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# CITY OF POMONA COUNCIL REPORT

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February 1, 2021

To: Honorable Mayor and Members of the City Council

From: James Makshanoff, City Manager

Submitted By: Rene Guerrero, Public Works Director

**SUBJECT: INTRODUCTION AND FIRST READING OF ORDINANCE TO ADD DIVISION 3, “WIRELESS FACILITIES IN RIGHT-OF-WAY” TO THE POMONA CITY CODE CHAPTER 46, ARTICLE IV; INTRODUCTION OF RESOLUTION TO ESTABLISH FEES FOR WIRELESS ENCROACHMENT PERMITS**

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**RECOMMENDATION:** It is recommended that the City Council take the following actions:

- 1) Introduce, waive further and give first reading to the following ordinance:

**ORDINANCE NO. 4279 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, ADDING DIVISION 3 “WIRELESS FACILITIES IN RIGHT-OF-WAY” TO CHAPTER 46 (STREETS, SIDEWALKS AND OTHER PUBLIC PLACES), ARTICLE IV (ENCROACHMENTS) OF THE POMONA CITY CODE**

- 2) Adopt the following Resolution:

**RESOLUTION NO. 2021-01: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, ESTABLISHING A FEE SCHEDULE FOR WIRELESS ENCROACHMENT PERMITS AND TO INSTALL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY UNDER CITY MUNICIPAL CODE CHAPTER 46, ARTICLE IV, DIVISION 3 “WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY”**

**EXECUTIVE SUMMARY:** The proposed ordinance is to establish a process for managing requests for the placement of wireless facilities within the public rights-of-way and create uniform standards for installation and implementation. The proposed ordinance is consistent with the City’s obligation to promote the public health, safety, and welfare, to manage the public rights-of-way, and to ensure that the public is not inconvenienced by the use of the public rights-of-way for the placement of wireless facilities. The City recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable Federal and State law regarding

the placement of personal wireless services facilities in its public rights-of-way. This ordinance shall be interpreted consistent with those provisions. Specifically, the Ordinance sets additional standards and requirements for obtaining an encroachment permit to install wireless facilities.

**PREVIOUS RELATED:** On July 20, 2020, City Council did not approve the introduction and first reading of ordinance to add Division 3, “Wireless Facilities in Right-of-Way” of the Pomona City Code Chapter 46, Article IV; Introduction of Resolution to Establish Fees for Wireless Encroachment permits.

**FISCAL IMPACT:** Approval of this action will allow the City to begin receiving revenue for non-recurring permit application fees and recurring fees for leasing municipal infrastructure in General Fund (101-9999-40021-00000). The overall fiscal impact is unknown since the City does not know how many permit applications for wireless facilities the City will receive annually. The City does not have a cost analysis for review of this permit type. The City could decide to update the fee if a future fee study identifies that processing costs vary from the proposed fees. Nevertheless, by adopting the Federal Communications Commission (FCC) safe harbor amounts as the permit application fees, the City will be able to defray some of the processing cost while remaining within the bounds of the FCC declaratory order related to acceptable non-recurring fees for permitting small cell wireless facilities. The safe harbor amounts are non-recurring fees equal to \$500 for a single application for up to five collocations (installations on existing structures), plus \$100 for each additional collocation, and \$1,000 for each new pole. Recurring fees for attachment to municipal infrastructure are presumed reasonable if equal to \$270 per facility/per year.

#### **Non-Recurring Permit Application Fees – Safe Harbor Amounts**

Existing Pole	\$500 for single application for up to five collocations (installations on existing structures) + \$100 for each additional collocation thereafter
New Pole	\$ 1,000 for single application per pole

#### **Recurring Fees for Leasing Municipal Infrastructure– Safe Harbor Amounts**

Lease	\$270 per facility/per year
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**ENVIRONMENTAL IMPACT:** The Ordinance is not a “project” as indicated in Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in direct or indirect physical change in the environment. Rather, it is only once an application to permit installation is filed with the City, that the review process in accordance with CEQA Guidelines, would then be implicated. Further, even if the Ordinance were interpreted to permit a “project,” any applicable wireless facility installation would likely be exempt from CEQA review in accordance with State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). Accordingly, City Staff recommends that the City Council direct that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles in accordance with CEQA Guidelines.

**DISCUSSION:** This Report introduces an Ordinance to provide the regulatory framework and standards for permitting the installation of wireless facilities within the City’s public rights-of-way (“ROW”). Traditionally, wireless antennas and equipment were primarily installed on large towers on private land and on the rooftops of buildings. These deployments are subject to land use review under the zoning code.

In recent years, companies have increasingly sought to install smaller wireless facilities in the ROW on utility poles, streetlights and new poles. Current predictions indicate that the next wave of wireless facility deployment—5G—will involve \$275 billion in investment over the next decade, with the vast majority of these new facilities anticipated to be placed in the ROW. Historically, telecommunications installations in the ROW were typically addressed through encroachment permits. However, the City’s existing Municipal Code contains minimal standards or regulations designed to address the unique aesthetic, safety, operational, and locational issues in connection with the installation of wireless facilities in the ROW.

In addition, recent changes in federal law initiated shorter time frames, or “shot clocks,” and other requirements on local review of wireless facility installations in the ROW.

A FCC declaratory order and regulations related to small wireless facilities went into effect partly on both January 14, 2019 and on April 15, 2019. Under these regulations, if a City does not take final action on a small wireless facility application within a specified time period (60 days for installations on existing structures, and 90 days for new structures), the failure to meet the deadline for action will be presumed to violate federal law (both a failure to act within a reasonable period of time and an effective prohibition of personal wireless services). Further, the FCC declared that all fees (including permit fees and rental fees for use of government-owned infrastructure, such as streetlights) must be based on a reasonable approximation of the local government’s costs, such that only objectively reasonable costs are factored into those fees, and fees are no higher than the fees charged to similar-situated competitors in similar situations. The FCC established presumptively reasonable fee levels (called “safe harbors”) that include: non-recurring fees equal to \$500 for a single application for up to five collocations (installations on existing structures), plus \$100 for each additional collocation, and \$1,000 for each new pole. Recurring fees for attachment to municipal infrastructure are presumed reasonable if equal to \$270 per facility/per year.

To address applications to install wireless facilities in the ROW, Staff recommends that the City Council approve the Ordinance No. 4279 (Attachment No. 1). The Ordinance would amend the Municipal Code to add Division 3, “Wireless Facilities in Right-of-Way” to Pomona City Code Chapter 46, Article IV. For all wireless facility installations in the ROW, this Ordinance provides, (among other regulations) the permit and review procedures, as well as, the operation and maintenance standards. The Ordinance treats wireless installations in the ROW similar to other installations in the ROW by requiring an encroachment permit. Specifically, the Ordinance sets additional standards and requirements for obtaining an encroachment permit to install wireless facilities.

City Staff also recommends that the City Council adopt Resolution No. 2021-01 (Attachment No. 2), which establishes the one-time fees to be charged for applications to install wireless facilities in the ROW in the City of Pomona. Per the Resolution, the application fees will use the FCC safe

harbor amounts. However, according to Section 46-226(d) of Ordinance No. 4279, the fees can be updated by resolution of City Council. Thus, if the City determines that its costs exceed the safe harbor amounts (e.g., by conducting a cost study), the City Council can adopt a resolution amending the fees as needed.

City Staff is developing a standard application for wireless facility installations in the ROW and a master license agreement for use of City infrastructure, such as streetlights. Together, these will serve as the City's framework for addressing applications for wireless facility installations in the ROW.

While the legal validity of the aforementioned FCC order is being litigated, both the FCC and a federal court have denied requests to stay the effectiveness of the small cell order pending the resolution of the litigation. Therefore, Staff is taking steps to address wireless deployments in the ROW that is consistent with the new federal regulations and recommends that City Council adopt this Ordinance and Resolution.

Other Southern California cities have adopted similar wireless facility ordinances in light of the FCC Small Cell Order and other FCC rules. Some of those cities are listed below:

1. City of Montclair
2. City of Downey
3. City of Ontario
4. City of San Juan Capistrano
5. City of Azusa

#### **COUNCIL PRIORITIES & GOALS:**

***This item likely supports the 2019-2020 City Council Priority 4: Infrastructure: Invest resources in streets, sidewalks, parks, landscaping, water systems, and public facilities to enhance the economic development, public safety, accessibility, and beauty of the City. Under this Ordinance, these wireless infrastructures that are installed within the City ROW will provide higher network bandwidth to promote business and economic development and support other technologies that other City Departments may use to enhance public safety within the City of Pomona.***

Prepared by:

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