



Staff:

Chris Huot, Assistant City Manager

Committee members:

Bob Smith, Chair
Ken Weir
Harold Hanson

**SPECIAL MEETING OF THE
PLANNING AND DEVELOPMENT COMMITTEE**
of the City Council - City of Bakersfield

Tuesday, September 20, 2016
12:00 p.m.

City Hall North
1600 Truxtun Avenue, Bakersfield, CA 93301
First Floor, Conference Room A

AGENDA

1. ROLL CALL
2. ADOPT AUGUST 2, 2016 AGENDA SUMMARY REPORT
3. PUBLIC STATEMENTS
4. NEW BUSINESS
 - A. Discussion Regarding the Wireless Communication Facilities In Public Right-of-Way – Fidler / Heglund
5. COMMITTEE COMMENTS
6. ADJOURNMENT



DRAFT

/s/ Chris Huot

Staff: Chris Huot
Assistant City Manager

Committee Members
Councilmember, Bob Smith Chair
Vice Mayor, Harold Hanson
Councilmember, Ken Weir

**REGULAR MEETING OF THE
PLANNING AND DEVELOPMENT COMMITTEE**

Tuesday, August 2, 2016
12:00 p.m.

City Hall North – Conference Room A
1600 Truxtun Avenue, Bakersfield, CA 93301

AGENDA SUMMARY REPORT

The meeting was called to order at **12:16 p.m.**

1. ROLL CALL

Committee members:

Councilmember, Bob Smith, Chair
Vice Mayor, Harold Hanson
Councilmember, Ken Weir

City Staff:

Alan Tandy, City Manager
Chris Huot, Assistant City Manager
Christopher Gerry, Administrative Analyst – City Manager’s Office
Caleb Blaschke, Management Assistant
Andy Heglund, Deputy City Attorney
Richard Iger, Associate Attorney
Nick Fidler, Public Works Director
Doug McIsaac, Community Development Director
Jacqui Kitchen, Planning Director
Cecelia Greigo, Associate Planner
Darrin Budak, Recreation and Parks Assistant Director
Devin Daugherty, Park Construction and Facility Planner

Additional Attendees:

Bob Bell, Downtown Bakersfield Development Corporation (DBDC)
Cathy Butler, Downton Bakersfield Development Corporation (DBDC)
Dave Dmhowski, Quad Knopf
Troy Hightower, TDH Association International
Adam Cohen, Bakersfield Resident
Roger McIntosh, McIntosh and Associates
Theo Douglas, The Bakersfield Californian
A Member of KGET 17 News

2. ADOPT APRIL 19, 2016 AGENDA SUMMARY REPORT

The report was adopted as submitted.

3. PUBLIC STATEMENTS

None

4. DEFERRED BUSINESS

A. High Speed Rail Station Plan Update

Community Development Director Mclsaac stated preliminary work was nearly completed. He stated 11 visioning workshops had been held and the information gathered at them was summarized into a "What We Heard" report by the consultant firm Skidmore, Owings & Merrill LLP. Mr. Mclsaac presented to the Committee an existing conditions report analyzing transportation, economics, urban design, etc. including several vision concept alternatives prepared by the consultant as well. The vision concept alternatives will be presented at the upcoming Stakeholder Committee meeting, and then at the first citywide community meeting tentatively scheduled for late August. It will be held at the Rabobank Convention Center.

City Manager Tandy stated that as part of the area planning efforts, conceptual planning for a street scape project along 34th Street, a designated economic opportunity zone, was also being planned with the assistance of Dignity Health. The project is in conjunction to a Pacific, Gas, and Electricity (PG&E) project to bury overhead lines planned for 2017.

Planning Director Kitchen stated the purpose of the review process is to engage the community in order to design visual concepts from their responses and feedback.

Committee Chair Smith stated all the vision concept alternatives were headed in the right direction. Several contain components which could be implemented with or without the High Speed Rail.

Committee member Hanson asked if the city was being reimbursed for the staff time being used for this part of the process. Mr. Hanson also inquired if any information was available regarding any private sector businesses partnering with the High Speed Rail Authority.

City Manager Tandy stated staff time was being reimbursed and explained the two components to the reimbursement agreement. One component reimburses the time of three planners dedicated to the Station Area Planning study and the second component reimburses staff time spent on the cooperative efforts associated with the High Speed Rail. He also stated he was not aware of any private equity partners connected with the construction of the project. The outcome of the current planning efforts could be used as a guide by private developers who may be interested in investing in future development.

Committee member Weir stated the planning exercise is very beneficial as it allows for the incorporation of what the community envisions for the area.

5. NEW BUSINESS

A. Proposed Friant-Kern Canal Project Update

City Manager Tandy stated staff has been working diligently with the Bureau of Reclamation and its designated Use Committee made up by 13 different water districts, for some time now, to develop a concept of a multi-use path along the federal waterway known as the Friant-Kern Canal. The idea was referred by Committee Chair Smith in response to the absence of a north to south passageway for bicycles and pedestrians. He stated there is federal legislation which encourages the Bureau of Reclamation to make multi-use elements out of the canals. Mr. Tandy stated that if approved, the project could be funded through several grant opportunities over a period of several years.

Management Assistant Blaschke presented a brief slide show containing images from several areas along the Friant-Kern Canal and renderings of a multi-use path along the canal and referred to the memorandum included in the meeting packet. He stated a six mile multi-use path along the canal would connect north Bakersfield to central, east, and west Bakersfield. Staff will continue to have dialogue with the Friant Water Authority, identify grant opportunities, and provide periodic updates to the Committee as the project progresses.

Committee Chair Smith thanked staff for all their time and efforts in moving the project forward.

Committee member Weir asked who would be maintaining the multi-use path if it is funded, built and completed and what the timeframe of the project was.

City Manager Tandy stated the city, specifically the Recreation and Parks Department, would be responsible to main the pathway in the same manner it does the bike path.

Public Works Director Fidler stated staff is reviewing several options to alleviate the added workload to the Parks Department including the Adopt-A-Highway program in which several sections of the multi-use pathway could be adopted and maintained by sponsors and volunteers. He stated a small segment could be constructed in 2018.

6. COMMITTEE COMMENTS

None

7. ADJOURNMENT

The meeting adjourned at **12:57 p.m.**



MEMORANDUM
CITY ATTORNEY

September 16, 2016

TO: PLANNING AND DEVELOPMENT COMMITTEE
BOB SMITH, CHAIR
KEN WEIR
HAROLD HANSON

FROM: VIRGINIA GENNARO, CITY ATTORNEY
ANDREW HEGLUND, DEPUTY CITY ATTORNEY

SUBJECT: PROPOSED ORDINANCE RE: WIRELESS TELECOMMUNICATIONS
FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Virginia
AH

Background. At the August 17, 2016 Council meeting, Public Works staff presented the need for a new ordinance regulating the placement of wireless telecommunication equipment (poles, antennas, etc.) in the **public right-of-way**. In response, your Council adopted a 45-day moratorium on the approval of any new wireless equipment in the right-of-way until regulations could be adopted and referred the matter to this Committee for further analysis. This memo introduces the topic and complements a power point that will be presented by the City Attorney's Office.

Traditionally, cellular companies have placed their equipment on **private property** through agreements with the property owners. These companies must comply with the City's zoning code regarding the size and location of the equipment installed. Applications for placement of this equipment on private property are approved administratively if they meet specific requirements. Those applications that do not are evaluated for approval by the Board of Zoning Adjustment.

Recently, cellular companies have been requesting approval to place their equipment in the City's right-of-way. These companies, which hold a certificate from the California Public Utilities Commission essentially granting franchise rights, have the same authority as power and telephone companies to place equipment in the right-of-way. This authority is subject to the City's reasonable time, place, and manner regulations generally governing the placement, look, and size of the equipment.

In implementing its regulations for the public right-of-way, the City may not prohibit or take action that effectively prohibits cellular companies from providing wireless services or closing a "significant gap" in service

coverage. While there is little guidance on how this limitation is applied, other cities have been fairly successful in controlling where the equipment is located, how it will look, and the noise produced by the equipment.

Proposed Ordinance. Placement of wireless equipment in the public right-of-way raises unique concerns – like traffic safety, use of the right-of-way by the City and other utilities, and aesthetics – when compared to placement of wireless equipment on private property. Since our existing code does not adequately address these concerns, staff has developed the attached draft ordinance to regulate the type of equipment in the right-of-way. Highlights of the proposed ordinance include:

1. A permit will be required before wireless equipment can be placed in the right-of-way. If the proposed placement meets certain criteria (collocation on an existing pole or a new pole less than 35 feet tall and without public protest), the permit can be issued administratively by the Public Works director. If not, the Board of Zoning Adjustment will evaluate the application and issue the permit, if appropriate.
2. The public will have the opportunity to protest any new pole (except for director-approved collocations).
3. The permit will last for 10 years. This will allow the City to apply updated standards as technology advances.
4. New poles must be less than 24 inches in diameter.
5. No new wood poles will be allowed.
6. Wireless equipment placed on an existing pole must add less than 4 feet to the height of the pole.
7. Pole-mounted equipment may be no larger than 5 cubic feet in dimension.

Conclusion: The City Attorney recommends that the proposed ordinance be placed on the September 28, 2016 Council agenda as an emergency ordinance (which does not require second reading) since placement of wireless equipment in the right-of-way without adequate standards impacts the health and safety of the public using the right-of-way.

AH:dll

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BAKERSFIELD ADOPTING
CHAPTER 12.30 OF THE BAKERSFIELD MUNICIPAL CODE
RELATING TO WIRELESS TELECOMMUNICATION FACILITIES
IN THE PUBLIC RIGHT-OF-WAY.**

BE IT ORDAINED by the Council of the City of Bakersfield as follows:

SECTION 1.

Chapter 12.30 of the Bakersfield Municipal Code is hereby adopted to read as follows:

Chapter 12.30 Wireless Telecommunication Facilities in the Public Right-Of-Way

Sections:

- 12.30.010 Definitions.**
- 12.30.020 Applicability.**
- 12.30.030 Permit – Required.**
- 12.30.040 Permit – Application requirements.**
- 12.30.050 Permit – Application requirements – Security.**
- 12.30.060 Permit – Approval – Director.**
- 12.30.070 Permit – Approval – Board of zoning adjustment.**
- 12.30.080 Permit – Term.**
- 12.30.090 Permit – Findings.**
- 12.30.100 Permit – Transfer.**
- 12.30.110 Design and development regulations – General.**
- 12.30.120 Design and development regulations – Traffic safety.**
- 12.30.130 Design and development regulations – Clearance.**
- 12.30.140 Design and development regulations – Facilities.**
- 12.30.150 Design and development regulations – Noise.**
- 12.30.160 Design and development regulations – No dangerous condition or obstructions.**
- 12.30.170 Operation and maintenance standards.**
- 12.30.180 Removal of facilities – Permit expiration, earlier termination or revocation or abandonment of facilities.**
- 12.30.190 Modification or removal of facilities – Exigent circumstances.**
- 12.30.200 Modification or removal of facilities – Conflicts with other public right-of-way uses.**
- 12.30.210 Cessation of use or abandonment.**
- 12.30.220 Nonconforming facilities.**

12.30.230 Cell on wheels deployment.

12.30.240 Appeal.

12.30.250 Severability.

12.30.010 Definitions.

Whenever used in this chapter, unless a different meaning clearly appears from the context, the words set forth in this section shall have the following meanings:

- A.** "Accessory Equipment" means any equipment associated with the installation of facilities, including but not limited to cabling, generators, fans, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes and surface location markers.
- B.** "Antenna" means any exterior transmitting or receiving device mounted on the ground, tower, building, or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunication signals or other communication signals.
- C.** "Cellular" means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.
- D.** "Code" means the Bakersfield Municipal Code.
- E.** "Collocation" means the mounting or installation of facilities on a pole for the purpose of transmitting and/or receiving radio frequency signal for communication purposes.
- F.** "Cell on wheels" means facilities temporarily transported in or temporarily installed.
- G.** "Department" means the department of public works.
- H.** "Director" means the director of public works or his or her designee.
- I.** "Exigent circumstance" means a dangerous condition, obstruction of the public right-of-way or an imminent threat to the public health, safety or welfare or the public's use of the public right-of-way.
- J.** "Facilities" means wireless telecommunication facilities.

- K.** "Modification" means a change to existing facilities that involves items such as collocation, expansion, alteration, enlargement, intensification, reduction or augmentation, including, but not limited to, changes in size, shape, color, visual design or exterior material. "Modification" does not include repair, replacement or maintenance if those actions do not involve a change to the existing facilities, as outlined above.
- L.** "Mounted" means attached or supported.
- M.** "Located within the public right-of-way" means any facilities which in whole or, in part, themselves or as part of another structure, rests upon, in, over or under the public right-of-way.
- N.** "Permit" means a wireless facilities right-of-way permit.
- O.** "Permittee" means the applicant to whom a permit was issued and all successors in interest to that permit.
- P.** "Pole" means a single shaft of wood, steel, concrete or other material approved by the director capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by this code.
- Q.** "Public right-of-way" means the area across, along, beneath, in, on, over, under, upon and within the dedicated public alleys, boulevards, courts, lanes, places, roads, sidewalks, streets and ways within the city, as they now exist or hereafter will exist and which are or will be under the permitting jurisdiction of the department.
- R.** "Utility pole" means any pole owned by any utility company that is primarily used to support wires or cables necessary for the provision of electrical or other utility services regulated by the California Public Utilities Commission.
- S.** "Wireless telecommunication facilities" or "wireless facilities" mean any equipment that transmits and/or receives electromagnetic waves. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals or structures supporting such equipment, including, but not limited to, poles; related accessory equipment; collocated equipment and other accessory development.
- T.** "Wireless telecommunications services" means the provision of services using facilities and shall include, but is not limited to, the following

services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. §332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

12.30.020 Applicability.

- A.** This chapter applies to the placement, construction or modification of facilities within the public right-of-way.
- B.** All facilities approved by the city prior to the adoption of this chapter shall not be required to obtain a new or amended permit until such time as a provision of this code so requires and shall be deemed a nonconforming use subject to the provisions herein related to nonconforming facilities.
- C.** All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this chapter governing operation and maintenance, modification or removal, cessation of use and abandonment and the prohibition of dangerous conditions or obstructions by such facilities; provided, however, that in the event a condition of approval related to any such facilities conflicts with a provision of this chapter, the condition shall control until the permit or other approval is amended or revoked.
- D.** This chapter does not apply to the following:
 - 1.** Facilities owned and operated by the city for its use;
 - 2.** Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement;
 - 3.** Government-owned and operated telecommunications facilities;
 - 4.** Facilities owned and operated by an emergency medical care provider;
 - 5.** Mobile services providing public information coverage of news events of a temporary nature; or
 - 6.** Facilities not in the public right-of-way as described in chapter 17.59 of this code.

12.30.030 Permit – Required.

It is unlawful for any person, firm or entity to install or collocate facilities within the public right-of-way without first applying for and receiving a wireless facilities right-of-way permit from the department as provided in this chapter. The permit shall be required whether the installation or collocation is part of a separate project or whether it requires some other approval. The permit will only be issued to those who have been granted the right to place facilities in the public right-of-way pursuant to state or federal law or franchise agreement with the city. No permit granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for any purpose other than as provided in this chapter. Further, no approval shall be construed as any warranty of title.

12.30.040 Permit – Application requirements.

- A.** Each applicant requesting a permit shall fully and completely submit to the department a written application on a form prepared by the director and pay the required permit fee and deposits.
- B.** The director may retain an independent, qualified consultant to review the technical aspects of any permit application, and the applicant shall pay the cost of this review through a deposit as required by the director. No permit shall be issued to any applicant that has not fully reimbursed the city for the consultant's cost.
- C.** In addition to the permit required under this chapter, the applicant must obtain all other required permits or approvals from the city, state or federal agencies. Any permit granted under this chapter is subject to the conditions and requirements associated with the other required permits or approvals.

12.30.050 Permit – Application requirements – Security.

To cover permittee's obligations under the permit and the code, permittee shall pay for and provide a performance bond or other form of security approved by the city, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition.

12.30.060 Permit – Approval – Director.

After making the findings required in this chapter, the director may approve a permit for the following installations of facilities within the public right-of-way

without the need for approval by the board of zoning adjustment:

- A. Shrouded and camouflaged facilities collocated on an existing pole, i.e. streetlight or utility pole, which are collectively less than three cubic feet in dimension, inclusive of antennas, and designed in accordance with criteria established by the director; or
- B. New poles on collectors and arterial roadways, as designated in the circulation element of the general plan, that are less than thirty-five feet tall, inclusive of all facilities, and designed in accordance with criteria established by the director and otherwise satisfying the requirements of this chapter; provided, however, that the applicant must first post notice, as required by the director, at the proposed location of the new pole to allow the public an opportunity to protest the proposed location and aesthetics of the pole. If protests are received by the city, the application will be referred to the board of zoning adjustment for consideration as provided in this chapter.

12.30.070 Permit – Approval – Board of zoning adjustment.

After public notice and hearing as required in chapter 17.64 of this code and making the findings required in this chapter, the board of zoning adjustment may approve a permit for the installation of those facilities within the public right-of-way not subject to director approval.

12.30.080 Permit – Term.

- A. A permit shall be void ten years from the date of issuance, unless it is otherwise deemed voided earlier or is revoked as provided herein. A permittee may apply for a new permit no earlier than one hundred eighty days before expiration of the permit. Any application for a new permit for existing facilities shall comply with the city's then-existing requirements for placement of facilities within the public right-of-way.
- B. Notwithstanding anything to the contrary herein, permits shall be deemed void one year after date of issuance if the permitted facilities have not been constructed before that date.

12.30.090 Permit – Findings.

No permit shall be issued unless all of the following findings are made:

- A. All notices required for the proposed installation have been given;

- B. The proposed facilities have been designed and located in compliance with all applicable provisions of this chapter including, but not limited to, all design and development regulations contained herein and those established by the director;
- C. If applicable, the applicant has demonstrated its inability to collocate its facilities on existing infrastructure; and
- D. The applicant has provided sufficient 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 it to use the public right-of-way.
- E. The applicant has demonstrated that the proposed installation is designed in such a way that it represents the least intrusive means possible for locating facilities within the public right-of-way and is supported by factual evidence and a justification study, as required by the director, to show that all alternative locations and designs identified in the application review process were technically infeasible or not available.

12.30.100 Permit – Transfer.

Transfer of a permit issued pursuant to this chapter is prohibited and voids the permit unless the permittee first notifies the director, in writing, of the proposed transfer, satisfies the requirements imposed by the director for the transfer to be effective and the director approves of the transfer in writing.

12.30.110 Design and development regulations – General.

No permit will be issued for the placement of facilities in the public right-of-way unless the facilities as proposed and constructed minimize visual, noise and other impacts to the surrounding community and are planned, designed, located and erected in accordance with the regulations set forth in this chapter and those established by the director.

12.30.120 Design and development regulations – Traffic safety.

All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety as required in city's subdivision and engineering design manual.

12.30.130 Design and development regulations – Clearance.

No portion of any facilities mounted on a pole shall be any closer to the ground than what is allowed under city's subdivision and engineering design manual. All facilities shall be installed a minimum of six feet behind ultimate curb and gutter flowline or at the edge of the public right-of-way and shall meet all applicable Americans with Disabilities Guidelines.

12.30.140 Design and development regulations – Facilities.

- A.** In approving a permit under this chapter, a preference shall be given for collocating facilities on an existing pole rather than placing facilities on a new pole.
- B.** Only facilities mounted to poles as defined herein shall be permitted in the public right-of-way.
- C.** The maximum height of any facilities mounted on an existing pole shall not exceed forty-eight inches above the top of the pole. Legally required lightning arresters and beacons shall be included when calculating the height of facilities.
- D.** Unless otherwise provided for in this chapter, pole-mounted equipment, inclusive of antennas, shall not collectively exceed five cubic feet in dimension.
- E.** New wood poles shall only be allowed to replace existing wood poles.
- F.** New poles located within the public right-of-way shall not exceed twenty-four inches in diameter either above or below the surface level of the ground.
- G.** Each component part of facilities shall be located so as not to inconvenience the public's use of the public right-of-way or cause safety hazards to pedestrians and motorists and shall be in compliance with the city's subdivision and engineering design manual.
- H.** Facilities shall not interfere with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure or any other public health or safety facility.
- I.** All accessory equipment shall be pole-mounted or located underground unless the director determines that there is no room in the public right-of-way for undergrounding, or that undergrounding is not feasible, in which

case, the location of any accessory equipment shall be determined by the director.

- J. Facilities may not be illuminated unless specifically required by the Federal Aviation Administration, Federal Communications Commission, or other government agency. Any required illumination must be installed so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.

12.30.150 Design and development regulations – Noise.

At no time shall equipment noise from any facilities exceed a reasonable decibel level as determined by the director.

12.30.160 Design and development regulations – No dangerous condition or obstructions.

No person shall install, use or maintain any facilities, which in whole or in part rest upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facilities unreasonably interfere with or unreasonably impede the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near the location where the facilities are located.

12.30.170 Operation and maintenance standards.

All facilities must comply at all times with the operation and maintenance standards established by the director.

12.30.180 Removal of facilities – Permit expiration, earlier termination or revocation or abandonment of facilities.

- A. Upon the expiration date of a permit, earlier termination or revocation of the permit or abandonment of the facilities, the permittee, owner or operator shall remove the facilities and restore the site to its natural condition except for any improvements the director determines should remain. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules and regulations of the city. The

facilities shall be removed from the property, at no cost or expense to the city. Failure of the permittee, owner or operator to promptly remove its facilities and restore the property within ninety days after expiration, earlier termination or revocation of the permit or abandonment of the facilities, shall be a violation of this code unless the deadline to remove the facilities is extended by the director upon a showing of good cause. Failure to abide by the timeline provided in this section shall be grounds for any or all of the following:

1. Acting on any required bond or other security;
 2. Removal of the facilities by the city in accordance with the procedures established herein or under the city's nuisance abatement procedures at the owner's expense; and/or
 3. Any other remedies permitted under this code or any other applicable law.
- B. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and, to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code.
- C. If the city removes facilities in accordance with this section, any such removal shall be without any liability to the city for any damage to such facilities that may result from reasonable efforts of removal. Neither the permittee, owner nor operator shall have any claim against the city for that damage. Unless otherwise provided herein, the city has no obligation to store such facilities.

12.30.190 Modification or removal of facilities – Exigent circumstances.

- A. If the director determines that the condition or placement of facilities located within the public right-of-way constitutes an exigent circumstance requiring modification or removal of some or all of the facilities, the director may cause the facilities to be modified or removed summarily and immediately without advance notice or a hearing. Within five business days of the modification or removal, the director shall serve written notice of the modification or removal, including the basis for the modification or removal, upon the permittee and person who owns the facilities. If feasible, facilities removed shall be preserved for pick-up by the owner; provided, however, that if the owner cannot be identified following reasonable effort or if the owner fails to claim the removed

facilities within sixty days, the facilities shall be treated as abandoned property and disposed of as determined appropriate by the director.

- B. If the director determines that exigent circumstances exist that require a modification or removal of facilities but that removal under this section is not necessary, the director will notify the permittee and owner of the decision and provide a deadline for the modification or removal of the facilities. If the permittee or owner fails to modify or remove the facilities within the time designated by the director, the city may exercise any or all of the available remedies under section 12.30.180.

12.30.200 Modification or removal of facilities – Conflicts with other public right-of-way uses.

- A. Permittee shall modify or remove its facilities, or any portion thereof, without cost or expense to the city, if and when made necessary by any of the following:
 - 1. Any public improvement project, including, but not limited to, the construction, maintenance or operation of any underground or above-ground equipment including, but not limited to, sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by the city or any other public agency;
 - 2. Any abandonment of any street, sidewalk or other public facility; or
 - 3. Any change of grade, alignment or width of any street, sidewalk or other public facility.
- B. Such modification or removal of the facilities shall be completed within ninety days of notification by the city unless exigencies dictate a shorter period for the modification or removal. Modification or relocation of the facilities shall require submittal, review and approval of a new permit.
- C. If the facilities are not modified or removed within the period of time outlined above, the city may exercise any or all of the available remedies under section 12.30.180.

12.30.210 Cessation of use or abandonment.

- A. Facilities are considered abandoned and shall be promptly removed as provided herein if they cease to provide wireless telecommunications services for ninety or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be

unreasonably denied. If there are two or more users of facilities, then this provision shall not become effective until all users cease using the facilities.

- B.** The operator of facilities shall notify the city, and any other permittee authorized to use the facilities, in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) no later than ten days before ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facilities shall provide written notice to the director, and any other permittee authorized to use the facilities, of any discontinuation of operations of thirty days or more. Failure to provide the notice required herein shall constitute a violation of the permit and be grounds for:
1. Litigation;
 2. Revocation or modification of the permit;
 3. Acting on any required bond or other security;
 4. Removal of the facilities as provided herein; and/or
 5. Any other remedies permitted under this code or applicable law.

12.30.220 Nonconforming facilities.

Preexisting facilities that do not conform to this chapter shall, within ten years from the date such facilities become nonconforming, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facilities, intensify the use or make some other change in a conditional use, the owner shall comply with all applicable provisions of this code at such time, including, but not limited to, securing a permit under this chapter, to the extent the city can require such compliance under federal and state law.

12.30.230 Cell on wheels deployment.

A cell on wheels shall be permitted for the duration of an emergency declared by the city or at the discretion of the director.

12.30.240 Appeal.

- A.** Any decision or action of the director provided for herein shall be final unless, within ten calendar days after the decision, the decision is

appealed to the board of zoning adjustment by paying the required appeal fee and detailing, in writing, the decision being appealed and the specific reasons why the appellant believes the decision or action from which the appeal is taken should not be upheld. The appeal shall be filed with the city clerk along with the required fee. If the circumstances surrounding the appeal require public notice, notice of the appeal hearing shall be given as set forth in section 17.64.050.

- B. Any decision or action of the board of zoning adjustment provided for herein shall be final unless, within ten calendar days after the decision, the decision is appealed to the city council by paying the required appeal fee and complying with the provisions of section 17.64.090. The city council may hear the appeal *de novo*.

12.30.250 Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held to be invalid, that invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

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I **HEREBY CERTIFY** that the foregoing Ordinance was passed and adopted by the Council of the City of Bakersfield at a regular meeting thereof held on _____ by the following vote:

AYES: COUNCILMEMBER: RIVERA, MAXWELL, WEIR, SMITH, HANSON, SULLIVAN, PARLIER
NOES: COUNCILMEMBER: _____
ABSTAIN: COUNCILMEMBER: _____
ABSENT: COUNCILMEMBER: _____

ROBERTA GAFFORD, CMC
CITY CLERK and EX OFFICIO Clerk of the
Council of the City of Bakersfield

APPROVED:

By: _____
HARVEY L. HALL, Mayor
City of Bakersfield

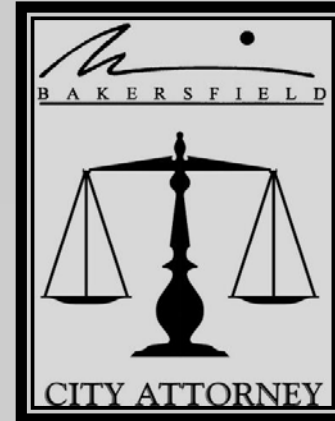
APPROVED AS TO FORM:
VIRGINIA GENNARO
City Attorney

By: _____
ANDREW HEGLUND
Deputy City Attorney

AH:dll

Documents
Presented At
Planning & Development
Committee
September 20, 2016
Meeting

Wireless Communication Facilities in the Public Right-of-Way



**Planning & Development
Committee
September 20, 2016**

**Andy Heglund
Deputy City Attorney**

August 17, 2016 Council Action

1. Council adopted a moratorium on the approval of any new wireless equipment in the right-of-way until regulations can be adopted
2. Referred the matter to this Committee for further consideration.



Wireless Equipment on Private Property

- Placement complies with City's zoning code regarding size and location
- Approved administratively if equipment meets specific requirements. Equipment that does not is evaluated for approval by the Board of Zoning Adjustment.



Authority to Use Public Right-of-Way

Cellular providers certified by the California Public Utilities Commission have the same rights as other public utilities to place their equipment in the right-of-way (as power and telephone companies have traditionally done)



City's Authority to Regulate

- Limit unreasonable interference with the public's use of the right-of-way and can generally regulate the location, aesthetics, size, and ongoing maintenance of the wireless equipment
- May not **prohibit** or take action that has the **effect of prohibiting** the provision of wireless services or **closing a "significant gap"** in service coverage



Proposed Ordinance

- Creates a new permit for placing equipment in the **Public Right-of-Way**
- Promotes installing equipment on existing poles
- Provides standards governing the look, size, location, and impacts of that equipment



Paths to Permit Approval

1. Director Approval (no public notice)
2. Director Approval (public protest)
3. BZA Approval (public notice and hearing)



Path 1 - Director Approval (no public notice)

Camouflaged equipment less than 3 cubic feet in dimension collocated on an existing pole (see illustration)



Path 2 - Director Approval (public protest)

1. New poles on collectors and arterials less than 35 feet tall, including all equipment
2. Applicant must post notice of a new pole and give the public an opportunity to protest the pole.
3. If a protest is received, the application will be evaluated by the Board of Zoning Adjustment



Path 3 – BZA Approval (public notice and hearing)

1. Any protested new pole under 35 feet tall.
2. Any other application not subject to approval by the Director.



Proposed Ordinance Highlights

1. Permit valid for 10 years to allow updated standards as technology advances
2. New poles smaller than 24 inches in diameter
3. No new wood poles
4. Pole-mounted equipment may be no larger than 5 cubic feet in dimension
5. Public can protest any new pole (except for director-approved collocations); appeals to City Council
6. Standards for placement, size, aesthetics, maintenance, bonding, etc. will be established by the Public Works Director



Recommendation

Direct the City Attorney to present the ordinance at the September 28, 2016 council meeting for approval as an emergency ordinance.



Planning and Development Committee

Tuesday, September 20, 2016

Attendance List

Name	Organization	Contact: Phone/ E-mail
Chris Hoot	C/MO	
Steven Teglia	C/MO	
DEVIN DAUGHERTY	RECRE PARKS	661-326-3148
Andey Heglund	CAO	
Gianny Gennaro	C/O	✓ 3721
Caleb Blaszk	C/MO	3745
USA McGRATH	H/C	3408
Ted Wright	PW	
Chris Gerry	C/MO	3753
BOB WILSON	COB PW	3564
PAUL JOHNSON	PLANNING	7509
Dave Dmohowski	Consultant	661-510-8311
BOB WINN	AT&T	916-541-9962