



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

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February 17, 2021

AGENDA DATE: February 24, 2021

AGENDA ITEM: 8

Planning Commission
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

SUBJECT: STUDY SESSION TO CONSIDER COUNTY CODE AMENDMENTS FOR WIRELESS COMMUNICATIONS FACILITIES, SPECIFICALLY REGARDING ELIGIBLE FACILITIES REQUESTS

Recommended Actions:

- 1) Conduct a study session to review the proposed amendments to the Santa Cruz County Code to add regulations regarding eligible facilities requests;
- 2) Provide feedback and recommendations to staff to return with updates on the proposed amendments; and
- 3) Schedule another study session to review additional proposed amendments to the Santa Cruz County Code to modify regulations regarding wireless communications facilities.

EXECUTIVE SUMMARY

An application to modify an existing wireless communication facility ("WCF") is also called an eligible facilities request. Due to federal legislation aimed at streamlining the rollout of wireless infrastructure across the country, modifications to existing WCFs qualify as facilities that are eligible for speedier review and approval. The County Planning Department currently relies on its Administrative Practice Guidelines to process modifications to existing WCFs. The proposed code amendments codify these practice guidelines and incorporate federal law regarding eligible facilities.

BACKGROUND

On February 22, 2012, the United States Congress enacted the Middle Class Tax Relief and Job Creation Act of 2012. Although this legislation primarily aimed to extend payroll tax exemptions, the omnibus act contained many other unrelated provisions, including Title VI which expedites the availability of spectrum for commercial mobile broadband, or, in other words, makes it easier for wireless carriers to deploy more wireless infrastructure without too much local intervention. The provisions in Title VI, also known as the Public Safety and Spectrum Act or the Spectrum Act, include Section 6409(a). Section 6409(a) was intended to spur the creation of a wireless communications

network for first responders and advance wireless services for public safety and commercial purposes. In the years following the passage of the Spectrum Act it arguably applied to all state and local governments, but it was not until the Federal Communications Commission (“FCC”) issued a set of rules or “orders” interpreting the Spectrum Act that clarified how Section 6409(a) applied to state and local governments. The FCC made clear through its orders that Section 6409(a) was meant to reduce the time state and local governments take to review requests to modify existing WCFs and to limit their discretion over such projects. The FCC provided that local governments **“may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”** This is pretty clear language that the federal government intended to preempt local regulations in favor of streamlining deployment of wireless services.

The FCC set forth rules requiring state and local governments to act within 60 days after the submission of an application for collocation¹ or modification of an existing WFC (the “60-day shot clock”). The FCC also provided guidance on what proposed changes would be considered “substantial.” The FCC further clarified that state and local governments may *only* require applicants to provide documentation that is reasonably related to determining whether the eligible facilities request meets the requirements of Section 6409(a) and other related FCC regulations.

The stated overall goal of Section 6409(a) is for a rapid build-out of wireless infrastructure and to upgrade existing facilities for 5G networks, particularly in rural areas. Under current County regulations, any request to collocate, replace, or remove transmission equipment at an existing WCF or base station submitted with a written request for approval under Section 6409(a) is processed as a Level III Minor Variation to the original WCF permit. The County Planning Department and the Office of the County Counsel are proposing adding Section 13.10.663, Eligible Facilities Requests, to the Santa Cruz County Code (“SCCC”) (attached as “Exhibit A”). The proposed SCCC amendments do not depart from Administrative Practice Guidelines Interpretation Number WCF-05 (attached as “Exhibit B”) but merely codify the regulations and provide clarity. Adoption of these SCCC amendments will require a public hearing and Planning Commission recommendation prior to adoption by the Board of Supervisors.

ANALYSIS

60-Day Shot Clock

The FCC provided that state and local governments are required to approve proposed modification requests within 60 days or the proposal is deemed granted. The 60-day shot clock begins running once an applicant has effectively submitted an eligible facilities request. According to the FCC, an application is considered submitted after an applicant takes the first procedural step in a local government’s review process, and the applicant has provided written documentation addressing the applicable eligible facilities request criteria, including that the proposed modification would not cause a “substantial change” to the existing structure. As stated in the proposed SCCC 13.10.663, an application will not be accepted as submitted without payment of required fees. Thus,

¹ “Collocation” is the placement of wireless antennas on existing structures such as towers, buildings, water towers, utility poles, and other structures.

payment of fees should be the first procedural step in the County's review process.

The shot clock will be tolled during such time that the County determines the application is incomplete. Within 30 days of submission, the County will provide written notice to the applicant confirming receipt of the application and, if incomplete, detailing all missing documents or information required to determine whether the proposal is an eligible facilities request. The shot clock begins running again when the applicant makes a supplemental submission in response to the County's notice of incompleteness. Following a supplemental submission, the County will notify the applicant within 10 days that the supplemental submission did not provide the information identified in the original notice. The shot clock is again tolled if there are subsequent notices requesting missing documents or information. However, subsequent notices of incompleteness cannot specify missing documents or information that were not requested in the original notice of incompleteness.

Substantial Change

One of the most common modification requests for existing WCFs is to increase wireless coverage and capacity by adding equipment to the top of towers. According to the FCC, modifications of towers outside the public-rights-of way cause a "substantial change" if they "increase the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater."

The FCC clarified that the phrase "separation from the nearest existing antenna" means "the distance from the top of the highest existing antenna on the tower to the bottom of the proposed new antenna to be deployed above it." Thus, when determining whether an application satisfies the criteria for an eligible facilities request, the County must measure this separation as the distance from the top of the existing antenna to the bottom of the proposed antenna and not the distance from the top of the existing antenna to the top of the proposed antenna.

Additionally, the FCC provided that a proposed modification to a support structure constitutes a "substantial change" if "it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets." The FCC determined that "small pieces of equipment such as remote radio heads/remote radio units, amplifiers, transceivers mounted behind antennas, and similar devices are not 'equipment cabinets' ... if they are not used as physical containers for smaller, distinct devices." Further, the FCC clarified that the maximum number of additional equipment cabinets that can be added is measured for each separate eligible facilities request, rather than per tower.

One power that local governments maintain over the design of a WCF is the stealth or concealment elements (i.e., aspects of a design intended to disguise a facility's appearance, such as faux tree branches or paint color). The FCC confirmed that a modification request that defeats the stealth or concealment elements of a WCF would be considered a "substantial change" under Section 6409(a). To be considered a "concealment element" according to the FCC, however, the element "must have been part of the facility that was considered by the locality at the original approval of the tower

or at the modification to the original tower,” if the approval of the modification occurred prior to the Spectrum Act or outside the Section 6409(a) process. The FCC also clarified that, to “defeat” concealment, the proposed modification must cause a reasonable person to view the structure’s intended stealth design as no longer effective after the modification.

Finally, the FCC rejected local governments’ assertion that a “substantial change” occurs per se whenever a proposed modification does not comply with the conditions associated with the infrastructure’s initial siting approval. The FCC clarified that such small modifications should generally be allowed, as the applicant will likely be able to comply with the aesthetic conditions originally imposed by making an alteration.

Other Proposed Code Updates. In an upcoming study session, the Planning Commission will be asked to review additional proposed amendments to the County Code regarding WCFs, specifically regulations related to aesthetics, siting, height, small cell deployment, and WCFs in the public rights-of-way.

ENVIRONMENTAL REVIEW

The proposed amendments to the Santa Cruz County Code are exempt from review under the California Environmental Quality Act (“CEQA”) per CEQA Guidelines Section 15378(b)(5) because the adoption of such amendments is not a “project” within the meaning of CEQA as it involves organizational or administrative activities of the County that will not result in direct or indirect physical changes in the environment.

LOCAL COASTAL PROGRAM CONSISTENCY

SCCC 13.10 implements the County’s Local Coastal Program, and as such amendments to this Chapter must be consistent with the both the program and the California Coastal Act. Amendments require action by the California Coastal Commission before becoming effective. The proposed updates to the code sections are relatively minor adjustments to existing code and will not result in any loss of agricultural land, any loss of coastal access, impingement on visitor accommodations, or, with appropriate concealment, any negative impacts to public viewsheds within the Coastal Zone.

STRATEGIC PLAN

Strengthening the County’s approval process for WCFs contributes to Goal 5C. Local Businesses in the Dynamic Economy focus area. Permitting infrastructure that supports communications, such as cellular phone connectivity, is a basic tenet of a strong economy.

EXHIBITS

A – Proposed SCCC 13.10.663

B – Administrative Practice Guidelines Interpretation Number WCF-05

Sincerely,

Daniel H. Zazueta
Assistant County Counsel
Jocelyn Drake
Principal Planner

Reviewed By: Jocelyn Drake
Jocelyn Drake
Principal Planner
Development Review

13.10.663 Modifications to wireless communication facilities.

(A) Eligible Facilities Requests. This Section implements Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, as interpreted by the Federal Communications Commission, which requires the County to approve any eligible facilities request for a modification of transmission equipment of an existing tower or base station submitted with a written request for approval under Section 6409(a) that does not result in a substantial change to the physical dimensions of such tower or base station.

(B) Application. Applicants shall comply with the requirements set forth in SCCC 13.10.661, unless the Director has waived specific requirements in writing prior to submission. Requests for information related to the proposed modification shall be limited to the information necessary for the County to consider whether an application is an eligible facility request. The application does not require the applicant to demonstrate a need or business case for the proposed modification. An application will not be accepted as submitted without payment of required fees.

(C) Review. Upon receipt of an application and payment of required application fees for an eligible facilities request pursuant to this Section 13.10.663, the Planning Department shall review such application to determine whether the application so qualifies and process such application as a Level III permit.

(D) Timeframe for Review. Within sixty (60) days of the date on which an applicant submits an application seeking approval under this Section 13.10.663, the County shall approve the application unless it determines that the application is not an eligible facilities request and not otherwise covered by this Section.

(E) Tolling of the Timeframe for Review. The sixty (60)-day review period begins to run when the application is filed and may be tolled only by mutual agreement by the County and the applicant, or in cases where the County determines that the application is incomplete.

(1) To toll the timeframe for incompleteness, the County will provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application. The application is considered submitted when a valid payment for the application is received.

(2) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the County's notice of incompleteness.

(3) Following a supplemental submission, the County will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this Section 13.10.663. Second or subsequent notices of incompleteness will not specify missing documents or information that were not delineated in the original notice of incompleteness.

(F) Interaction with Telecommunications Act Section 332(c)(7). If the County determines that the applicant's request is not covered by Section 6409(a) as delineated under this Section 13.10.663, the presumptively reasonable timeframe under Section 332(c)(7), will begin to run from the issuance of the County's decision that the application is not a covered request. To the extent such information is necessary, the County may request additional information from the applicant to evaluate the application under Section 332(c)(7), pursuant to the limitations applicable to other Section 332(c)(7) reviews.

(G) Substantial Change. An eligible facilities request for a modification, including collocation, replacement, or removal, of the transmission equipment of an existing tower or base station will result in a substantial change if any of the following are found:

(1) Towers outside public rights-of-way:

- (a) Increases height by more than 20 feet or 10 percent, whichever is greater;
- (b) Protrudes from edge of tower more than 20 feet or more than the width of the tower structure at the level of the appurtenance, whichever is greater;

(2) Towers in public rights-of-way and for all base stations:

- (a) Increases height of tower or base station by more than 10 percent or 10 feet, whichever is greater;
- (b) Protrudes from the edge of the structure more than 6 feet;

(3) Involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;

(4) Entails any excavation or deployment outside the current site of the tower or base station;

(5) Would defeat existing concealment elements of the tower or base station; or

(6) Does not comply with conditions associated with the prior approval of the tower or base station unless non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds.

(H) Failure to Act. In the event the County fails to approve or deny a request seeking approval under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

**SANTA CRUZ COUNTY PLANNING DEPARTMENT
ADMINISTRATIVE PRACTICE GUIDELINE**

Interpretation No.: **WCF-05 (Wireless Communication Facilities – Application processing pursuant to federal and state law)**
Effective Date: 08/25/16
Originally Issued: 08/25/16
Revised:

Issue of Concern

Certain provisions of the County's Wireless Communications Facility (WCF) Ordinance require guidance and clarification so that the ordinance is administered consistently with recent changes in Federal and state rulings and legislation, namely the FCC's "shot clock", Section 332(c)(7) of the Communications Act of 1934 and Sec. 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") at the federal level, and AB 57 at the state level

**Applicable Regulatory Section(s)
§13.10.660-668**

PROPOSED ADMINISTRATIVE PRACTICE GUIDELINE:

**Applications Subject to Spectrum Act
(60-Day "Shot Clock")**

All proposals for modifications to existing WCFs that qualify as "eligible facilities" under the Spectrum Act (i.e., collocation, removal or replacement of new transmission equipment on existing cell towers and/or base stations), that do not constitute a "substantial change in the physical dimensions" of the subject WCF (see below) shall be processed as Level 3 Minor Variations to the original WCF permit(s) to the extent allowed by the County Code, and the County shall approve such applications, potentially with reasonable modifications/conditions of approval, within 60-days of submittal of an application. The 60-day "shot clock" starts the date the application is received by staff, stops when notice is provided that the application is incomplete, and starts again upon resubmittal by applicant of all required completeness items.

A "substantial change in the physical dimensions" of an existing WCF (i.e., a wireless tower* or base station**) is an increase that results in:

- More than 10% increase in height, or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater. For other eligible base stations/support structures (e.g., roof-mounts, microcells or any WCFs in rights-of-way, etc.), increases the height of the structure by more than 10% or more than 10 feet, whichever is greater.

- Installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets. For towers in the public rights-of-way and eligible base stations/support structures (e.g., roof-mounts), installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure.
- New antenna(s) or appurtenance(s) that protrude more than 20-feet horizontally from the edge of tower, or more than the width of the tower structure at the level of the appurtenance, whichever is greater. For other eligible base stations/support structures (e.g., roof-mounts, microcells, etc.), if it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 feet.
- Excavation needed outside current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. For other eligible base stations/support structures (e.g., roof-mounts, microcells, etc.) this is further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.
- Any modification that would "defeat the concealment elements" of the wireless tower or eligible base station/support structure.
- Any modification that does not comply with previously approved conditions of approval - other than those conditions related to height, width, equipment cabinets, excavation/deployment, or concealment elements- associated with the siting approval of the construction or modification of the eligible support structure or base station equipment.

* A "tower" according to the FCC definition is any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term "tower", and the size criteria/dimension thresholds given above, do not apply to utility poles that are solely or primarily used for purposes other than supporting FCC-licensed antennas.

** A "base station" according to the FCC definition is a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower or any equipment associated with a tower. A "base station" may include a utility pole that currently enables FCC-licensed or authorized wireless communications between user equipment and a communications network.

A tower or base station is "existing" if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was

built, but was lawfully constructed. A tower or base station that was not built, modified or maintained correctly, which violates conditions of approval of any permit or approval therefore, or which violates County Code shall not be considered “existing.”

Shot Clock and AB 57

The FCC established a nationwide standard for a “reasonable period of time” to process wireless applications for zoning approval (building permit process is separate). The FCC originally established two time periods: 90-days for action upon a collocation request (including existing WCF upgrades/ modifications) and 150-days for action upon a new siting application. Pursuant to Section 6409(a) of the Spectrum Act the FCC established a third, 60-day, timeline for “eligible facility requests” that do not include a “substantial change in the physical dimensions” of an existing wireless tower or base station (discussed above). The time runs from the date of application submittal. The shot-clock is temporarily stopped, or “tolled”, if an application is deemed incomplete (in writing) within the first 30-days after submittal, and it starts up again upon resubmittal of completeness items by the applicant. The County then has 10-days to determine if the resubmittal is sufficient. If no further completeness determination is made by the County within 10-days the application is “deemed complete”, and the shot clock continues running.

Under AB 57, a state law which went into effect on Jan. 1, 2016, if the County fails to act upon a WCF application within the FCC shot clock time limits, or does not obtain a written “tolling agreement” from the applicant extending the shot clock time limit, the application is “deemed approved”.

Proposals for “major collocations” (or any “substantial change in the physical dimensions” of an existing wireless tower or base station, as defined above) or new WCFs shall still be processed as Level 5 Commercial Development Permits, and can be denied in a manner consistent with County Code. “Shot clock” time limits apply only to zoning approval stage, not building permit processing stage.

WCF Projects That Qualify as Building Permit-Only

While the 60-day, 90-day and 150-day processing timelines do not apply to the Building Permit process, applicants of WCF proposals should be informed that they can apply for concurrent Building Permit processing to expedite their final approval, with the understanding that the applicant accepts the risk that the zoning permit process may result in the need to make changes to the initial Building Permit submittal.

Antenna or equipment “swap-outs” that involve in-kind replacement of old antennas or other equipment for new antennas/equipment of approximately the same size, and additions of other minor equipment that would out of view or otherwise visually inconspicuous, are exempt from discretionary review and may be approved with a Building Permit-only, provided a new cumulative radio-frequency (RF) emissions calculation/estimate report, taking the new

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antenna(s)/equipment into account, presenting the proposed new RF levels as a percentage of the FCC's RF emission limits, and existing/proposed condition photo-simulations, are submitted with the Building Permit application materials.

County Code Sections Affected

All applicable subsections of the WCF Ordinance (Sec. 13.660-668) will be affected by the 150-day shot clock standard for processing **new** WCFs, the 90-day shot clock standard for major modifications/collocations, and the 60-day shot clock for "eligible facility requests" (i.e., most collocations/modifications, removal or replacement of transmission equipment on **existing** cell towers and/or base stations) that fall below the "substantial change" thresholds.

Subsection 13.10.660(D)(21) – Definition for "Major Modification to Visual Impact" will be interpreted so that only WCF upgrades/additions that constitute a "substantial change in the physical dimensions", as defined above, are to be considered a "Major Modification to Visual Impact" and thus subject to Level 5 review with a public hearing. Collocation/modification proposals that fall below the "substantial change" thresholds (i.e., "eligible facility requests") will be subject to a Level 3 Minor Variation to the existing WCF permit that shall be approved (subject to reasonable modifications/conditions of approval).

Subsections 13.10.661(C)(3), 13.10.661(G), 13.10.663(A)(2), and 13.10.663(B)(12) dealing with collocations will be interpreted to comply with the requirements of Spectrum Act and the FCC "shot clock". The 9-antenna/3-equipment cabinet limit for collocations will no longer be in effect if the collocation/modification does not exceed the "substantial change" criteria thresholds.

Reason

Certain provisions of the County's Wireless Communications Facilities (WCF) Ordinance require guidance and clarification so that the ordinance is administered in compliance with recent changes in Federal and state rulings and legislation, namely the FCC's "shot clock", Section 332(c)(7) of the Communications Act of 1934, Sec. 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") and AB 57. This Administrative Practices Guideline ensures that County procedures comply with these regulations.


Kathy M. Previsich, Planning Director


Date