



MEMORANDUM

DATE: October 8, 2024
TO: Board of Supervisors
FROM: Mark Cliser, Senior Planner
SUBJECT: Wireless Communication Facilities (Small Cell Towers) in Right of Way (ROW)

INTRODUCTION: Small Cells Towers (aka small wireless facilities) are small antennas (3 – 4 feet tall) and support equipment installed on streetlights, rooftops, and other locations as a primary way to deliver 4G (Fourth Generation) and, more recently, 5G (Fifth Generation) mobile technology. Other equipment, such as an electric meter, may also be placed on the pole or on a nearby pedestal. Small cells help wireless service providers meet the increasing demand for wireless services and are always connected to a fiber network. They are relatively new and are taking the place of large cell towers. Typically, these facilities are developed in the Right of Way (ROW). This brings coverage closer to the end user. As this technology uses low-band spectrum, which does not travel as far, high-density placement is key.

Mendocino County Planning Staff and Department of Transportation has seen an increase in interest from mobile companies wishing to install these types of towers in Mendocino County. These types of applications are subject to Federal shot-clocks and are required to be processed quickly. Presently, there is not an applicable Mendocino County Code section that defines installation and use of Small Cell Towers in the right-of-way. For consideration, the following sections summarize current County processes regarding wireless facilities, and items to consider when crafting small cell tower regulations for Divisions I, II, and III of Mendocino County.

CURRENT POLICY: Existing regulations for wireless facilities include Mendocino County Code (MCC) Chapter 20.236 – Towers and Antennas, and the Wireless Guidelines adopted in 2015. Such facilities are considered Major Impact Facilities in all divisions. However, neither Division II (Coastal) or Division III (Town of Mendocino) have chapters, ordinances, or policies that specifically address wireless projects and instead refer to the aforementioned Chapter and Guidelines for development. None of the Divisions address Small Cells or development of wireless facilities in county right-of-way.

- MCC 20.236 states that radio, telephone, and other communication and transmission structures, towers, and antennas ("towers and antennas") are conditional uses subject to approval of a conditional use permit, though certain facilities, such as government owned used to protect public health, safety and welfare, are exempt. These facilities are discretionary and are subject to conditions of approval regarding impacts to biological resources and aesthetics. Facilities in the ROW are not mentioned in this chapter. Additionally, this chapter covers Division I only. In Division II and Division III nearly all cell facilities require a Coastal Development Use Permit or modification to an existing Coastal Development Use Permit.
- The Wireless Guidelines, adopted August 2015, are intended to provide a comprehensive set of guidelines for the development, operation, and maintenance of wireless facilities with applicable federal regulations. They seek to address concerns regarding views, natural vegetation, quiet seclusion, scenic values and rural quality of life. These guidelines are not yet part of the Certified

Local Coastal Program of Mendocino County. Typically, staff will incorporate conditions of approval for Division II projects that ensure the facility is operated and maintained in conformance with standards of the guidelines. Incorporation of the Guidelines into the Local Coastal Program is anticipated in the near future.

DISCUSSION: Mendocino County's General Plan notes the importance of wireless communication for economic development. Principles and Policies include:

- Principle 2-2b: Promote telecommunications and information technology by supporting expanded opportunities for affordable high speed internet service to all areas of the county.
- Policy DE-206: The County will encourage appropriate utility infrastructure necessary to support social and economic needs including wired, wireless and satellite communications.

However, the General Plan also notes the importance of minimizing visual impacts to the rural landscape. Goals and Policies include, but are not limited to:

- Goal RM-14 (Visual Character): Protection of the visual quality of the county's natural and rural landscapes, scenic resources, and areas of significant natural beauty.
- Policy RM-86: Conserve the county's hillside vegetation (consistent with fire safety standards) by incorporating density transfers, clustering, small building sites, shared improvements and other measures that:
 - Are compatible with the natural terrain and hydrology.
 - Conserve continuous critical habitats, oak woodlands and natural vegetation.
 - Minimize visual impacts.
- Policy RM-132: Maintain and enhance scenic values through development design principles and guidelines, including the following:
 - Development scale and design should be subordinate to and compatible with the setting.
 - Reduce the visual impacts of improvements and infrastructure.
 - Minimize disturbance to natural features and vegetation, but allow selective clearing to maintain or reveal significant views.
- Policy DE-205: The County will seek to reduce the impacts of above-ground utilities. Standards and policies to reduce impacts include:
 - Promoting the underground installation of utilities to reduce visual impacts to significant scenic resources.
 - Locating utility systems in established corridors where possible.
 - Ensuring that above-ground utilities are located and designed to minimize visual impact and clutter.
 - Avoiding vegetation removal, new road construction, and silhouettes against the sky.
 - Pursuing the undergrounding of utility lines in new development, and in the downtown core of community areas.

Federal Communications Commission (FCC) and state laws, however, can prohibit jurisdictions the ability to deny carriers several important items. For example, a local jurisdiction is unable to deny:

- The ability to provide service either through explicit prohibitions (example: banning new wireless facilities) or through actions that effectively prohibit service.
- Wireless applications based on health concerns, such as those expressed about radio frequency emissions.
- A carrier from using the public right-of-way to install their equipment.

Additionally, a jurisdiction cannot stall a project or fail to make a decision. The Streamline Small Cell Deployment Act proposes to “streamline wireless infrastructure deployments by requiring siting agencies to act on deployment request within specified time frames and by limiting the imposition of onerous conditions and fees.” The Telecommunications Act and subsequent Federal Communications Commission orders impose a short time frame, often referred to as a shot clock, for a city or county to review a wireless application. Failure for a city or county to act results in the application being automatically approved without the ability to impose conditions of approval.

Shot clocks for Small Cell Towers:

- 60 days for reviewing the application for attachment of a Small Cell Tower using an existing structure
- 90 days for the review of an application for attachment of a Small Cell Tower using a new structure
- Missing either timeline constitutes a presumptive prohibition and expects a locality that misses the deadline to issue any necessary permits or authorizations without further delay

In addition to time frames, the Streamline Small Cell Deployment Act limits the imposition of onerous conditions and fees. Likewise, the Declaratory Ruling and Third Report and Order, aims to reduce barriers to the deployment of Small Cell Towers. Local jurisdictions cannot prohibit additional services or improving existing services (such as Small Cell) that will ensure quality service. The Declaratory Ruling and Third Report and Order also notes that ROW access fees, and fees for the use of government property in the ROW, such as light poles, traffic lights, utility poles, and other similar property suitable for hosting Small Wireless Facilities, as well as application or review fees and similar fees imposed by a state or local government as part of their regulation of the deployment of Small Wireless Facilities inside and outside the ROW are a reasonable approximation of the state or local government’s costs, that only objectively reasonable costs are factored into those fees, and said fees are no higher than the fees charged to similarly-situated competitors in similar situations.

CONSIDERATIONS & RECOMMENDATIONS: When crafting policies for installation of small cell towers, public health and safety, visual impacts, and zoning integrity should be considered.

PUBLIC HEALTH AND SAFETY: Considerations of Small Cells to public health and safety should include measures to prevent unauthorized access or vandalism, fire safety, structural standards, and maintenance.

Public concern over potential radiation and exposure are common and make up the bulk of public comments received when proposing a new wireless facility. Staff does not anticipate this will change. However, jurisdictions are unable to consider radiation when reviewing a project. However, as further discussed below, the County could restrict proximity to residential zones and/or homes.

VISUAL IMPACTS: Both Division II (Coastal) and Division III (Town of Mendocino) require projects consider visual impacts. In the coastal zone, facilities are typically conditioned to blend in with surroundings and applicants are required to use faux pines in their designs. In the Town of Mendocino, considerations would be compatibility with historical nature of structures. Projects could be subject to Mendocino Historical Review Board prior to being permitted. Location of Small Cells in the Town of Mendocino may require a more stealth nature. For all divisions, the county could deny a project on the grounds that it does not meet design standards and request a new design from the applicant. Other visual impact considerations could include limiting lights, maintaining or replacing vegetation, visual compatible site security measures (no electric fences or razor wire), and limiting signage. Another visual consideration could include installation on existing structures (streetlights or utility poles) versus new structures, and/or prohibition on traffic lights or signs.

ZONING: The county could identify preferred locations for small cell towers and distances from existing residential structures. For example, preferred locations might include within or adjacent to Industrial or Public Facilities zones, while least preferred locations might include Residential zones.

STAFF RECOMMENDATIONS: As previously noted, existing regulations for wireless facilities include Mendocino County Code (MCC) Chapter 20.236 – Towers and Antennas, and the Wireless Guidelines adopted in 2015. Following are staff suggestions for each Division.

Division I: Amendment to Chapter 20.236 could address Small Cell Towers.

- MCC Section 20.236.015 exempts certain facilities from the requirements of the Towers and Antennas Chapter. In this instance, exemption could be granted to Small Cell Towers utilizing existing infrastructure and require only a building permit. However, applicants shall still be required to demonstrate radio-frequency emission compliance, comply with zoning district height, and minimize aesthetic impacts.
- For projects which require installation of new structures (poles, etc...), MCC Section 20.236.020(B) can be amended to include Small Cell Towers subject to an Administrative Permit.
- Additional findings for the Small Cell Towers subject to discretionary review could include:
 - The project meets the definition for a “small cell tower” as defined by the FCC
 - The project is in the most preferable location
 - The project will not be located on a prohibited support structure
 - The project will be installed on the most preferable structure
 - The project must be located in such a way as to have a backdrop of terrain which obscures the visibility of the facility and shall be discouraged on ridge top sites where they will be silhouetted against the sky from the surrounding community, or from highly used public locations Any such installation must also be found not to create the potential for adverse impacts from site development such as access limitations, significant vegetation removal, or operational impacts such as noise (from generators or other accessory equipment).
 - The project is in compliance with RF emissions and all applicable health and safety regulations
- Conditions of Approval for the Small Cell Tower discretionary permits could include:

- Permit Terms that expire in 10 years. Modifications to the project shall require amendments to the original AP and subsequent building permits.
- Permit Renewal of non-expired permits that demonstrate they remain in compliance. Expired permits shall be required to submit a new Administrative Permit application.
- Annual Permit Fee for encroachment permits
- Bond for removal
- Site Maintenance. The site shall be neat, clean and safe in accordance with approved building plans.
- Compliance with laws and regulations.
- Adverse impacts to other properties shall be avoided
- The ability for County staff to inspect with notice at anytime
- Landscaping. Any vegetation removed shall be replanted and monitored for a period of 5 years.
- Additional conditions of approval as required by the Department of Transportation

Division II and Division III: County staff would conduct outreach with the California Coastal Commission to determine if appropriate exemptions may be able to be utilized for this type of infrastructure or if a Coastal Development Permit would regularly be required. In addition to the requirements of Division II, Division III shall require of all projects be approved by the Mendocino Historical Review Board provided they cannot be found to be exempt.

ATTACHMENTS:

- A. Mendocino County Wireless Guidelines
- B. MCC 20.236 – Towers and Antennas
- C. Third Reading