



CITY of CALABASAS

COMMUNICATIONS AND TECHNOLOGY COMMISSION AGENDA REPORT

DATE: JULY 14, 2020

TO: CTC COMMISSIONERS

FROM: MICHAEL RUSSO, COMMUNICATIONS DIRECTOR
MICHAEL KLEIN, SENIOR PLANNER, AICP
JACLYN RACKERBY, ASSISTANT PLANNER

SUBJECT: COMMUNICATIONS AND TECHNOLOGY COMMISSION DISCUSSION OF
OPTIONS TO AMEND SECTION 17.12.050 (ANTENNAS / WIRELESS
COMMUNICATION FACILITIES) OF THE CALABASAS MUNICIPAL
CODE.

MEETING

DATE: JULY 21, 2020

STAFF RECOMMENDATION:

That the Communications and Technology Commission (CTC) provide direction to the City Council for revisions to the current wireless telecommunication facility ordinance.

Staff recommends that the Commission approve Exhibit A, a draft Memo from the CTC to the City Council with recommendations to update the ordinance.

REVIEW AUTHORITY:

Pursuant to Chapter 17.76 and Section 17.12.050(I) of the Calabasas Land Use and Development Code, the Communications and Technology Commission acts as a Planning Commission and is the reviewing body for considerations of amendments to Section 17.12.050 of the City of Calabasas Land Use and Development Code. The Communications and Technology Commission makes a recommendation to the City Council, which is the final approval body.

BACKGROUND:

At the direction of the City Manager, the Communications Department conducted a citywide survey to assess community opinions on the nature and quality of wireless services provided in Calabasas. The survey initially ran during the period of June 28, 2019 through August 8, 2019. The City received a total of 835 responses during the initial survey period. Due to the fact that the initial survey omitted residents in the 91301 and 90290 zip codes, the survey was re-opened and post cards were sent to City residents within these two zip codes to ensure that residents who may have inadvertently been omitted from the initial outreach were afforded additional time to respond. As a result, the survey was extended to December 15, 2019.

The total number of survey responses received during that period was 1,058. Of the 1,058 surveys received during both periods, 68 survey responses were from persons who identified themselves as not living in Calabasas, or did not disclose their locations, or indicated that they lived in Calabasas but indicated that their home was in a community other than Calabasas (most commonly Hidden Hills, Agoura, and Los Angeles County). As during the original analysis, out-of-City responses were excluded from this updated analysis.

The results of the survey demonstrate that the majority of respondents are dissatisfied with the quality of wireless service throughout the City, and very dissatisfied with the reliability of wireless service during the Woolsey Fire. Additionally, there is also willingness to accept new cell sites throughout the City, including in neighborhoods, to improve wireless service to Calabasas residents.

On March 11, 2020, the survey results were discussed by the City Council at a regular meeting. The City Council directed staff and the City Attorney to review the survey results with the Communications and Technology Commission in order to analyze the City's wireless ordinance and provide the Council with feedback on how to increase wireless service coverage and reliability within the City.

At the direction of the City Council, on April 21, 2020, the Communications and Technology Commission discussed the survey results. At the conclusion of the discussion, the Communications and Technology Commission directed the wireless subcommittee to work with staff, the City Attorney and Kramer Firm to analyze the current wireless ordinance to determine 1) the cause of poor wireless service within the City and 2) recommendations to amend the wireless ordinance in order to improve wireless service within the City.

The remainder of this report is intended to provide the Commission with an analysis of the existing wireless ordinance, and recommendations to address the hurdles for

deployment of a reliable wireless infrastructure within the City. The purpose of this report is for the Communications and Technology Commission to develop recommendations to update the ordinance. These recommendations would then be forward to the City Council for feedback and formal direction to staff to prepare an amendment to the City's wireless ordinance for consideration by the Commission and Council in noticed public hearings. These are "high level" recommendations, and not specific amendments to the ordinance. If so directed by City Council, staff will work with the subcommittee to develop and bring back an amended ordinance for the Commission's review. Public and industry outreach will also be included in the development of a new or amended ordinance.

DISCUSSION:

A. Current Wireless Ordinance: The City regulates installation, operation, and maintenance of personal wireless telecommunications facilities in the City under the provisions of the Wireless Facility Ordinance, Section 17.12.050 of the Calabasas Municipal Code. The ordinance was last comprehensively updated in 2012, and has since been modified as required by new federal law and FCC regulations. As stated in Section 17.12.050(A), the ordinance is intended to protect the health and safety of residents and business, protect the benefits provided to residents and business by wireless telecommunications facilities, balance these goals by permitting the installation and operation of personal wireless telecommunication facilities where needed, while reducing adverse economic, safety and/or aesthetic impacts. The ordinance is intended to accomplish these goals while also complying with all applicable federal and state laws, including the federal 1996 Telecommunications Act. However, as was the desire in 2012, the ordinance also states that Section 17.12.050 is intended to regulate personal wireless telecommunications facilities to the limit of, but not beyond, the City's power. In other words, it was the desire of the City Council to adopt an ordinance that prioritized maximum control over the installation of wireless facilities, rather than a balanced approach to encourage desired facilities and discourage undesirable facilities.

The current wireless ordinance is made up of three main components: 1) general requirements/standards and requirements for the issuance of a Wireless Telecommunication Facility Permit, 2) requirements for the issuance of a Minor Modification Permit, and 3) requirements for the issuance of a Small Wireless Facility Permit. The following is a brief overview of each section:

- 1) General requirements and standards: This section establishes that all wireless facilities located on private/public property and in the public right-of-way are subject to the provisions of Section 17.12.050 of the CMC. This section

includes submittal requirements for a Wireless Telecommunication Facility Permit, such as documentation that a proposed facility is the least intrusive means to close a significant gap in the carrier's service coverage, affirmation that a proposed facility meets all FCC standards, a masterplan of all existing and proposed facilities in the carrier's network and a siting analysis. Additionally, this section establishes preferred zones for the installation of new wireless facilities, and a minimum setback of 1,000 for new facilities (not including Small Wireless Facilities) from residential zones, schools or parks. Furthermore, the public hearing is required to be noticed to all property owners within a 1,500 –foot radius of the site, which in some cases has resulted in mailed notices to more than 2,000 property owners. As a result, the Wireless Telecommunication Facility Permit is a discretionary permit subject to review and approval by the CTC or the City Council.

- 2) **Minor Modification Permit:** This section was added after adoption of the ordinance in 2012. As required by Section 6409(a) of the 2012 Tax Reform Act, the City must approve and shall not deny a request to modify an existing wireless telecommunication facility such that the modification does not substantially alter the existing facility or defeat the concealment methods approved by the jurisdiction. Subsequent to the passage of this regulation, the FCC adopted rules to implement the federal statute. The CMC was updated accordingly. Although the Minor Modification Permit requires a public hearing with the Community Development Director, it is not discretionary and is subject to objective standards related to size, height and aesthetics. This is the most common permit pursued by carriers to date.
- 3) **Small Wireless Facility Permit:** In 2018, the FCC issued a new rulemaking intended to speed up the deployment of 5G technology, by requiring cities to administratively review applications for new "small cell sites". As a result, the City updated the wireless ordinance to add a new permit process for new facilities that meet the FCC's definition of a small cell site. This update did not change existing regulations or standards, it simply created an administrative process with no public hearing or need to demonstrate that the facility is the least intrusive means to close a significant gap in the carrier's coverage. No new facility has been submitted to the City under this permit, in part we expect because the above mentioned zoning restrictions remain in effect.

B. Issues with Current Ordinance: As discussed above, it was the intent of the City Council in 2012 to adopt a wireless ordinance that exerted the City's maximum control under state and federal law. The current wireless ordinance is designed to be restrictive in both its regulations (i.e. allowed locations, setbacks, height limit etc.) and its process (i.e. requiring a discretionary review for all new

facilities), within the bounds set by applicable law. The above mentioned regulations may have been a deterrent for the deployment of new wireless facilities, with no option to encourage new stealth wireless facilities in areas where the City deems acceptable. As a result, only one new wireless facility has been constructed in the City since the current ordinance was adopted in 2012. In contrast, more than 30 new wireless facilities were approved and built in the ten years prior.

Based on the results of a citywide survey, which was presented to the CTC in April 2020, the lack of construction of new wireless facilities, and related cell service complaints and reliability levels, has resulted in a notable level of dissatisfaction with wireless service in the City of Calabasas. It is also worth noting that while the national trend is to eliminate traditional telephone landlines in favor of wireless devices, 65% of the respondents stated that they still have a telephone landline, likely due to the lack of reliable wireless service in residential areas of Calabasas. Furthermore, safety is a critical issue in the deployment of a reliable wireless infrastructure. Not only does a robust wireless infrastructure provide access to E911 services for daily emergency situations, but could also provide (if built properly) reliable communications during a state of emergency when residents may no longer have access to telephone landlines or internet-based VOIP phone lines. As a result, the majority of respondents indicated that they would be willing to have additional wireless facilities in their neighborhood in order to receive better wireless coverage and more reliable service.

The CTC's wireless subcommittee met with staff, the City Attorney and Jonathan Kramer in order to discuss issues with the current wireless ordinance that have resulted in the lack of deployment of new wireless facilities. As a result of these meetings, the following elements of the ordinance were identified as among the primary causes for the lack of construction of new wireless facilities:

- 1) The Wireless Telecommunication Facility Permit process is too prohibitive. With the exception of the Small Wireless Facility Permit, which is mandated by the FCC, a Wireless Telecommunication Facility Permit is required to construct a new wireless facility, regardless of where it is located or how it is designed. This is a one size fits all discretionary permit process that requires carriers to demonstrate that the new facility is necessary to close a significant gap in their network and that the proposed facility location and design is the least intrusive means to close the purported gap. The Wireless Telecommunication Facility Permit requires the CTC to make such findings at a public hearing, noticed to all property owners within 1,500 feet of the subject site. This is a lengthy public hearing process that has no certainty for project approval, which is a

deterrent for a carrier to decide to pursue a project and commit funds to acquire site access, design/engineer a facility and pursue entitlements. Furthermore, there are no other options in the CMC, other than the Small Wireless Facility Permit, that provide a less restrictive process for desirable types of new wireless facilities, such as a full stealth facility in a commercial or public facility zone.

The recommended solution to this issue is to develop a two tier permit process.

Tier 1 permits would be an administrative permit that does not require a public hearing, and would allow stealth facilities in specific areas (i.e. on arterial roads and collector streets) and specific zones (i.e. commercial zones, public facility zones and residential zones under HOA ownership [e.g. HOA-owned common areas and private streets, but only with HOA consent]). Staff suggests development of Design Guidelines that would identify a closed list of specific stealth designs that would be allowed for Tier 1 permits. Any deviation from the approved set of stealth designs would require a full wireless facility permit, termed a Tier 2 permit. A Tier 2 Permit would remain the same as the current Wireless Facility Permit, with the same documentation and comprehensive public hearing process. The intent of providing a two tier permit process, is to encourage deployment of full stealth facilities in preferred areas by allowing a streamlined permit process, and to discourage designs that are not acceptable in undesirable areas by requiring the more restrictive process currently in place.

- 2) All residential zones and open space zones are prohibited. The current wireless ordinance prohibits the installation of wireless facilities in all residential zones, including streets and developed common areas within gated HOAs. Due to the City's challenging topography and large residential neighborhoods, providing wireless coverage in residential communities is difficult without access to those areas. Because the CA Public Utility Code grants telephone providers access to the public right-of-way, subject to reasonable regulations by the City, a carrier may propose to install a micro facility in the public right-of-way (i.e. on a utility pole or light standard) in order to provide wireless coverage in areas that prohibit wireless facilities in surrounding zones. However, the streets in gated HOAs are not a public right-of-way, and are therefore not available for the installation of new facilities under the current ordinance, even if an HOA wanted to provide such access. Similarly, HOA owned parks and clubhouses are typically zoned either residential or open space. Even though these may be ideal locations to install a stealth facility (at the desire of the HOA), these zones are currently prohibited.

The recommended solution to this issue is to allow stealth facilities in residential and open space zones, but only if located on property that is already

developed and owned by an HOA. This approach would open up privately owned streets in gated communities and developed areas like HOA owned parks, while continuing to preserve undeveloped open space. This change would give HOAs the ability to decide whether or not they want to allow wireless facilities in their neighborhood. Any installation on HOA owned land, including common areas and private streets, would still require HOA approval.

- 3) With the exception of Small Wireless Facilities, the current ordinance requires all new wireless facilities to be located at least 1,000 feet from residential zones, schools and parks. Nearly the entire city is located within 1,000 feet of a residential zone, school or park, making this setback difficult to comply with, absent applicable of narrow exceptions possible under federal law.

The recommended solution is to not require a 1,000-foot setback for Tier 1 facilities, and maintain the 1,000-foot setback for Tier 2 facilities. This would encourage deployment of Tier 1 facilities, and discourage Tier 2 facilities subject to a stricter standard.

- 4) The current wireless ordinance is a subsection of 17.12 of the CMC. The purpose of Section 17.12 of the CMC is to provide development standards for specific land uses, such as residential accessory structures, alcohol sales, recycling facilities and antennas and wireless facilities. Although most subsections within 17.12 are between several sentences and a few pages, the wireless ordinance is 26 pages long. As a result, the section is difficult to navigate in the web based CMC. Satellites and amateur radio antennas are also embedded in the same subsection, which have their own set of constraints from federal regulations.

The recommended solution is to reorganize the wireless ordinance and make it a new chapter in Title 17 of the CMC. This will make the document more user friendly for staff and the public to read and navigate in the web based CMC. Its is also recommended to keep the satellites and amateur radio antennas in section 17.12.050 in order to provide proper separation between two different land uses.

- C. Summary of Recommendations:** After a thorough review of the current wireless ordinance, it was determined that the best approach is to modify rather than revise the entire ordinance. As a result, the following is a summary of the above recommendations:

- 1) Develop a two-tier permit process for the construction of new wireless facilities. A Tier 1 permit would allow for the construction of new stealth

facilities, located in areas predetermined by the City to be appropriate. A Tier 1 permit would require an administrative review and would eliminate the need for a public hearing for new facilities that meet these requirements. A Tier 2 permit would be required for any new facility that does not meet these specific requirements, and the process would remain the same as the City's current Wireless Telecommunication Facilities Permit.

- 2) Allow for stealth facilities in Residential Zoning Districts and Open Space Zoning Districts, specifically on properties that are developed and under HOA ownership. Property owner consent would still be required.
- 3) Allow Tier 1 eligible facilities to be constructed within 1,000 feet from residential zones, schools and parks. The 1,000-foot setback would remain applicable to Tier 2 facilities.
- 4) Reorganize the existing wireless ordinance into its own Chapter in the Municipal Code.
- 5) Develop design and stealth guidelines for Tier 1 Facilities. The design guidelines would be a supplementary document, meant to act as a visual aid that complements the standards set forth in the ordinance.
- 6) Implement a time limit for the updates to the ordinance. The ordinance's amendments creating the Tier 1 permit process would initially remain in effect for only 12-18 months after being adopted, for the purpose of encouraging sooner deployment of new facilities to more swiftly address the issues described in this memorandum. Provisions could be added that would allow the ordinance to be reevaluated at a later date, and extended for an additional period of time if necessary and as determined by the Council. The reorganization element would remain in effect.

REQUESTED ACTION:

Staff recommends that the CTC approve the Draft Memo from the CTC to the City Council (Exhibit A), which includes recommendations to update the current wireless ordinance.

ATTACHMENTS:

- Exhibit A: Draft CTC Memo to City Council
Exhibit B: Current Wireless Ordinance