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SUMMARY

City staff have prepared draft Code amendments related to regulations of small wireless facilities on public property regulations contained in Chapter XIV “Work on Public Property” of the Albany Municipal Code.

STAFF RECOMMENDATION


BACKGROUND

At the November 18, 2019 City Council meeting, the City Council voted 5-0 to introduce the ordinance for first reading. As part of the action, the Council directed staff to make the following changes to the draft:

- Include a severability clause in the draft ordinance.

The ordinance attached to this report contains a severability clause. Additionally, FCC Order 18-133A1 is attached for reference and went into effect on January 14, 2019. The Council requested that staff stay abreast of pending litigation and other regulatory requirements that may result in a change to the order.

Representative Anna Eshoo (D-CA-18) from Palo Alto introduced H.R. 530 which proposes to nullify the FCC order. This bill was introduced to the House Energy and Commerce Committee. It was referred to the Subcommittee on Communications and Technology on January 25, 2019.
There is pending litigation in the Ninth Circuit Court of Appeals. The case before the court is City of San Jose vs. FCC. Several jurisdictions in California and out of state joined the effort which is currently underway.

**Mill Valley Ordinance**

The City Council made reference to the Mill Valley Wireless Ordinance in their discussion on November 18, 2019. The ordinance was adopted on September 6, 2018 as an urgency ordinance to preempt Federal regulations which were adopted on September 26, 2019. Although the Mill Valley ordinance was adopted before FCC Order No. 18-133 went into effect, the contents of that Order were known at the time; and Mill Valley believes that its ordinance is allowable under the Order. The ordinance covers all telecommunications facilities, not just small wireless facilities located in the public right-of-way. It requires a conditional use permit and design review for all facilities, except for certain co-location facilities which under State law must be approved ministerially. New facilities generally are not allowed in residential districts, and there is a 1500' separation requirement for pole-mounted facilities.

The ordinance contains an exception if the applicant can prove that denying approval of a facility or application of the ordinance's provisions would violate State or Federal law. The City is authorized to hire an independent consultant, at the applicant's expense, to evaluate the exemption request. These review requirements are similar to Albany’s previous wireless ordinance which was repealed and replaced in 2015. The validity of the previous ordinance was challenged by wireless carriers and those cases were ultimately settled.

**DISCUSSION**

The Ordinance is before Council for Second Reading – Pass-to-Print. If approved, a summary of the Ordinance will be published and posted at each of the City’s posting locations (City Hall, Community Center, Senior Center, and the City’s website). The Ordinance will go into effect 30 days following adoption.

**Attachments**

2. FCC Order 18-133A1