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## Small Cell Wireless issues discussed during town council meeting

By Vera Kochan

The Federal Communications Committee issued a ruling in September 2018, making it difficult for municipalities to avoid the installation of 5G equipment for small cell wireless facilities, titled: Accelerating Wireless Broadband by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 (the "Order"). Although the Order went into effect on Jan. 14, 2019, there was an established deadline for local jurisdictions to publish compliant aesthetic standards by April 15, 2019.

According to a March 24 presentation for the council by Town Manager Cynthia Battenberg and Assistant Town Attorney Denise Bazzano, "Planning staff presented to the town council on March 13, 2019, various options for revisions to Moraga Municipal Code Chapter 8.144 'Wireless Communications Facilities, Satellite Dishes and Miscellaneous Antennas', in response to the Order. Staff noted that, at that time, the town had regulations in place regarding wireless communications facilities in MCC Chapter 8.144, but no regulations pertaining to small cell facilities and did not reflect the various changes that had been made to federal regulations relating to other types of wireless communications facilities since the initial adoption of Chapter 8.144 in 1999."

The town adopted the aesthetic criteria and development standards Ordinance No. 282 in April 2019, found in MMC section 8.144.035, and added a more comprehensive update addressing the inconsistencies with FCC regulations. At the time, the town had expressed a desire to update the entire Chapter 8.144, as well as monitor other municipalities' legal efforts in challenging the Order.

Battenberg and Bazzano reported, "Although the Order was challenged by a number of cities and other public agencies, including the city and county of San Francisco, San Jose and Burlingame the Ninth Circuit Court of Appeals upheld most of the provisions of the Order." The report continues, "However, the Ninth Circuit did vacate and remand certain portions of the Order relating to the requirement that aesthetic regulations be objective and no more burdensome than those applied to other infrastructure deployments stating that the FCC lacked a reasoned explanation."

The council is now requesting staff to update the town's small cell wireless facility ordinance along with a project timeline and cost estimate. Staff is also taking into consideration the many public concerns regarding potential amendments.

Key aspects for review regarding Developmental Standards involve location preferences (add, delete, modify existing standards); aesthetic and landscaping requirements (add, delete, modify existing standards); noise (potentially add standards); and radiofrequency monitoring and insurance requirements (potentially add standards).

Procedural Standards up for review include public notice (potentially add standards); and use of technical consultants and licensed engineers in review process (potentially add standards).

Town staff feels that a finalized draft of the ordinance could be completed in approximately 60 days, at which point it would be presented to the planning commission for a recommendation before going to the town council for consideration in June or July.

Legal costs for all necessary services are estimated at \$20,000 and are appropriated to Account 101-520-026-14 Legal Fees - General from the General Fund Reserve for Fiscal Year 2020-21. Legal services will be provided by Burke, Williams, & Sorensen who has experience in this direction. However, the Town Attorney's Office recommends the additional legal services of Harriett A. Steiner of Best, Best and Krieger (a telecommunications practice group with 20 years experience in the field). Council members agreed that if Steiner's services become necessary, her fees are to be included in the \$20,000 budget and not to exceed. The council voted 4-0 (Council Member Teresa Onoda was absent) in favor of the appropriation.

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