



# Department of Conservation and Development

## County Planning Commission

Tuesday, February 9, 2016 – 7:00 .P.M.

(Continued from December 15, 2015)

### STAFF REPORT

Agenda Item # \_\_\_\_\_

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<b>Project Title:</b>	Wireless Telecommunication Facilities Ordinance Chapter 88-24
<b>County File(s):</b>	ZT13-0001
<b>Applicant/Owner:</b>	Contra Costa County
<b>Zoning/General Plan:</b>	Countywide
<b>Site Address/Location:</b>	Countywide
<b>California Environmental Quality Act (CEQA) Status:</b>	Negative Declaration SCH #2013032035
<b>Project Planner:</b>	Stan Muraoka, AICP, Senior Planner (925) 674-7781
<b>Staff Recommendation:</b>	Adopt a motion recommending Board of Supervisors approval (See Section II for Full Recommendation)

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### **I. PROJECT SUMMARY**

This is a County initiated proposal to adopt an amendment to the County Ordinance Code Chapter 88-24 that will establish procedures, conditions, and requirements for the establishing and locating wireless telecommunication facilities within unincorporated areas of Contra Costa County.

### **II. RECOMMENDATION**

Staff recommends that the County Planning Commission adopt a motion recommending that the Board of Supervisors:

- A. CERTIFY the Negative Declaration, California State Clearinghouse Number #2013032035, finding it to be adequate and complete, finding that it has been prepared in compliance with the California Environmental Quality Act (CEQA) and the State and County CEQA Guidelines, and finding that it reflects the County's independent judgment and analysis, and specify that the Department of Conservation and Development (located at 30 Muir Road, Martinez, CA) is the custodian of the documents and other material which constitute the record of proceedings upon which this decision is based.
- B. FIND that the proposed zoning amendment, Code Chapter 88-24, is consistent with the County General Plan.
- C. ADOPT the proposed zoning amendment that adds Chapter 88-24, to the County Ordinance Code.
- D. Direct staff to file a Notice of Determination with the County Clerk.

### **III. BACKGROUND**

The County Planning Commission opened the public hearing and took testimony on the proposed Wireless Telecommunications Facilities Ordinance on December 15, 2015. Prior to the meeting, staff received three comment letters, including a letter in support of the Ordinance from the Delta Protection Commission dated December 14, 2015, and letters requesting changes to the Ordinance from Mackenzie & Albritton on behalf of Verizon Wireless dated December 14, 2016 and from Paul O'Boyle on behalf of Crown Castle dated December 15, 2016. At the December 15 meeting, staff made a presentation on the proposed Ordinance and responded to questions from the County Planning Commission. The Commission also received public testimony from two persons, including representatives for Verizon Wireless and American Tower. The Commission continued its consideration of the proposed Ordinance to February 9, 2016 in order to provide an opportunity for staff to consider the oral and written comments received and to discuss the comments with the commenters for the wireless service providers.

Staff has reviewed the oral and written comments, and held a conference call with the commenters for the wireless service providers regarding the issues raised in the comments. Subsequently, staff has revised some portions of the proposed Ordinance in order to address issues/concerns raised.

#### **IV. MAIN COMMENTS AND RESPONSES TO THE COMMENTS**

Following are the main comments of the commenters for the wireless service providers and staff responses to the comments.

- A. Comment on Access Permits: *The regulation of the County right-of-way should be handled by the Department of Public Works, other jurisdictions handle wireless facility applications in the right-of-way through their Public Works Departments, state law gives wireless service providers the right to use the right-of-way, Title 8 of the County Code does not apply to public utility infrastructure, and utilities should be treated equally.*

Response: Pursuant to California Public Utilities Code (CPUC) Section 7901, a wireless service provider may install a wireless facility in a County right-of-way; however, pursuant to CPUC Section 7901.1, local jurisdictions have the right to determine the “time, place, and manner” of use of the right-of-way. Thus, the draft Ordinance provides for the wireless facility access permit for a facility proposed in a County right-of-way.

Normally, use of a County right-of-way requires an encroachment permit, issued by the Department of Public Works. Under the proposed Ordinance, an encroachment permit is processed as part of the access permit, and a separate encroachment permit is not required. As stated in draft Ordinance Section 88-24.402(a)(2) (Facilities within a County right-of-way), County Code Chapters 1002-4 (Encroachments: Permits) and 1002-8 (Encroachments: Requirements) apply to a wireless facility in a County right-of-way; however, if there is any conflict between this Ordinance and Chapters 1002-4 and 1002-8, the requirements of the Ordinance shall govern.

Regarding the application of Title 8 of the County Code to public utilities, the revised draft Ordinance amends Section 82-2.010 of the County Code (Utilities and pipelines) to clarify that this Ordinance applies to wireless telecommunication facilities.

Staff reviewed ordinances regulating wireless telecommunications facilities in public right-of-ways that have been adopted by other jurisdictions, including Alameda County, City of Glendale, City and County of San Francisco, and Ventura County.

This comparison is illustrated on the following table.

<b>Jurisdiction</b>	<b>Submittal to:</b>	<b>Administrative or Discretionary</b>	<b>Required review by:</b>	<b>Notice required:</b>	<b>Hearing required:</b>
<i>Contra Costa County</i>	<i>Planning</i>	<i>Administrative</i>	<i>Public Works</i>	<i>Yes</i>	<i>Only if requested</i>
Alameda County	Public Works	Discretionary	Planning	Yes	No
City of Glendale	Public Works	Discretionary		Yes	Yes, in residential zones and historic districts
City and County of San Francisco	Public Works	Discretionary	Planning	Yes for Tier III*	Only if requested
Ventura County	Public Works	Discretionary		Yes	No

\*A facility is a Tier III facility based on the size of the antenna enclosures, affects the character of a neighborhood, is proposed for a Planning Protected location, or is proposed for a Park Protected location. A Planning Protected Location is a location within a historic district or adjacent to a historic resource, or along a significant street or a scenic route. A Park Protected Location is a location adjacent to a City park or open space.

All of the above jurisdictions:

- Require submittal of an application to Public Works.
- Application may be approved, denied, or modified.
- Require public notice.
- Two jurisdictions require review by the Planning Department, including:
  - Alameda County.
  - City and County of San Francisco for a Planning Protected Location or a Zoning Protected Location.
- Two jurisdictions require a public hearing:
  - City of Glendale for applications in residential zones and historic districts.
  - City and County of San Francisco for Tier III facility, only if requested.

City and County of San Francisco also requires:

- Review by Department of Public Health.
- Review by Recreation and Park Department for a Park Protected Location.
- Finding of General Plan Consistency by Planning Department.

In comparison to the ordinances of these other jurisdictions, the proposed Ordinance:

- Requires submittal of an application to Conservation and Development.
- Application may be approved, or modified.
- Requires public notice.
- Requires review by Public Works.
- Requires public hearing only upon written request.

As discussed above, the processing of an access permit in Contra Costa County would be essentially the same as the process followed by other jurisdictions. Notably, the permit application may be approved, modified, or denied in the other jurisdictions prior to going to a public hearing. In this County, the access permit will only be approved or modified under the proposed Ordinance by the Department of Conservation and Development prior to a public hearing. Further, all jurisdictions have noticing requirements, whether the application for use of the right-of-way is handled by Public Works or by Conservation and Development. Accordingly, staff believes the processing of an access permit as provided in the proposed Ordinance is appropriate and analogous to that of other jurisdictions.

Regarding the comment that utilities should be treated equally, utilities such as telecommunications and cable companies that currently provide land line service are treated equally. The proposed Ordinance specifically addresses wireless telecommunications service and not land line service. Under the proposed Ordinance, any utility that provides wireless telecommunications service would be subject to the Ordinance and will be treated equally.

- B. Comment on pole-mounted equipment: *The provisions in the Ordinance for equipment enclosures may prohibit small pole-mounted equipment. The Ordinance should allow pole-mounted equipment, and a specific standard should be provided for pole-mounted equipment.*

Response: Staff concurs with the commenters. The definition of equipment enclosure in Section 88-24.204(h) of the proposed Ordinance (Definition: equipment enclosure) has been revised so as to not specify the location of the equipment enclosure. Also, Section 88-24.408(f)(2)(B) of the proposed Ordinance (Design requirements: County right-of-way) now clarifies that an equipment enclosure must be installed below ground or at grade.

In addition, a new subsection has been added to the draft Ordinance to specifically address pole-mounted equipment: Section 88-24.408(f)(2)(G) has been added that states that "ancillary equipment not enclosed in an equipment enclosure must be installed at a location the zoning administrator determines will minimize visual and aesthetic impacts, to the greatest extent feasible."

- C. Comment on the term of minor alteration permits and collocation permits: *The County cannot limit the duration of any permit for a wireless facility to less than 10 years. At a minimum, delete the phrase "whichever is shorter" in Sections 88-24.616(b) and 88-24.620(b)(5).*

Response: Pursuant to California Government Code Section 65964(b), a local jurisdiction cannot unreasonably limit the duration of a wireless facility permit, and a term of less than 10 years is considered unreasonable unless there is a public safety or substantial land use reason.

As defined in the Ordinance and in federal law, minor alterations are the replacement and removal of existing antennas and/or ancillary equipment on an existing wireless facility, and collocations are the addition of antennas and/or ancillary equipment on an existing facility. If the land use permit for the existing facility expires, there is no longer a permitted facility to locate or collocate on, which would constitute a substantial land use reason. The former wireless service provider or a collocating wireless service provider can submit an application for a land use permit that will allow the existing facility and existing antennas and/or ancillary equipment to remain on the facility site.

To allow for such an occurrence, Section 88-24.616(b) (Permit duration: minor alteration permit and collocation permit) of the proposed Ordinance has been revised to clarify that the term is the shorter of 10 years or the duration, including any renewal period, of the permit for the existing facility.

- D. Comment on traffic signals: *The County should allow wireless service providers to locate wireless facilities on traffic signals.*

Response: The Department of Public Works has the responsibility to maintain traffic signals. The traffic signal is a right-of-way control device, and therefore, the Public Works has major concerns about public safety and County liability, and will not allow the installation of a wireless facility on a traffic signal. Also, the wireless facility on the traffic signal pole will need a power source independent of the power source for the traffic signals. In some instances, a

signal pole installation will include a street light as part of the overall system, where additional safety measures are warranted, since the electrical and power systems are interconnected.

## V. REVISED DRAFT ORDINANCE

The proposed ordinance has been revised based on staff review of the oral and written comments of the December 15, 2015 Commission meeting and subsequent discussion with the commenters for the wireless service providers. The revisions include the following pages and sections:

Page 2, Section 88-24.204 (Definition: equipment enclosure) has been revised to delete location below ground or at grade.

Page 10, Section 88-24.408(f)(2) (Design requirements: County right-of-way) has been revised as follows:

- (B) Equipment enclosure is below ground or at grade.
- (C) No antenna may extend, rather than exceed, above the height of the pole or facility by more than 10 feet.
- (D) No antenna may extend over the vehicular, rather than improved, path of travel.
- (G) A new subsection is added to address pole-mounted equipment.

Page 12, Section 88-24.414(f) (Building standards, maintenance, and operational requirements) has been revised to provide 30 days, rather than 10 days, for the permittee to notify the zoning administrator of a change in the facility license.

Page 16, Section 88-24.604(d)(4) (Application requirements: access permits) has been revised to require visual simulations from areas within a visual sightline of the proposed facility, rather than from each lot within a visual sightline.

Page 16, Section 88-34.606 (Financial assurance) has been revised such that "the zoning administrator will determine the reasonable cost to remove the facility and restore the site", rather than "will determine the cost."

Page 21, Section 88-24.616(b) (Permit duration: minor alteration permit and collocation permit) has been revised such that the term of a minor alteration permit and a collocation permit is the shorter of either 10 years or the duration, including any renewal period, of the underlying land use or access permit, rather than "whichever is shorter".

Page 25, 82-2.010 (Utilities and pipelines) has been revised to clarify that development projects involving hazardous waste and hazardous materials are subject to the land use permit regulations of County Code Chapter 84-63 and that wireless telecommunications facilities are subject to the requirements of this draft Ordinance.

## **VI. CONCLUSION**

The proposed Wireless Telecommunication Facilities Ordinance includes criteria for the location, design, and approval of wireless facilities in a manner consistent with enacted federal and state law. Staff recommends adoption of a motion to the Board of Supervisors for approval of the Ordinance.

## **ATTACHMENTS**

- Exhibit 1: January 2016 Draft Ordinance (redlined)
- Exhibit 2: Comment Letters received prior to the December 15, 2015 County Planning Commission Meeting