



CITY OF COMMERCE AGENDA REPORT

TO: Honorable City Council **Item No.** _____

FROM: City Manager

SUBJECT: **PUBLIC HEARING –** An Ordinance Amending Chapter 19.27 (Antennas and Other Wireless Communication Facilities) of Title 19 of the City's Municipal Code by Repealing and Revising Section 19.27.030 (Antennas Requiring Conditional Use Permit), and Adding Section 19.27.100 (Wireless Telecommunication Facilities in The Public Right-Of-Way) and Section 19.27.110 (Design Guidelines for Small Wireless Facilities); (First Reading)

MEETING DATE: July 7, 2020

RECOMMENDATION

It is recommended that the City Council of the City of Commerce, upon holding a Public Hearing:

1. Waive the full reading and by reading the Title only, Introduce an Ordinance, attached hereto as Exhibit A, Amending Chapter 19.27 (Antennas and Other Wireless Communication Facilities) of Title 19 of the City's Municipal Code by Repealing and Revising Section 19.27.030 (Antennas Requiring Conditional Use Permit), and Adding Section 19.27.100 (Wireless Telecommunication Facilities in The Public Right-Of -Way), and Adding Section 19.27.110 (Design Guidelines for Small Wireless Facilities)
2. Schedule the Second Reading and Adoption of the Ordinance, for July 21, 2020.

BACKGROUND

"5G communications" is the fifth generation of wireless communication and is being deployed by wireless telecommunications carriers and is targeted towards providing connectivity with the "internet of things," such as self-driving cars, tablets, and other devices. 5G uses a newly opened electromagnetic spectrum wave known as the millimeter wave or mm wave. One of the limitations of this technology is that the wireless signal does not extend a great distance as compared to 4G or propagate through buildings and other objects as easily as lower frequency technology. Because of the short wavelengths, which new 5G wireless relies upon, multiple Small Wireless Facility ("SWF") sites are required to provide consistent coverage in an area.

In order to encourage the expedited deployment of 5G technology, on September 26, 2018, the Federal Communications Commission ("FCC") adopted the Declaratory Ruling and Third Report and Order FCC 18-133 ("FCC Third Order"). The FCC Third Order sets forth a number of provisions designed to promote the expedited processing of small cell permits including:

- Placing presumptive safe harbor limits on one-time application fees and annual lease/license or attachment fees. The FCC advises that any fees in excess of the safe harbor provision are presumed to violate the Telecom Act unless (1) the fees are a reasonable approximation of the costs; (2) the costs themselves are reasonable; and (3) the fees are no higher than those charged to similarly-situated competitors in similar situations.
- Imposing shot clocks of sixty (60) calendar days for placement on existing structures and ninety (90) days for placement on new structures.
- Requiring that aesthetic controls by local jurisdictions do not create an effective prohibition on the deployment of wireless facilities. Therefore, any design standards implemented by local jurisdictions must be (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; and (3) be objective and published in advance.

The California Public Utilities Code ("CPUC") also acknowledges and preserves the right of local jurisdictions to manage aesthetics in the public right of way. CPUC Section 7901 establishes that public utilities may "construct lines of telegraph or telephone lines along or upon a public road or highway...in such a manner and at such points as not to incommode the public use of the road or highway." CPUC Section 7901.1 goes on to preserve local municipalities right to "exercise reasonable control" over the time, place, and manner of roads and highways as long as the control are applied to "all entities in an equivalent manner."

ANALYSIS:

In compliance with the FCC Third Order, the proposed Ordinance, attached hereto as Exhibit A, will accomplish the following:

- The proposed repeal and revisions to Section 19.27.030 (Antennas Requiring Conditional Use Permit) of the Commerce Municipal Code will create an exemption for SWFs from the traditional Conditional Use Permit process used for "macro" wireless facilities and direct applicants to the new SWF process included in proposed Commerce Municipal Code Sections 19.27.100 (Wireless Telecommunication Facilities in The Public Right-Of -Way), and 19.27.110 (Design Guidelines for Small Wireless Facilities).
- The addition of Commerce Municipal Code Section 19.27.100 (Wireless Telecommunication Facilities in The Public Right-Of-Way) will create a new

permit specifically for SWFs in the public right-of-way as the FCC Third Order requires a different regulatory framework for handling SWFs, including shorter shot clocks and reduced fees from traditional “macro” facilities.

- Section 19.27.100 also allows the associated fees for the SWF Permit to be established by resolution of the City Council. The City has commissioned a cost study for the application fees conducted by Matrix Consulting Group to ensure the fees meet with FCC regulations in that they are an accurate estimate of costs that the costs are reasonable, and the fees are non-discriminatory to other similarly situated competitors. A draft of the proposed Fee Schedule has been attached hereto for reference as Exhibit C, and the cost study used for the Fee Justification has been attached hereto as Exhibit D. The Fee Schedule (“Fee Schedule”) will be presented to City Council in the near future for adoption in a subsequent resolution, a draft of which has been attached hereto as Exhibit B.
- The addition of Commerce Municipal Code Section 19.27.110 (Design Guidelines for Small Wireless Facilities) authorizes the City Council to adopt by resolution certain design standards and guidelines to regulate the deployment of SWFs in the public right-of-way. The publication of such design standards should result in better proposed designs and a reduction in the amount of time spent negotiating a design with the application. The proposed Section 19.27.110 also grants the Director of Public Works, in consultation with the City Engineer, the authority to implement rules and promulgations to interpret and implement such design standards and develop any related policies, regulations, conditions, forms, or documents necessary to regulate SWFs in the public right-of-way. This will allow for greater flexibility and adaptability to comply with the often-changing legal landscape regarding small wireless deployments. A draft of such design standards and guidelines (“Design Standards”) has been attached hereto for reference as Exhibit E. The City will also require a template license agreement for SWFs attached to City owned property in the public right-of-way, a draft copy of the template license agreement (“ROW License”) is attached hereto as Exhibit F. Both the Design Standards and ROW License are included for review and comment, and should City Council approve the Ordinance, same will be presented for adoption at a future council meeting in a subsequent resolution.

ENVIRONMENTAL IMPACT:

None. The projects considered under the Ordinance and Resolution are exempt from the California Environmental Quality Act (“CEQA”), under the common sense exemption listed under §15061(b)(3) whereas the activity in question can be seen with certainty that there is no possibility that it will have a significant effect on the environment.

FISCAL IMPACT:

Approval of the recommended action will have no adverse fiscal impact to the General Fund.

RELATIONSHIP TO STRATEGIC GOALS:

The project contemplated under the Ordinance will conform to the policies included in the Commerce General Plan in the following manner:

- a. Provide new services to meet the needs of the labor force and attach new business and industry to the City (Community Development Policy 5.2).
- b. Improve efficiency of the City's transportation and circulation system through the use of 5G technology in smart cars and smart traffic applications (Transportation Policy 1.8).
- c. Improve wireless coverage and capacity ensuring that law enforcement services continue to meet the public safety needs of the community (Safety Policy 2.1).

Recommended by: Daniel Hernandez, Director of Public Works Department
Prepared by: Belgin Cuhadaroglu, Associate Civil Engineer
Reviewed by: Daniel Hernandez, Director of Public Works Department
Fiscal Impact reviewed by: Josh Brooks, Acting Director of Finance
Approved as to form by: Norma Copado, Assistant City Attorney
Respectfully submitted: Edgar P. Cisneros, City Manager

ATTACHMENTS:

1. Exhibit A-Ordinance No. 2020-XX
2. Exhibit B-Resolution No. 2020-XX
3. Exhibit C-Fee Schedule
4. Exhibit D-Fee Justification
5. Exhibit E-Design Guidelines
6. Exhibit F- ROW License
7. City of Commerce Wireless Cell Site Permit Application Form