

**City Manager’s Report**  
**February 12, 2019 City Council Meeting**  
**Prepared By: Pierre Rivas, Development Services Director**



**Item#: 8.4**

**Subject:** (1) Adopt a Resolution of Intention (ROI) 19-01 to initiate amendments to Municipal Code Title 10, Chapter 4, adding Section 20: Small Cell Wireless Facilities that are necessary to be consistent with Federal Communications Commission final rule adopted for Wireless Infrastructure Deployment for 5G (47 CFR Part 1); and (2) Consider authorizing the Mayor to sign a letter in support of H.R. 530, the Accelerating Wireless Broadband Development by Empowering Local Communities Act of 2019.

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**Purpose:** The purpose of this proposed zoning text amendments is to bring the City Code into conformity with the final rule adopted by Federal Communications Commission regarding streamlining of small cell wireless facility siting review by local agencies.

**Background:** On September 26, 2018, The Federal Communications Commission (FCC) adopted rules (47 CFR Part 1) for “Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment.” These rules were in the form of a Declaratory Ruling and Third Report & Order (FCC 18-133) becoming effective on January 14, 2019 with local jurisdiction having until April 15, 2019 to “establish and publish” standards regarding aesthetics.

**Discussion:** The FCC adopted “Declaratory Ruling and Third Report and Order” interprets provisions of the Telecommunications Act of 1996 to preempt local regulations that effectively prohibit the deployment of small cell wireless infrastructure in local communities. The FCC Ruling includes broad definitions of the types of local regulations that would be presumed to constitute an impermissible effective prohibition of wireless services; allowance of locating small cell facilities within public rights-of-way and on municipally owned light poles, traffic lights, utility poles, and other similar property suitable to hosting such facilities; and establishes the applicable “shot clock” timelines by which local agencies must take action on small cell facility installation applications.

Specifically, the rules address the following:

- **Rule Violations:** Municipal regulations that would constitute an unlawful “Effective Prohibition” of small cell service deployment and, thus, be preempted by the Telecommunications Act of 1996.

- **Fees and Charges:** Standards for determining whether a municipal fee or charge imposed on small cell infrastructure providers would be permissible based on the FCC's interpretations of the Telecommunications Act, what local fees are covered by the new interpretation, and what fees are presumptively compliant local fees.
- **Non-Fee Requirements:** What non-fee provisions in a local regulation, such as aesthetics, undergrounding, and minimum spacing requirements, could operate as an effective prohibition of service.
- **Shot Clocks:** The new “shot clocks” or time lines applicable to local review of applications for wireless infrastructure installation and deployment, and the potential consequences if a municipality fails to act on the application during the specified time frame.
- **Grandfathering:** The FCC interpretation affect on previous agreements between a municipality and a carrier or other third party involved in small cell infrastructure deployment.

It is the opinion of staff that changes are needed to add code regulations that are consistent with the final rules established by the FCC which are intended to streamline the wireless infrastructure siting review process by local agencies. The City Council may initiate amendments to the Placerville Zoning Ordinance by Resolution of Intention or minute order, per Section 10-1-7(A-1) of City Code.

The attached resolution (Attachment 1) would direct staff to begin the process of amending the Zoning Ordinance. The draft ordinance would be available for public review and consideration by the Planning Commission at a noticed public hearing. The Commission would review and make recommendations for consideration by the City Council at a noticed public hearing.

#### H.R. 530

Rep. Anna Eshoo (CA-18) introduced H.R. 530 (Attachment 3) to overturn the FCC's September order preempting local authority over small cell wireless infrastructure on January 14, 2019, the same day the FCC order took effect. Although H.R. 530 would not preclude future FCC or congressional preemption of cities on wireless infrastructure, it provides that FCC's order [Declaratory Ruling and Third Report & Order (FCC 18-133)] would have no force or effect.

Additionally, the League of California Cities, a coalition of California cities, local governments, and utility companies across the country has joined in suing the FCC over these regulations.

The League has asked Cities to support this legislation by sending a letter to their respective members of Congress. A copy of the draft letter is attached (Attachment 4) for the Council's consideration.

**Cost and Budget Impact:** Minimal. Costs include staff time to schedule hearings, prepare staff reports and noticing for Planning Commission and City Council public hearings for an ordinance amendment.

**Recommendation:** (1) Adopt a Resolution of Intention (ROI) 19-01 to initiate amendments to Municipal Code Title 10, Chapter 4, adding Section 20: Small Cell Wireless Facilities that are necessary to be consistent with Federal Communications Commission final rule adopted for Wireless Infrastructure Deployment for 5G (47 CFR Part 1); and (2) Consider authorizing the Mayor to sign a letter in support of H.R. 530, the Accelerating Wireless Broadband Development by Empowering Local Communities Act of 2019.



M. Cleve Morris, City Manager



Pierre Rivas, Development Services Director

Attachments:

1. Resolution of Intention 19-02
2. Federal Communications Commission 47 CFR Part 1, Federal Register/Vol. 83, No. 199/Monday, October 15, 2018/Rules and Regulations
3. H.R. 530
4. Draft letter in support of H.R. 530