's costs of implementing these regulations.

EXECUTIVE SUMMARY:

In response to an Administrative Order issued by the Federal Communications Commission, it is necessary to adopt specific regulation relating to the installation of Small Wireless Facilities within the public right-of-way. These regulations would establish standards for these facilities and would also establish a permitting process and fees for the regulation and monitoring of these facilities.

BACKGROUND:

Devices making use of wireless telecommunications networks have proliferated in recent years and are now a part of everyday life. Most urban areas, including the entirety of the City of Salinas, are now served by one or more of these networks. To support these networks, the companies that provide them maintain antennas, dishes, and other equipment (referred to generically as "wireless telecommunications facilities" throughout this report) to broadcast and transmit signals. Most recently, these companies have begun to deploy Small Wireless Facilities (also known as "small cells" or "SWFs"), which generally include small antennas mounted on existing structures, rather than the larger antennas that are mounted onto dedicated towers.

SWFs are currently being deployed to enhance existing 4G networks, and are expected to be essential to the deployment of 5G networks in the near future. The number of antennas necessary to accomplish the development of this network, however, would result in dozens, if not hundreds, of new antennas in Salinas alone. Because of this scale, wireless telecommunications companies favor the use of street lights and other City-owned infrastructure for the deployment of SWFs –

this allows for negotiation with a single property owner, as well as uniformity of design for the facilities. To facilitate the deployment of these networks, the City Council on April 18, 2018 adopted a Resolution providing guidance for the creation of Master Lease (or License) Agreements to allow for these companies to utilize existing City infrastructure. In return, the City would receive lease payments (in an amount to be negotiated) as compensation for the use of its property.

On October 15, 2018, the Federal Communications Commission (FCC) issued an Administrative Order regarding how local jurisdictions may respond when presented with proposals to install SWFs on City-owned infrastructure within the right-of-way. The Order is lengthy, but the portions relevant to the City may be summarized as follows:

- 1) Reiterates existing law which states that Cities may not take any action which would “prohibit or have the effect of prohibiting” the development of wireless networks. The impacts of any regulations on the fiscal health or profitability of a wireless network company must be taken into account when determining whether an action “effectively prohibits” the development of the wireless network.
- 2) The City must treat all wireless service providers equally, and may not charge different fees or impose different requirements upon different providers.
- 3) The City may not collect or charge any fees except to cover its own, actual costs. As a result, the City is prohibited from charging any lease or license payments for the use of its property. The City may not recover its own costs unless those costs themselves are “reasonable.” The FCC has published what it deems to be appropriate “safe harbor” fee levels, but acknowledges that higher fees may be necessary based upon local conditions.
- 4) Aesthetic and other regulatory requirements (including undergrounding requirements) must be “reasonable,” applicable to all projects within the right-of-way, and published in advance. Requiring all facilities to be located underground amounts to an “effective prohibition” of wireless service.
- 5) Cities must allow wireless communications companies to use their infrastructure and must allow wireless telecommunications companies to construct new infrastructure in the right-of-way if doing so is necessary to provide wireless service. As a result of this, although a City may enter into a Master License Agreement with a wireless telecommunications company, it may not condition the use of City-owned property on entering into such an Agreement. The City may, however, require that applicants obtain non-discretionary permits such as Encroachment Permits if the standards are published in advance.
- 6) Cities must process all applications received within 60 days of application for equipment mounted on existing structures, or 90 days for the construction of new structures. This is known as the “shot clock,” and includes all required approvals (ie not just an initial approval).
- 7) The Order took effect on January 14, 2019, while the deadline for local jurisdictions to adopt aesthetic standards is April 14, 2019.

Despite this Order, the City is still currently engaged in negotiations for a Master Lease Agreement with several telecommunications companies for mutually acceptable terms. However, these regulations are still necessary to properly protect public health, safety, and welfare in the event that applications are received and the applicant refuses to enter into a Master Lease Agreement

under terms acceptable to the City of Salinas, as well as to establish a baseline level of standards to demonstrate that the City is not discriminating between market players.

ANALYSIS:

These regulations apply only to Small Wireless Facilities, as defined by the FCC, located within the right-of-way. It addresses several topics, as detailed below:

Creates a new type of Encroachment Permit process and Fee Structure

Encroachment Permits are generally required for any work done in the right-of-way. However, SWF applications under the FCC Order have several peculiar aspects which do not provide a good fit for the current Encroachment Permit process:

- 1) Encroachment Permit fees are generally based on proxy impacts such as the length and time of lane closures, number of parking stalls eliminated, etc. The FCC Order requires the City to charge only enough to cover its costs, and proposes a permit fee of roughly \$100 per application as a “safe harbor” amount. This fee amount is significantly less than the City’s costs to review a permit application. A new fee is therefore necessary, but the current structure is not designed in a way that demonstrates how fees reflect costs.
- 2) It is expected that the City will receive dozens, if not hundreds, of applications for SWFs, likely over a short period of time. The creation of a shot clock will require tracking of these individual applications in a manner that goes beyond current practices. Due to the volume, keeping track of this information will require a systemic solution to avoid unnecessary drains on staff time.

These regulations create a Small Wireless Facility Encroachment Permit (SWFEP), and establish regulations for the processing of these applications. This is designed to facilitate conformance with the FCC Order:

- 1) The SWFEP combines all aspects of the installation into one Permit application, and will include location, design, engineering, fiber/electrical connections, traffic control, and any other applicable reviews.
- 2) Flat fees based on expected “typical” costs are included, as follows:
 - a. It is expected that it should take a Junior Engineer two hours to review an application: this includes a review of structural and soils engineering calculations, examination of electrical and fiber connections, design review, proposed location, an examination of other nearby facilities that may already exist, radiofrequency emissions, and communications with the applicant. Time spent to manage the Junior Engineer, respond to queries, and review policies and procedures are also included, as are incidental overhead costs such as administration and supplies. The appeal fee is set to an amount expected to be necessary to review and render a decision on an appeal of a denial.
 - b. Inspection Fees are based on five hours of a Construction Inspector’s time. This is considered a reasonable estimate of the amount of time which will be necessary to inspect each of these sites for proper traffic control, proper attachment of

equipment, proper connections of fiber and electrical lines, concrete/trench work, and other items that may arise. The time of management staff, administration, and supplies are included as well.

- c. It is expected that the City will incur ongoing costs relating to the ongoing maintenance of these facilities. However, at this point the City has not developed a detailed scope of these activities, and therefore is not able to provide a reasonable estimate of its actual costs. Therefore, the City proposes to adopt the FCC's "safe harbor" amount of \$270.00 per year per SWF as its Monitoring Fee. The City will evaluate this amount at some point in the future and will propose adjustments if appropriate.
- 3) The regulations ensure the City will be in compliance with the FCC's Order by including the ability to modify these regulations in the event that strict application of them would result in the "effective prohibition" of wireless service.
- 4) The SWF Permit would include fiber in the immediate vicinity, but the installation of lengthier fiber lines would require a separate Encroachment Permit. These would be reviewed utilizing the fees and process currently used.

Creates Design Standards

The regulations establish design standards intended to minimize the aesthetic impacts of these facilities without "effectively prohibiting" the provision of wireless service. Accordingly, varying degrees of flexibility may be provided, provided that the applicant can demonstrate that the regulations would "effectively prohibit" the provision of wireless service. Flexibility in the design standards may also be granted through the terms of a Master Lease Agreement, provided that the alternative would result in an equal or superior level of design that that provided through strict application of the regulations.

Establishes General Standards for Operation

General operational and work requirements are also provided, including the requirement that insurance be maintained by the applicant.

Limited Applicability

The regulations only cover SWFs within the right-of-way. In the event the FCC's Order is overturned, rescinded, or modified in a manner that the City is once again able to require a Master Lease Agreement to allow the use of its facilities, then the City will once again require execution of a Master Lease Agreement as a condition of the use of its facilities, and will consider the revocation of any SWFEPs issued without a Master Lease Agreement.

CEQA CONSIDERATION:

The proposed regulations are exempt from the California Environmental Quality Act (CEQA) per Section 15302 and 15303 (Class 2 and Class 3) of the CEQA Guidelines, as the FCC has already deemed the installation of SWFs in the ROW to be approved, and as these regulations do not alter this, there is no potential for these regulations to cause a significant effect on the environment.

The City of Salinas has determined that the proposed fees are not a project as defined by CEQA (CEQA Guidelines Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

STRATEGIC PLAN INITIATIVE:

These actions relate to the City Council's goals of Well-Planned City and Excellent Infrastructure and Quality of Life.

DEPARTMENTAL COORDINATION:

These regulations have been developed with significant contributions by the Public Works Department. Assistance was also provided by the Community Development Department and the City Attorney's Office.

FISCAL AND SUSTAINABILITY IMPACT:

The proposed regulations are not expected to have a significant impact on City revenues. The proposed fees would have a positive revenue impact; however, since these revenues would be offset by increased expenditures related to the administration of SWFs, the fiscal impact is expected to be neutral.

ATTACHMENTS:

Proposed RESOLUTION Establishing Requirements for SWFs in the Right-of-Way
Proposed RESOLUTION Establishing Fees Related to SWFs in the Right-of-Way