



## DEPARTMENT OF COMMUNITY DEVELOPMENT

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### PLANNING DIVISION

DATE: March 4, 2015  
TO: Planning Commission  
FROM: Craig Jimenez, Planning Division Manager  
SUBJECT: **AR-1 Bricks & Mortar: Wireless Telecommunication Facilities Presentation**

In 2011, the City Council adopted Ordinance No. 2011-04 amending the City's regulations on the siting, construction and design of wireless facilities. The ordinance is a comprehensive set of regulations that comply with changes in state and federal regulations and case law. The adopted regulations are part of the Zoning Ordinance and are under the purview of the Planning Commission.

No changes are proposed to the existing regulations. However, the City has received its first submittals for right-of-way installations pursuant to the Ordinance. In anticipation of future public hearings before the Planning Commission, the Assistant City Attorney will provide a presentation at the March meeting. The purpose is to provide background and context of the City's ability to regulate wireless telecommunication facilities pursuant to local, state and federal regulations.

The staff report prepared in 2011 for the adoption of the current Ordinance is attached to provide additional background. Additionally, if you are so inclined, you can find further information on the City's website ([www.cityofmonrovia.org/planning](http://www.cityofmonrovia.org/planning)).



# CITY COUNCIL AGENDA REPORT



**DEPARTMENT:** Community Development

**MEETING DATE:** May 3, 2011

**PREPARED BY:** Barbara Lynch, Senior Planner

**AGENDA LOCATION:** PH-1

**TITLE:** Amendment to Title 17 (Zoning) of the Monrovia Municipal Code Adding a New Chapter Entitled "Wireless Telecommunications Facilities" to the Zoning Ordinance, and Repealing Ordinance No. 2009-02U, an Interim Urgency Ordinance Relating to Wireless Facilities in Public Rights-of-Way; Introduction and First Reading of Ordinance No. 2011-04

**OBJECTIVE:** To provide uniform and comprehensive regulations and standards, along with permit requirements, regarding the installation of wireless telecommunications facilities in all City zones and in the City's public right-of-way.

**BACKGROUND:** On June 2, 2009, the City Council adopted a 45 day interim urgency zoning ordinance (Ordinance No. 2009-02U) temporarily prohibiting the installation of commercial wireless facilities in public rights-of-way throughout the City. On July 7, 2009, the City Council adopted Ordinance 2009-04U, extending the moratorium 10-months and 15-days. On May 18, 2010, the City Council approved an additional (and final) one-year extension to the moratorium from the date Ordinance No 2009-02U would have expired if it had not been extended. The moratorium expires June 1, 2011.

The Zoning Ordinance currently regulates the installation of wireless facilities on private property (§17.44.220 Wireless Communications Facilities). In general, roof mounted cellular equipment and the collocation of antennae arrays onto existing telecommunications facilities (poles, monopoles) are reviewed and approved by the Development Review Committee administratively and new telecommunications facilities require conditional use permit approval by the Planning Commission.

Legal challenges to the local regulation of wireless facilities in public rights-of-way have occurred at both the state and federal levels. The moratorium has allowed Staff time to study and review current codes and to determine what conditions and standards are applicable based on state and federal law. The City must now consider a comprehensive ordinance to lawfully regulate the installations of wireless facilities.

On April 13, 2011, the Planning Commission held a public hearing to review the proposed ordinance. There was no one in the audience who spoke for or against the proposed regulations. A letter was submitted by T Mobile (Exhibit A) expressing concern about specific sections in the proposed ordinance. The Planning Commission recommended revisions in response to the letter and at the close of the public hearing, the Planning Commission adopted Planning Commission Resolution No. PCR2011-04 recommending approval (with the revisions) of Ordinance No. 2011-04 to the City Council.

**ANALYSIS:** The proposed ordinance includes private property, public property and right-of-way regulations. A new chapter (§17.46 Wireless Telecommunications Facilities) will be added to the Zoning Ordinance (Title 17) that will include the following guidelines and regulations:

# PH-1

## Preferred and Discouraged Locations

The proposed ordinance lists preferred locations by zones and type of wireless telecommunications facilities (WF) in order of preference to encourage installation with facilities that have the least visual impact in predominantly commercial and manufacturing locations. The proposed ordinance also lists discouraged locations in order of preference that does not allow the installation of wireless telecommunications facilities primarily in (or near) residential areas.

- Preferred (in order of preference) and Discouraged Locations
  - Preferred within the NC, CRS, RCC, RCM, O/RD/LM, BE, M and P/QP zones
    - Installed on existing WF facilities (collocate)
    - Building mounted or roof mounted to an existing or new building
    - Mounted to an existing pole or a new pole used to replace an existing pole (e.g. light pole, utility pole)
    - Mounted to a new telecommunications tower
  - Preferred within public **right-of-way** located adjacent to NC, CRS, RCC, RCM, O/RD/LM, BE, M and P/QP zones
    - Collocated with existing WF facilities
    - Mounted to an existing pole or a new pole used to replace an existing pole
  - Discouraged locations
    - Within the RF, RE, RL, RM, RM/RH, HWP, HR, HCD or ANF zones
    - Public owned properties (within residential zones)
    - Locations within 100' of a residential zone or residential use
    - Planned Development and Specific Plan zones, if it prohibits a wireless facility
    - Planned Development and Specific Plan zones that are exclusively residential, unless the zone or plan specifies otherwise
    - Planned Development and Specific Plan zones that include mixed-use (residential and non-residential), those areas that are designated residential, unless otherwise specified in the zone or plan
    - Public right-of-way within or adjacent to RF, RE, RL, RM, RM/RH, RH, HWP, HR, HCD or ANF zones
    - Public right-of-way in any zone if mounted to a new telecommunications tower that is not replacing an existing pole
    - Public right-of-way that abuts an historic landmark property

Note: If an applicant proposes a location that could fall under either a Preferred Location or a Discouraged Location, it will be considered a Discouraged Location and treated as such. For example, if a commercial zone abuts a residential zone and the facility is proposed to be in the preferred commercial zone but would in fact be located within 100' of a residential zone or residential use, it would be treated as a Discouraged Location and an exception would be required.

Preferred Locations include both private property and public rights-of-way that are in commercial and manufacturing designated areas. A minor conditional use permit (mCUP) approval by the Development Review Committee (DRC) is required for wireless facilities that will collocate on an existing facility (poles/monopoles) or, will locate on a building (roof or side mounted). A conditional use permit (CUP) approval by the Planning Commission is required for new wireless telecommunications facilities (poles/monopoles) and on new "wireless telecommunications collocation facilities." A "wireless telecommunications collocation facility" is governed by state law (Government Code § 65850.6) and is specifically designed for subsequent collocation as a permitted use.

Discouraged Locations include private property and public rights-of-way that are primarily in residential areas. Also, included is hillside open space land and historic landmarked properties (and proximity to historic landmarked properties). A CUP and **Exception** must be approved before a wireless telecommunications facility can be installed in a Discouraged Location.

## **Exception**

If an applicant claims that denial of a facility or conformance with the regulations in Chapter 17.46 would deprive it of its rights under state or federal law, an exception can be requested. For example, if the applicant claims under federal law that the City's regulations as applied (to the applicant) have the effect of prohibiting wireless service, the applicant would have to prove the facility is necessary to "fill a significant gap" in service and is the least intrusive means of doing so on the values the City seeks to preserve. The burden of proof is on the applicant to provide the necessary information to substantiate the claim. The applicant will be required to provide all information and studies necessary for the City to evaluate that claim as determined by the Director. This may include written documentation detailing the significance of the gap, along with maps depicting the coverage gap that the facility is meant to close and the level of service coverage provided both before and after installation of the facility, along with an analysis justifying why the proposed facility is the least intrusive means to provide service, including identification of alternative sites. Approval of an Exception and CUP is necessary to install facilities in any of the Discouraged Locations, otherwise such facilities are not allowed.

Additionally, there are some locations for which Exceptions will not be permitted. Those include:

1. The location of a wireless telecommunications facility on a lot zoned for single family residential use that is not common area;
2. A lot occupied with a single family home;
3. In the right-of-way directly adjacent to the front elevation of a single family residential use; or
4. In any public right-of-way location that abuts the property line of a structure recognized as a local, state or national historic landmark, historic district or on the register of historic places. (§ 17.46.220)

## **Accessory Equipment**

In addition to defining Preferred Locations for the facility, the proposed ordinance also guides the applicant in the City's preference in the placement and installation of accessory equipment. Accessory equipment is any equipment associated with the installation of a wireless telecommunications facility that includes such things as generators, cooling fans, electrical panels, cabinets, pedestals and vaults. The following lists the order of preference for equipment locations:

- Accessory Equipment
  - Shall be located underground
  - Within a building or structure
  - On a screened rooftop area or structure
  - In a rear yard if not visible to surrounding properties

Accessory equipment will be reviewed at the same time the proposed facility is considered through the mCUP or CUP process.

## **Public Rights-of-Way**

Installation of wireless telecommunication facilities in a public right-of-way shall only be permitted if the applicant has been granted the right pursuant to state or federal law or has entered into a franchise agreement with the City. Public rights-of-way are included in the list of Preferred and Discouraged Locations (described above) and require a mCUP approval in commercial and manufacturing areas if installed on an existing pole, a CUP if replacing a pole or installing a "collocation" facility. In Discouraged Locations which are primarily residential and open space areas, installation is not allowed unless a CUP with an Exception is secured. Again, the applicant has to provide extensive documentation that denial of the proposed location would deprive the applicant of its rights under state and/or federal law.

## **Supplemental Application**

Any applicant filing for a wireless telecommunications facility permit (or a wireless telecommunications collocation facility permit) will be required to submit a supplemental application. The supplemental application allows the City to collect information that is specific to wireless telecommunication facilities. Some of the information that will be requested includes:

- Supplemental Application
  - A written description of the facility, its purpose and specifications.

- A detailed site and engineering plan of the facility.
- Photographs and photo simulations providing a visual impact analysis.
- RF exposure guidelines checklist (using the Federal Communications Commission (FCC) form) and documentation certifying that the applicant obtained all licenses and approvals required by the FCC.
- If the application is for installation in a public right-of-way, the applicant must certify that it is a telephone corporation or state the basis for its claimed right to enter the right-of-way. The applicant must provide a copy of its certificate (if one was issued) of public convenience and necessity (CPCN) issued by the California Public Utilities Commission (CPUC).
- A written description identifying the geographic service area where the installation is proposed and submittal of a 5 year master plan.
- If an Exception is requested, submittal of all information and studies necessary for the City to evaluate the claim.

### **Design and Development Standards**

The proposed ordinance also sets forth design and development standards for wireless telecommunications facilities on private property and in public rights-of-way to encourage designs that minimize visual, noise and other impacts to nearby properties. The guidelines include:

- Development and Design Standards for Property *not* in Public Rights-of-Way
  - Provide screening and camouflage design techniques in the design and placement of telecommunication facilities to make them as visually inconspicuous as possible.
  - Screening shall be designed to be architecturally compatible with surrounding structures and/or disguised to blend into existing and proposed landscaping.
  - Installation cannot eliminate or interfere with required parking spaces or create impacts on traffic safety.
  - Use the least visible antennas possible. Antennas shall be flush mounted to the extent feasible and shall be designed so as not to preclude future collocations.
  - Building and roof mounted facilities shall be concealed in a manner compatible with the existing architecture of the building.
  - Shall be located in close proximity to existing above-ground utilities such as electrical and utility poles and trees similar in height.
  - Facilities mounted to telecommunication towers (poles, monopoles, or other structure designed and primarily used to support antennas) must be a maximum 60' high in preferred locations and a maximum 45' high in discouraged location if an exception is granted.
  - Shall be setback from any right-of-way a minimum of two times its height.
  - Monopoles shall be no greater in diameter than is necessary and all components shall be treated with exterior coatings of a color and texture to visually blend with its surroundings.
  - A faux tree design (monopine, monopalm) shall be compatible with the trees that are nearby and if no trees exist new trees will be required to create a landscape setting.
  - Accessory equipment for building mounted/roof mounted facilities shall be located in a building, underground or roof mounted if screened. Screening must be architecturally integrated with the building.
  - Accessory equipment for facilities mounted to telecommunication towers shall be located within a nearby building, in an underground vault, or in another type of enclosed structure, which must comply with the development and design standards of the zone it is located in.
  - No lighting shall be permitted
  - Noise levels emitted from equipment shall not exceed 50 dBA at the facilities property line in commercial, business and manufacturing zones, and in no case shall emit noise onto a residential property that is within 500' of the facility.
- Development and Design Standards on Property *within* the Public Right-of-Way
  - Shall be designed to minimize visual, noise and other impacts on the surrounding community.

- Utilize design and camouflage techniques to ensure that the facility is visually inconspicuous and does not dominate the area.
- Shall be designed and located in such a manner to avoid adverse impacts on traffic safety.
- Shall be designed to encourage collocation. Antennas shall be flush mounted to the extent feasible and shall use the least visible antenna.
- An antenna added to an existing utility pole shall not exceed 2’.
- The maximum height of an antenna mounted to the top of an existing street light pole shall not exceed 7’ in a preferred location and 3’ in a discouraged location.
- No facility shall be located on a pole that is less than 26’ in height or is over 60’ in overall height (pole and antenna).
- Only pole mounted antennas shall be permitted and no new poles are permitted if not replacing an existing pole.
- Facilities shall be designed to occupy the least amount of space.
- Cannot obstruct pedestrian and vehicular traffic; interfere with fire hydrants, fire stations, or any other public health and safety facility.
- Facilities and accessory equipment must be setback 18” from a curb.
- All cables (utility, electrical) between the pole and accessory equipment and accessory equipment must be undergrounded, if feasible.
- If additional landscaping is required it must be installed, irrigated and maintained by the applicant.
- No lighting shall be permitted
- Noise levels emitted from the equipment shall not exceed 50 dBA 3’ from the source in commercial, business and manufacturing zones and shall not emit noise onto a residential property.

### **Permit Expiration and Extension**

Upon adoption of this ordinance any application approvals for a facility will be valid for 10 years. This provides an opportunity for the City to verify that the facility is in compliance with the findings and conditions of approval. If necessary, additional studies and materials can be required and added conditions can be imposed if deemed necessary to bring the facility into compliance with current regulations. If a permit *has not* expired at the time an extension is requested and is in conformance with the Code and its conditions of approval, an extension of up to 10 years may be given administratively. However, if a permit *has* expired or if the facility is nonconforming or additional conditions of approval are necessary to bring the facility into compliance with the provisions of this code, the permit must go before the Planning Commission at which time the extension of the permit can be approved, conditionally approved or denied.

### **Nonconforming Wireless Telecommunications Facilities**

In order to address previously approved facilities (prior to the adoption of this ordinance) and taking into consideration that facilities approved under this proposed ordinance may someday become nonconforming based on technology advancements and code revisions, a “Nonconforming Wireless Telecommunications Facilities” section has been included in this proposed ordinance. Within 10 years from the time a facility is deemed nonconforming it will be required to be brought into compliance with current code. If the applicant wishes to modify it earlier, the facility will have to be brought into compliance with all applicable code regulations in effect at that time.

### **Findings**

In addition to the findings that must be made for a mCUP and a CUP the proposed ordinance sets forth findings that also must be made that are specific to wireless telecommunications facilities. These findings read as follows:

1. The proposed facility has been designed and located in compliance with all applicable provisions in the chapter.
2. The proposed facility has been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.
3. The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.

4. Noise generated by equipment will not be excessive, annoying nor be detrimental to the public health, safety and welfare and will not exceed the standards set forth in the chapter.

If the facility is in a public right-of-way, two additional findings must be made. They are:

1. The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the City permitting them to use the public right-of-way.
2. The applicant has demonstrated that the facility will not interfere with the use of the City's public right-of-way and existing subterranean infrastructure and will not interfere with the City's plans for modification of such location and infrastructure.

These findings must be made in order to grant approval of a mCUP and CUP for the installation of a wireless telecommunication facility.

### **T Mobile Letter**

The concerns expressed in the T Mobile letter were discussed at length at the Planning Commission meeting and the following was decided:

- Section 17.46.040 (B) The Planning Commission did not want to revise the language to read "shall not locate" because the discouraged locations are the areas that most cities (including Monrovia) have never allowed cellular equipment. They understood that if a "significant gap" in service is shown there was a process the applicant could go through.
- Section 17.46.070 (F) (2) The last part of the sentence was struck out..."and shall be no higher than the existing poles, structures or trees near the proposed location." The Planning Commission understood that such obstacles could obstruct radio signals. Also, it was clarified that the height limit restriction of "two times its height from a right-of-way" only applies to new towers-not collocations.
- Section 17.46.070 (M) Following a lengthy discussion the Planning Commission chose not to revise the language in this section because it read "to the extent feasible".
- Section 17.46.080 (D) (5) Since the 3' high antenna applies only to the "discouraged locations" the Planning Commission chose to keep the language the same. Installation in a discouraged location requires an Exception approval and if it is found that a taller antenna is needed it would be substantiated in the significant gap analysis information submitted to the City and would be part of the Exception approval.
- Section 17.46.080 (H) The Americans with Disabilities Act (ADA) section was included in the ordinance to insure that equipment and pole placements do not interfere with public access clearances (i.e.: sidewalks). If improvements are exempt by the Building Code of CalACS Code such improvements would then be in compliance.

The attached ordinance reflects the Planning Commission's recommended revisions. After the Planning Commission review, Staff communicated with the T Mobile representative who had submitted the letter. The representative was satisfied with the recommended revisions and was appreciative that the Planning Commission considered each comment in the letter.

The proposed ordinance will establish a regulatory procedure and performance standards for the installation of wireless telecommunication facilities that are located in the public right-of-way and will update the existing standards for private property. The City's ability to regulate wireless telecommunication facilities, especially in public rights-of-way, based on federal and state law is limited. The proposed ordinance encourages applicants to locate wireless facilities in commercial and manufacturing areas and encourages the designs to be discreet and as unobtrusive as possible. The standards will allow the benefits of new technology for Monrovia residents and businesses with balancing regulations for the placement and design of the required infrastructure for a wireless telecommunications facility.

**ENVIRONMENTAL IMPACT:** Wireless telecommunication facilities have the potential of causing noise disruptions and dramatically impacting the visual environment. The proposed regulations will allow for the installation of such facilities while maintaining the ambience and character of the area.

A Radio Frequency (RF) exposure guideline checklist and all applicable licenses and approvals required by the Federal Communications Commission (FCC) are required to be submitted as part of the application to provide proof to the City that compliance is met.

**FISCAL IMPACT:** There is no direct fiscal impact to the City as a result of the adoption of this ordinance. As applications come forward, any costs incurred will be covered by fees paid for by the applicant.

**OPTIONS:** The recommended regulations are the result of changes in state and federal law and include private property, public property and public right-of-way development standards for wireless telecommunication facilities. The Planning Commission and Staff recommend approval of the new regulations. The options are as follows:

- 1) Adopt Ordinance No. 2011-04 and approve new regulations for wireless telecommunication facilities in agreement with the Planning Commission and Staff.
- 2) Do not adopt Ordinance No. 2011-04 resulting in the current regulations remaining in effect.

**RECOMMENDATION:** The Planning Commission and Staff recommend approval of the ordinance.

**COUNCIL ACTION REQUIRED:** If the City Council concurs, following the public hearing, the appropriate action would be a motion to introduce, waive further reading, and read by title only Ordinance No. 2011-04.