



COUNTY OF HUMBOLDT

For the meeting of: 11/1/2022

File #: 22-1295

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Public Hearing on the Wireless Telecommunications Facilities Ordinance (Record # PLN-2021-17452)

RECOMMENDATION(S):

That the Board of Supervisors:

1. Receive and consider the staff report, open the public hearing, and accept public comment; and
2. Close the public hearing; and
3. Deliberate on the proposed ordinances; and
4. Adopt the proposed ordinances by taking the following actions:
 - a. Adopt Resolution No. _____ [Attachment 1] making findings the Coastal Ordinance is exempt from environmental review pursuant to CEQA and making all the required findings for consistency with the General Plan, Zoning Ordinance and the Coastal Act, and transmitting the ordinance to the California Coastal Commission for their review and certification; and
 - b. Adopt Resolution No. _____ [Attachment 2] making findings the Inland Ordinance is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA), and making all the required findings for consistency with the General Plan, Zoning Ordinance; and
 - c. Adopt Coastal Ordinance No: _____ [Attachment 3] regulating Wireless Telecommunications Facilities in the coastal zone, which will become effective after California Coastal Commission certification; and
 - d. Adopt Inland Ordinance No: _____ [Attachment 4] regulating Wireless Telecommunications Facilities in the inland parts of the County; and
 - e. Direct the Clerk of the Board to publish a Summary of the Ordinances within 15 days after adoption by the Board, along with the names of those Supervisors voting for and against the ordinances [Attachment 5 & Attachment 6] and to post in the Office of the Clerk of the Board of Supervisors a certified copy of the full text of the adopted ordinance along with the names of those Supervisors voting for and against the ordinance (Government Code section 25124); and

- f. Direct Planning Staff to prepare and file a Notice of Exemption with the County Clerk and Office of Planning and Research.

SOURCE OF FUNDING:

The salary funding for preparing this staff report is included in the General Fund contribution to the Long-Range Planning unit (1100282-9360).

DISCUSSION:

This item involves eight amendments to the Zoning Regulations for both Coastal and Inland areas of the unincorporated county to add a Wireless Telecommunications Facilities Ordinance (addition of Sections 313-91 and 314-91, and amendment of Sections 313-138, 313-171, 314-7, 314-84, 314-138 and 314-171 of Chapters 3 and 4 of Division 1 of Title III of the Humboldt County Code, and addition of Section 411-12 of Chapter 1 of Division 1 of Title IV of Humboldt County Code).

Background

This Wireless Telecommunications Facilities Ordinance implements measure **T-IM1. Communications Facilities Ordinance** of the Humboldt County General Plan which mandates a Communications Facilities Ordinance that provides compatibility of communications facilities with nearby land uses, is proactive in the design and siting of wireless communications facilities, provides incentives for unobtrusive and compatible wireless facility location and design, and establishes clear standards for such facilities. The current Humboldt County regulations pertaining to development of wireless telecommunications facilities are inconsistent and do not align with the goals of the General Plan, do not satisfy the requirements of the California Environmental Quality Act (CEQA) and do not equip the county to comply the state and federal laws which govern the period of time-or “shot clock” - during which action must be taken on an application.

Federal and state laws set the stage for how local governments may control the development of wireless telecommunications facilities. The Federal Telecommunications Act of 1996 preserves local zoning authority over decisions regarding the development of wireless telecommunications facilities while establishing five limitations on that authority:

- 1) Local government cannot discriminate among providers, nor can they prohibit or have the effect of prohibiting wireless services;
- 2) Local governments must take action on applications for wireless facilities within a period of time determined reasonable by the federal government;
- 3) Any decision by local government to deny an application must be supported by substantial evidence in the record;
- 4) Local government may not regulate development of wireless facilities on the basis of environmental and health effects of radio frequency;
- 5) Any adversely affected person may file a court action against a local authority if they violate these limitations.

Subsequently, congress established additional limitations: the 2012 Middle-Class Tax Relief and Job Creation Act establishes a class of “eligible facilities” that must be approved if certain criteria are met by an application. This special class of development includes co-location of new transmission equipment on existing facilities, removal of transmission equipment and the replacement of transmission equipment. If a local government entity does not take action on one of these types of applications within 60 days, that application is deemed granted.

Also, the Federal Communications Commission (FCC) has clarified several of the provisions of the Telecommunications Act which also contains shot clocks for local governments to take action on different types of telecommunications facilities applications.

In 2018 the FCC established a new type of facility: the small cell wireless facility. These types of facilities are associated with the deployment of the fifth-generation mobile network (5G) and often operate on a higher radiofrequency (millimeter wave). These high frequency parts of the spectrum allow for far more data to be transmitted, but the waves do not travel well through structures nor for very significant distances, so a small cell wireless facility’s signal might only reach up to 1,500 feet without obstruction, and often a shorter distance. These facilities allow a higher reuse of wavelengths and thus increase capacity within the service area. The FCC ruled that local jurisdiction must allow small cell facilities to be deployed in the public right of way and gives a short timeframe for review of these applications.

The State of California has also entered into the regulatory arena in several significant ways. If a local jurisdiction fails to act before the FCC shot clock runs out, then the permit is deemed granted by state law. The second important requirement is included in Section 65850.6 of Government Code which mandates a ministerial process for co-location of facilities subject to a previous discretionary approval, and discretionary review for co-location of facilities subject to a previous ministerial approval. Said another way, no further discretionary review is required for co-location on facilities already approved with a discretionary permit.

Existing Regulations

The existing local regulations for the inland areas of the county are not consistent in their treatment of telecommunication facilities. In some zones, communication transmission facilities are specifically enumerated either as principally permitted uses or conditionally permitted uses in the zone. However, the zoning ordinance also permits telecommunication facilities as Quasi-Public Structures and Uses. This is confusing because these two pathways to permitting do not match each other. For instance, telecommunications facilities are listed as a principally permitted use in Timberland Production Zone (TPZ), but TPZ is not included in the list of zones where Quasi-Public uses are principally permitted. Another example is that Quasi-Public uses are principally permitted in Agriculture Exclusive (AE), however communications transmission facilities are listed as a use permitted with a use permit in the zone. The treatment of wireless communications facilities is not uniform and consistent throughout the code. The current regulations also fall short as they do not require environmental review for projects in resource lands that may result in conversion of timberland and unknown potential impacts on natural resources.

The zoning ordinance for the coastal zone does not suffer from the same confusion as the inland ordinance, however, it still falls short of the county's needs in several other ways. First, like the inland code, the regulations do not facilitate review of telecommunications facilities applications in time to meet the strict shot clock guidelines as described in federal and state regulations. Second, in the inland and coastal zones, the regulations encourage telecommunications facilities in TPZ-zoned areas without regard to the impacts on timber productivity or natural resources. Third, the existing regulations do not provide a comprehensive, uniform set of aesthetic guidelines and location incentives.

Proposed Regulations

This ordinance seeks to clarify the regulatory framework for telecommunications facilities, to streamline review and approval of new facilities in commercial and industrial zones, and to broadly encourage small cell wireless facilities in developed areas. The ordinance implements the Telecommunications Element of the General Plan which responds to a demand for a better quality of service, wider deployment of service, and future innovations such as the deployment of the next generation of wireless telecommunications facilities-small cell wireless facilities (a cornerstone of the emerging 5G network).

The Telecommunications Element recognizes that this infrastructure is critical to residents who rely on these services for quality of life, education, research, and access to healthcare and government services. Businesses rely on telecommunications for economic growth and job creation. As a relatively rural area with a dispersed population base, Humboldt County lags in its access to reliable telecommunications services compared to urban centers such as the San Francisco Bay Area. In fact, several communities including some on the Yurok Reservation are still without basic telephone services. This proposed ordinance addresses these deficiencies.

The proposed ordinance creates a tiered approach to permitting which allows for a streamlined process for those proposed facilities that would have relatively few impacts (Tier 1), and a more robust, discretionary process for those projects that would be more likely to have impacts on aesthetic values, resource lands and residential uses (Tier 2 and Tier 3).

Tier 1

Tier 1 projects do not require a public hearing because these projects are not likely to cause a significant impact on aesthetics, residential uses, or natural resources. These also capture many of the types of projects with short, 60-day shot clocks. These types of projects would only require a building permit and a completed checklist to be constructed. In some limited instances, design review would be required, but the Planning Director would have authority to approve the design review without the possibility of a public hearing, except those decisions would be subject to appeal to the Board of Supervisors. Projects that would qualify for Tier 1 permit include:

- Most co-locations
- New facilities at developed sites with existing facilities in TPZ and AE
- Most facilities in Commercial and Industrial zoning districts
- New invisible facilities except those in residential zoning districts, AE zone, and TPZ.
- Most new small cell facilities

Tier 2

Tier 2 projects require a Special Permit. Projects that would qualify for a Tier 2 permit include:

- All projects that do not meet the criteria for Tier 1 or Tier 3

Tier 3

Tier 3 projects require a Conditional Use Permit with a public hearing before the Planning Commission. These projects may have impacts on aesthetics, residential uses or resource lands. Projects that would qualify for a Tier 3 permit include:

- New facilities-except small cell facilities-in Residential zoning districts,
- New facilities at previously undeveloped sites zoned AE or TPZ,
- Most new facilities that exceed height limits in underlying zone,
- Most new, high-visibility facilities including on ridgetops

Planning Commission Recommendation

Publicly noticed hearings on the proposed ordinance were held by the Planning Commission on March 3, 2022, April 7, 2022, and April 21, 2022. At these meetings, several members of the public expressed concern relating to potential environmental and health effects of electromagnetic radiation associated with wireless communications facilities. Several commenters expressed particular concern over the rollout of 5G, expressing a desire for local regulation to assert maximum control over these new and potentially widespread technologies.

The Planning Commission did not feel comfortable making changes to the ordinance that may be prohibited by the FCC, and the only change it made to the ordinance was to add provisions for streamlined processing of new or modified facilities in the TPZ and AE zones within the developed area of an existing tower. It also directed Planning and Building staff to investigate if and how other local jurisdictions have implemented setbacks from wireless communications facilities from schools and other potential sensitive receptors.

In performing the research requested by the Planning Commission, staff found there are examples of other jurisdictions adopting setbacks from schools. The justifications offered for establishing setbacks by these jurisdictions were “to reduce clutter” and “to preserve community character.” It is unclear to staff why these concerns apply to schools and not to other types of sensitive receptors, such as senior care facilities. Also, the justification for setbacks is further weakened by the fact that the distances selected by various jurisdictions seems somewhat arbitrary, ranging from 300 feet to 1,500 feet, and lacks compelling justification of why a given distance was selected in the record.

As mentioned above, the Federal Telecommunications Act of 1996 limits local authority to regulate development of wireless facilities on the basis of environmental and health effects of radio frequency. It would violate federal law to adopt an arbitrary setback on the basis of unspecified health concerns that apply to certain sensitive receptors and not others, so based on the research directed by the Planning Commission, staff does not recommend any changes to the proposed ordinance.

Public Comment Received After the Planning Commission’s Review

In addition to registering concerns at the Planning Commission hearings, some citizens have continued to identify and push for changes to the ordinance recommended by the Planning Commission. Several meetings have been held with staff after the Planning Commission concluded their deliberations to discuss potential changes to the ordinance for the Board’s consideration. One meeting included a consultation with an attorney from Campanelli & Associates, P.C., a firm that has worked in the area of cell towers, specializing in Federal Telecommunications Act litigation and drafting zoning ordinances for local jurisdictions. The Campanelli & Associates approach includes extensive and exacting requirements for wireless telecommunications companies and site developers. Planning and Building staff reviewed a sample ordinance prepared by Campanelli and Associates for the Idaho city of Dalton Gardens (Attachment 8). The Dalton Gardens ordinance is optimized for maximum local control over placement of wireless telecommunications facilities. This contrasts the approach described in the Humboldt County General Plan which focuses primarily on the expansion of broadband and wireless service.

The Dalton Gardens ordinance prepared by Campanelli & Associates does not identify setback requirements from sensitive receptors. Instead it limits new cell towers by establishing a high standard for filling a gap of service when an applicant proposes to rely on that argument for developing a site. This approach is so different than the one recommended by the Planning Commission that further consideration of it would require a restart of the Planning Commission’s review process.

Planning and Building staff sent the draft regulations to the Coastal Commission on Jan. 14, 2022, and followed up on Jan. 26, 2022. Coastal Commission staff replied that they would not be able to respond prior to the Planning Commission hearing, but that they would appreciate the opportunity to provide feedback prior to adoption by the Board of Supervisors. On Sept. 21, 2022 Planning and Building staff sent another email to Coastal Commission staff with the latest draft and the target hearing date. If any comments are made by the Coastal Commission, staff will bring those forward for the Board's consideration.

Environmental Review

The proposed Wireless Telecommunications Facilities Ordinances are exempt from environmental review pursuant to CEQA, under CEQA Guidelines §15307, actions by regulatory agencies for protection of natural resources, and §15308, actions by regulatory agencies for protection of the environment.

Under the Class 7 exemption, CEQA does not apply when a regulatory agency acts to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Under the Class 8 exemption, CEQA does not apply when a regulatory agency acts to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Presently the zoning ordinance allows ministerial permitting of new telecommunications facilities in the AE and TPZ zones. The combined area of TPZ and AE zoned property within Humboldt County is 3,000,477 acres. The proposed ordinance protects timberlands and agricultural lands and the environment in these areas zoned TPZ and AE by requiring a conditional use permit for new telecommunication facilities in areas zoned AE and/or TPZ, providing for environmental review and consideration of impacts on natural resources and the environment, and appropriate mitigation.

FINANCIAL IMPACT:

Staff costs and other expenses related to preparation and review of this ordinance total approximately \$27,000. These costs are supported by the General Fund contribution to the Planning and Building Department, Long Range Planning Unit's FY 2021-22 & 2022-23 budgets (Budget Unit 1100282-9360).

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by streamlining county permit processes.

OTHER AGENCY INVOLVEMENT:

Public Works, Aviation, and County Counsel.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may choose to not adopt the proposed ordinance which would lead to continued processing of applications under the current non-uniform regulations. Staff is not recommending this alternative because the current regulations have internal conflicts, they fail to accommodate federal and state requirements and they fail to adequately assess potential impacts on the environment for some projects.

If the Board wishes to consider Mr. Campanelli's approach, the Board should direct Planning staff to restart the Planning Commission's review of the ordinance. Staff does not recommend further consideration of this alternative because it does not align with the guidance provided in the Telecommunications Element of the General Plan.

ATTACHMENTS:

1. Resolution No. ____ making findings the Coastal Ordinance is exempt from environmental review pursuant to CEQA and making all the required findings for consistency with the General Plan, Zoning Ordinance and the Coastal Act, and transmitting the ordinance to the California Coastal Commission for their review and certification 2. Resolution No. ____ making findings the Inland Ordinance is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA), and making all the required findings for consistency with the General Plan and Zoning Ordinance 3. Draft Coastal Wireless Telecommunications Facilities Ordinance 4. Draft Inland Wireless Telecommunications Facilities Ordinance 5. Post Adoption Ordinance Summary - Coastal 6. Post Adoption Ordinance Summary - Inland 7. Planning Commission staff report for April 7, 2022 Planning Commission meeting 8. City of Dalton Gardens Telecommunications Towers and Personal Wireless Service Facilities Ordinance

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PREVIOUS ACTION/REFERRAL:

N/A