

## Legislation Text

---

File #: #17-0234, Version: 1

---

**PREPARED BY:** TRICIA STEVENS

**DATE OF MEETING:** 06/05/17

**SUBJECT:**

PUBLIC HEARING AND ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN PABLO AMENDING ZONING ORDINANCE SECTIONS 17.62.200 AND 17.70.030 AND TABLES 17.32-A, 17.34-A AND 17.36-A, AND ADDING SECTION 17.62.300 RELATING TO WIRELESS COMMUNICATION FACILITIES TO ADDRESS FEDERAL COMMUNICATIONS COMMISSION (FCC) REGULATIONS AND TO ADDRESS THE NEEDS OF SAN PABLO

**CITY MANAGER RECOMMENDATION**

Conduct public hearing; waive first reading; introduce Ordinance

**COMPLIANCE STATEMENTS**

The wireless facilities ordinance is consistent with Policy Area: Strategic Planning/Special Projects, Policy Item 4.16 New Telecommunications Ordinance, as listed in the FY2015-2017 Council Priority Workplan, effective October 1, 2016.

**CEQA Compliance Statement**

The proposed project has been determined to be categorically exempt from the provisions of CEQA in accordance with CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitations, with no potential for causing a significant effect on the environment.

**Public Hearing Notice**

A public hearing notice was published in the East Bay Times newspaper on May 26, 2017.

**PROJECT OVERVIEW AND DESCRIPTION**

The proposed ordinance overhauls the City's zoning regulations on telecommunications facilities. This overhaul is driven by the need to comply with Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, regulations of the Federal Communication Commission (FCC), and other legislative and regulatory changes at the federal and state level. In particular, the Section 6409 (a) regulations require that the City not deny non-substantial requests to collocate, remove or replace transmission equipment at an existing tower or base station, known as 6409(a) facilities. The "non-6409(a)" regulations govern all other telecommunication facilities, including new towers and collocations on buildings and public facilities that do not qualify for approval under Section 6409(a). The City has more discretion over these facilities. Overall, the proposed ordinance reduces potential confusion, streamlines local review and preserves the City's land-use authority to the maximum extent possible given the federal and state laws and regulations.

The Planning Commission held a public hearing on May 16, 2017 and recommended approval of the proposed ordinance. No members of the public spoke at the Planning Commission hearing. Commissioners had questions about what constitutes a "significant gap in service" and "least intrusive facilities" as they relate to exceptions to development standards. They also had questions

about permits and fees. Their questions were answered by staff and the Commission did not make any changes to the ordinance as proposed by staff.

## **GENERAL PLAN COMPLIANCE**

The proposed ordinance meets the intent of the following policies:

***General Plan LU-G-3:*** *Preserve and strengthen the City's overall image and create a safe, walkable and attractive urban environment for the current and future generations of residents.*

***General Plan PSCU-I-35:*** *Continue to work with the Pacific Gas & Electric Company on undergrounding of electric lines.*

***General Plan PSCU-I-38:*** *Encourage telephone and communication system providers to upgrade and incorporate state of the art communication technologies, such as wireless internet technology, within the city.*

## **KEY ISSUES**

- ***Design and location standards for new facilities.*** The proposed ordinance provides high standards for the design and location of new telecommunications facilities. The ordinance allows facilities in any zone, but outlines commercial/industrial zones and public right-of-ways as preferred locations. A streamlined process for the preferred locations is included. Collocations on existing building and facilities are also preferred. The design standards call for concealment as well as heights and setbacks similar to other structures in the respective zones. Residential zones are disfavored and discouraged by making the approval process quicker and easier in more preferred locations. Exceptions to the design and location standards can be made by the Planning Commission, but only with strict findings that such a facility is the "least non-compliant" and "least intrusive" alternative. The proposed ordinance contains the strictest standards possible under existing laws. The City has discretion over the proposed standards for new and substantially changed facilities, but only to the extent that such discretion does not (1) prohibit or effectively prohibit wireless facilities; (2) unreasonably discriminate against functionally equivalent service providers; or (3) regulate on the basis of environmental effects of radio frequency emissions to the extent that such emissions comply with FCC regulations. The City also has discretion over the level of review, such as requiring a Planning Commission conditional use permit for more facilities.
- ***Collocations and replacements of existing facilities.*** Consistent with federal law, the proposed ordinance permits collocations and removal/replacements on existing towers and base stations with a very streamlined review, with findings that the facilities are not a substantial change over what is existing. Whether a proposed change is "substantial" or not is determined by standards established by the FCC. The proposed ordinance incorporates those standards and the City has little, if any, discretion on permitting these specific facilities.
- ***Facilities in the public right-of-way.*** The proposed ordinance states that facilities in the public right-of-way, especially those on existing structures, are among the preferred locations. With regard to undergrounding of support structures and cables, the City can only require undergrounding if all utilities in the area are undergrounded, or unless there are clear policies for undergrounding in special areas, such as historic districts. The City may require utility

agencies to underground their infrastructure if installing overhead cables and equipment in designated Rule 20A Districts.

### **PROPOSED ORDINANCE**

The ordinance amends Chapter 17.62 of the Zoning Ordinance as follows:

A. Existing Section 17.62.200 is completely replaced by a new ordinance that outlines procedures and requirements for minor telecommunication facilities that are considered 6409 (a) facilities covering requests to collocate, remove or replace transmission equipment on an existing tower or base station with existing antennas. These procedures and standards greatly streamline approvals consistent with law. Key features include:

- *Definitions:* The ordinance provides new definitions, including “base station” and “substantial change”. The definition of substantial change outlines the extent of antenna additions that fall into this minor category. Base stations include structures, other than towers, that contain existing telecommunications facilities, such as buildings or public facilities (water towers, etc.). These definitions are consistent with federal regulations.
- *Approval Procedures:* The ordinance requires an administrative permit issued by the zoning administrator for approval of these minor facilities. The ordinance outlines the content of the application, including photo simulations, RF (Radio Frequency) compliance and acoustic analysis. The procedure includes a pre-submittal conference and submittal appointment. For zoning administrator decisions, the ordinance outlines noticing of decisions and required findings for approval or denial. Appeals of the zoning administrator decision are considered by the City Manager. The FCC regulations provide the number of days the City must approve telecommunications facilities, known as “shot clock”. Shot clock standards are not included in the ordinance and are summarized below.
- *Standard Conditions of Approval:* The proposed ordinance includes “automatic” standard conditions of approval. The zoning administrator may modify conditions as needed to further public health and safety.

B. A new Section 17.62.300 is added that provides City regulations for all other telecommunications facilities. These largely mirror existing standards, but a few key changes are included. Key features include:

- *Definitions:* These definitions are similar to the definitions for 6409(a). Of note, a new definition of “temporary wireless facilities” is provided. Temporary facilities are not currently addressed in the existing ordinance.
- *Approval procedures:* New telecommunications facilities may require an administrative use permit (AUP) or a conditional use permit issued by the Planning Commission (CUP), depending on its location.
  1. Administrative Use Permit: An AUP is the appropriate application for facilities in “preferred locations”. City-owned properties or structures in the public right-of-way, or parcels within industrial or commercial zones are preferred.

2. Conditional Use Permit: The Planning Commission may issue a CUP for all facilities:
  - a. Not in preferred location
  - b. Within 250 feet of a single family or multi-family residence or in a historic district or structure
  - c. Located in open space districts, hillside areas or Priority Development Areas
  - d. That require an exception. These are facilities that do not comply with the Design Standards and allow the City to apply a higher level of scrutiny.
3. Temporary Use Permit: Zoning Administrator permits are also required for temporary facilities.

The ordinance outlines the content of the application, including photo simulations, RF compliance, acoustic analysis, and alternatives analysis. The procedure includes a pre-submittal conference and a submittal appointment.

The approving authority (zoning administrator or Planning Commission) must make the following findings to approve the project.

1. Complies with criteria for a conditional use permit
  2. Complies with all the development standards
  3. Complies with all FCC rules and regulations for human exposure to RF (Radio Frequency) emissions
  4. Demonstrates good-faith effort to consider more-preferred locations, collocations, and less-intrusive designs
  5. Demonstrates with a comparative analysis that less-intrusive locations and designs are not feasible or available.
- *Limited Exception for Personal Wireless Facilities.* The proposed ordinance includes a new provision for exceptions. If a proposed telecommunications facility does not comply with all the development standards, an application may be filed for an exception. The applicant is held to a higher standard than if the facility complies with all the standards. The application must demonstrate that the design and location is the least non-compliant configuration that will reasonably achieve the applicant's clearly defined technical service objective to be achieved by the proposed facility, which includes without limitation a meaningful comparative analysis into multiple smaller or less intrusive facilities dispersed throughout the intended service area. These standards are similar to a variance, but more narrowly tailored to specific standards used to evaluate whether a denial would violate federal law.

An example of how this exception applies is relevant to a proposed telecommunications facility in residential zones. A facility may be allowable in a residential zone if it complies with very strict development standards, including concealment and a maximum height the same as residential structures. Facilities such as collocation on an institutional building (e.g., hospital, school, church) may be possible under the development

standards, but a new tower would not meet the development standards and would be subject to the higher decision standard for exceptions.

- *Shot Clock.* The FCC regulations have strict “shot clock” requirements to ensure that local jurisdictions process applications in a timely manner. These shot clock requirements are not included in the ordinance as they may be amended from time to time. For the City Council's reference, the City is required to process applications to approve, conditionally approve or deny an application, within the following timeframes:
  1. 60 days for applications in compliance with 6409, collocations on existing towers and base stations with existing antennas.
  2. 90 days for applications for new facilities that are collocations.
  3. 150 days for new sites that are not a collocation.

The shot clock is interrupted if the application is deemed incomplete and the shot clock doesn't restart until the application is deemed complete. Attachment C outlines these timeframes. Although this flowchart is complicated, it is important to note that the process is iterative and the City is obligated to respond to applicants in a timely fashion. If the applicant asserts that the shot clock has not been complied with, they can file a notice for “deemed approved”.

- *Site Location Guidelines:* This section includes the preferred locations as outlined above, as well as preferred support structures. Emphasis is given to collocations on existing building and structures.
- *Design Standards:* These standards provide strict and robust standards for design of new facilities.
  1. For all facilities, these standards emphasize concealment elements that blend the facilities into their environment. Height of all facilities may not exceed the height limit in the applicable zoning district, and may not encroach into setbacks. Landscape features are required, along with security measures.
  2. For freestanding facilities, tower-mounted equipment must be mounted as close to the vertical support structure (e.g. “slim-line” design). Ground-mounted equipment must be concealed to the extent possible.
  3. For building-mounted facilities, the standards emphasize facilities that are completely concealed and architecturally integrated into building elements, such as steeples, cupolas, chimneys and water tanks. If located on a building façade, equipment must be concealed behind screen walls or mounted flush to the building. Roof-mounted equipment must be screened to the extent possible.
  4. For facilities located in the public right-of-way, wireless facilities must be concealed to the maximum extent feasible, and be located on existing structures whenever possible. Undergrounding of non-antenna equipment may be required when existing utilities are located underground.

- *Standard Conditions of Approval:* The ordinance provides standards conditions relating

to such items as permit duration, concealment elements, maintenance, adverse impacts on other properties, noise complaints, and indemnification. The City may require utility agencies to underground their infrastructure if installing overhead cables and equipment in designated Rule 20A Districts.

- *Amortization of Non-Conforming Facilities:* The ordinance provides a schedule for removal of non-conforming facilities, ranging from 5 to 15 years based on the value of the facility. These standards are based on those adopted by the County of San Diego, and have been qualified to make exceptions for circumstances in which state or federal law would require a longer term.
- *Temporary Facilities:* The ordinance provides for temporary facilities, including non-emergencies and emergencies. For non-emergency facilities, temporary permits may be granted for up to five days, or longer if a need is demonstrated.

### **CONCLUSION**

The proposed amendments comply with applicable laws and preserve the City's land use authority to the maximum extent possible. Preferred locations and design standards ensure that new telecommunications facilities are compatible with their environment. Minor changes to existing telecommunications towers and base stations receive a streamlined review.

### **FISCAL IMPACT**

If a Master License Agreement is adopted by the City Council for wireless facilities in the public right-of-way, such an Agreement would have a positive effect on City revenues. For wireless facilities on private property, it is not anticipated that the implementation of this ordinance will have any fiscal impact.

### **ATTACHMENTS**

- A. Draft Ordinance 2017-###, adopting the Zoning Ordinance amendments
- B. Planning Commission Resolution 17-10 recommending approval of the Zoning Ordinance amendments to the City Council
- C. Shot Clock timeframes
- D. Notice of Hearing