

SUBJECT: P13-2449

APPLICANT: City of Pleasanton

PROPOSAL: City-initiated application to amend Title 18 (Zoning) of the Pleasanton Municipal Code to modify Chapter 18.110 (Personal Wireless Service Facilities); and Sections 18.28.040 (Agricultural District), 18.32.050 (R-1 One-Family Residential Districts); 18.36.030 (RM Multi-Family Residential Districts); 18.36.040 (RM Multi-Family Residential Districts); 18.40.030 (O Office District); 18.40.040 (O Office District); 18.44.090 (C Commercial Districts); and 18.56.040 (P Public and Institutional District). These amendments modify the existing code for cellular antennas and equipment including the locational, design, and processing standards. The amendments also remove the locational restrictions currently imposed on other uses seeking to locate within 300 feet of an existing facility, e.g., nursing homes, assisted living facilities, private schools, and childcare centers.

ZONING: Various

GENERAL PLAN: Various

EXHIBITS:

- A. [Proposed Amendments to Chapter 18.110 \(Redline\)](#)
- B. [Proposed Amendments to Chapter 18.110 \(Clean\)](#)
- C. [Map & Table of Existing Wireless Facilities](#)
- D. [Proposed Amendments to other sections of the Zoning Code](#)

BACKGROUND

In 2012, the City initiated a survey of local businesses to better understand the needs of the business community. Results from that survey showed that local businesses felt strongly that the City was deficient in its telecommunications infrastructure, particularly cellular and broadband service. Following that survey, the City Council added an item to its annual Work Plan Priorities List directing staff to perform an infrastructure development assessment to address technological shortfalls within the City such as poor broadband and cellular coverage.

The business community is not alone in its requests for better cellular service. Residents have voiced concerns as well regarding the lack of cellular coverage (voice and data) in the City. Pleasanton residents rely on their cell phones and tablets for work, whether they maintain a home office or are doing business from their devices while out and around Pleasanton. Residents have also become accustomed to using these devices to improve their quality of life and for public safety. The ways that people rely on cellular devices is endless but staff has highlighted a few examples that demonstrate why good cellular coverage throughout the City is important to residents:

- A resident doesn't have a "land line" in their home and relies solely on their cell phone for calls, including access to 911.
- A resident is hiking on the Pleasanton Ridge or visiting one of our many parks and wants to feel the security that if they or someone else gets injured, they can call 911.
- A mother drops off her child at soccer practice and asks the child to call her to be picked up as soon as practice is over. The child is likely relying on a cell phone to make the call from the sports field and the mother may be running errands when the child calls and is relying on her phone to have good cell coverage so she gets the call.
- Parents at an all-day swim meet would like the ability to do a variety of things with their devices, e.g., access the internet, make phone calls, take videos of their kids at the swim meet and send them to grandparents.
- A resident is shopping at the grocery store and wants to call home to make sure he/she hasn't forgotten anything or to ask if they need milk.
- A realtor is meeting a client to show a home and wants to access the MLS from the home in order to answer questions for the client (or wants to call the listing agent for the information).
- A contractor is "on the job" at a residence and needs to make a call to a subcontractor or supplier or access the internet to review the specifications on a product to be installed.

While businesses and residents have been asking for better cellular service, wireless carriers advise staff that they are having difficulty meeting the growing needs of the community because the City's wireless ordinance is overly restrictive and makes it extremely difficult for carriers to locate the necessary new facilities. For all of the reasons above, staff has performed a thorough review of the City's wireless ordinance and proposes amendments to the ordinance as contained in Exhibits A, B, and D.

Legal Background

The Telecommunications Act of 1996 (the “Telecom Act”) was signed into law by President Clinton in February 1996. The Telecom Act provides that local governments:

- (1) shall not regulate the placement and construction of personal wireless service facilities on the basis of the environmental effects of radio frequency (RF) emissions to the extent that such facilities comply with the Federal Communications Commission’s regulations concerning such emissions;
- (2) shall not unreasonably discriminate among providers of functionally equivalent services (i.e., favor one wireless carrier over another); and
- (3) shall not prohibit or have the effect of prohibiting the provisions of personal wireless services (i.e., a local government cannot prevent a wireless carrier from closing a significant gap in service coverage). (47 USC 332)

The effect of this federal law is to enable personal wireless service providers to establish networks for their services and to preempt local governments from regulating the potential health impacts of wireless facilities. While a local government may not establish or regulate RF emissions standards, it may review those applications to ensure compliance with the RF standards set by the FCC and it may take aesthetics into consideration when reviewing an application.

As stated above, a local government shall not prohibit or have the effect of prohibiting the provision of personal wireless services by *any* carrier licensed by the FCC. Local governments cannot prevent a wireless carrier from closing a “significant gap” in service coverage. The proposed amendments to the Pleasanton Municipal Code are intended to comply with federal law by better enabling carriers to close significant gaps in coverage. Moreover, amending the code will allow carriers to provide better cellular voice and cellular data service for the City’s businesses, residents, and visitors.

Telecommunications law is an area of law that is constantly evolving and in a direction that diminishes local control over wireless facilities. Most recently, the federal government adopted the Middle Class Tax Relief and Job Creation Act of 2012 which provides that a state or local government “may not deny, and shall approve” any request for collocation, removal or replacement of a wireless facility that does not “substantially change” the physical dimensions of the tower or base station. In September of this year, the FCC released a Notice of Proposed Rulemaking (NPRM) to reshape the national landscape for the processing of wireless site applications at the state and local government level and “with the goal of reducing, where appropriate, the cost and delay associated with the deployment of such infrastructure.” The potential impact of the Middle Class Tax Relief Act is further discussed under the “Water Tank Sites” section of the staff report below.

Consequences of Current Ordinance

The City's current wireless ordinance creates large areas where wireless facilities are prohibited. For example, *without regard to aesthetics*, the current ordinance prohibits facilities in or within 300 feet of all of the following: the property lines of undeveloped, approved, or existing residences in residential or agricultural or PUD zoning districts with a residential or agricultural zoning designation; existing or approved public or private schools and childcare centers; existing or approved senior care/assisted living facilities and nursing homes; and neighborhood parks, community parks, or regional parks, as designated in the general plan. In other words, *even if a carrier proposes a facility that is totally concealed*, it would still be prohibited to be located within 300 feet of the property lines of all of the uses listed above. Because the current restrictions are so broad, there are sectors of the city where there are few (if any) locations that a carrier can locate which results in gaps in coverage and poor service.

Staff also sees two other unintended consequence of the current ordinance. With the current 300' "buffer zones" surrounding many uses, carriers often have few choices as to where to locate a facility. Since carriers cannot simply place sites in logical locations to meet coverage needs, carriers are faced with having to place more facilities throughout the City to try and close those gaps. As a result, the current ordinance may have resulted in more facilities having to be located in the City than would be the case if the ordinance had less restrictive locational requirements. Moreover, staff has seen numerous situations where---due to the buffer zone requirements---a carrier is limited to one building or just a small corner of a building in a permitted zone, and the only way to conceal the facility requires changing the architecture of a building in an unusual or unattractive way.

The current ordinance also exposes the City to lawsuits from carriers that may be precluded from being able to close a significant gap in coverage. Finally, the restrictions in the ordinance increase the possibility that a carrier will seek to place Distributed Antenna Systems (DAS) throughout the community on City utility poles. Unlike cellular towers and equipment, DAS providers hold a Certificate of Public Necessity from the California Public Utilities Commission as telephone corporations, not as wireless carriers. Because they hold no FCC licenses, they have the right to use City right of way, often by attaching antenna and equipment to city light poles. Staff believes that it is preferable to have carriers rely upon cellular facilities that can serve a greater area rather than having hundreds (perhaps thousands) of DAS facilities placed throughout the City, e.g., on city light poles throughout residential neighborhoods and elsewhere.

PROPOSED CODE AMENDMENTS

The proposed code amendments modify the locational, design, and processing standards related to "personal wireless service facilities", also commonly known as, cellular antennas and equipment. Staff also proposes to amend the Zoning Code to

remove the locational restrictions currently imposed on other uses seeking to locate within 300 feet of an existing facility, e.g., nursing homes, assisted living facilities, private schools, and childcare centers. A redlined version of the wireless code showing each proposed amendment is attached as Exhibit A and a redlined version of the proposed Zoning Code amendments is attached as Exhibit D. Below, this staff report highlights the key changes to the wireless ordinance.

1. Legal Non Conforming Facilities

Prior to drafting proposed code amendments, staff inventoried and reviewed each existing location with a personal wireless service facility. Currently, there are 29 (existing and approved) locations in Pleasanton where one or more carriers have a facility. (See Exhibit C which provides an overview of each existing facility as well as a photograph of the facility.) Under the current ordinance, six existing sites have facilities that are considered legal nonconforming, i.e., when the facility was approved it was legal but it became nonconforming when the ordinance was amended in 1998. The proposed amendments will make two of those six sites legal/conforming. The two sites that will become conforming are sites 4 (4683 Chabot Drive) and site 22 (5720 Stoneridge Mall Rd.). Although site 4 is totally concealed (on the roof of a building), the current ordinance deems it nonconforming because it is within 300 feet of a childcare center. Under the proposed ordinance, that site will become conforming. Similarly, although site 22 is completely concealed on the roof of a building, it was considered nonconforming because it was within 300 feet of an open space area. Under the proposed ordinance, that site will become conforming.

Under the proposed ordinance, four sites will remain legal nonconforming. Two sites will be nonconforming because they do not meet the 300' buffer zones that are proposed. The first site (#2 in Exhibit C) is located at 3333 Busch Road where a monopole sits in the City's corporation yard. Housing was constructed by Ponderosa homes approximately a year ago that is less than 300' from this wireless facility. That new housing makes the site at 3333 Busch Road nonconforming. The second site (#10 in Exhibit C) is located at 519 Kottinger Drive where a slim-line pole is mounted to a city water tank. That facility will not be conforming under the proposed ordinance because it is located less than 300 feet from the nearest residence. The third and fourth sites that will remain nonconforming will do so for aesthetic reasons. Site #13 (Exhibit C) at 3830 Old Santa Rita Road and Site #26 (Exhibit C) at 4440 Willow Road will remain legal nonconforming because they utilize antenna towers and are neither concealed nor camouflaged.

2. Locational Standards

Staff looked at many other wireless ordinances prior to embarking on this code change, including ordinances from the neighboring cities of Livermore, Dublin, Walnut Creek and the Town of Danville. Each ordinance was unique in its locational standards and processing requirements, e.g., the type of review that is required

generally changed depending on the proposed location of a facility. It is worth noting that every other city ordinance that staff reviewed allowed wireless facilities to be located on residential property (though the review is usually more onerous if a carrier is proposing to place a facility on a residential property).

a. Prioritizing Zoning Districts Where Facilities are Allowed

The intent of the proposed ordinance amendments is to improve telecommunications coverage throughout the City without sacrificing the aesthetic ideals that are important to the citizens of Pleasanton. With that in mind, the proposed ordinance creates a prioritization system for locating new facilities.¹ The ranking works as follows. Carriers must locate a new facility in the Commercial, Office, or Industrial (C, O, or I) zoning districts. If a carrier can show that it is not feasible to locate in one of those districts, it must locate in the Agricultural, Public, Public and Institutional, or Mixed Use zoning districts (A, P, P&I, M-U). A wireless carrier may demonstrate feasibility by providing evidence demonstrating that there are no other locations in the prioritized zone that: meet the applicant's coverage needs; are structurally or technically feasible; or are available to lease or otherwise economically feasible. The proposed ordinance also includes language allowing the City to hire an expert to review the carrier's evidence, at the carrier's expense, in order to determine whether other locations may be feasible.

Finally, new facilities are prohibited in all other zoning designations with one exception. New facilities will be permitted on parcels containing a City water tank (or on an adjacent parcel) so long as certain requirements are met. For the purposes of the wireless ordinance, if a parcel is zoned Planned Unit Development (PUD), staff shall look to the zoning districts identified under the particular PUD. In other words, if the zoning designation is PUD-I/C, then this would be considered Industrial or Commercial and would fall under the first ranked category. If the zoning designation is PUD-HDR, then this would be considered High Density Residential and a facility would be prohibited from locating there.

b. Requirement to Conceal or Camouflage

For new facilities that are proposed in the C, O, or I (first priority), carriers are required to "conceal" the facility, where feasible. Concealed is defined as a facility that is concealed from view and shall not be visible by persons at ground level. The ordinance explains that a facility would be considered concealed if it is "contained within new or existing architectural details of a building, e.g., real or

¹ The City of Livermore's ordinance prioritizes locations as follows: 1) Education and Institution such as public golf courses, water tank sites, schools and parks; 2) Industrial; 3) Commercial; 4) Office or Neighborhood Mixed Use; 5) Open Space, Airport-Service, Agriculture; and 6) Residential, Transect, Neighborhood Mixed Use

faux clock or bell tower, or on the roof of a building and concealed by parapets or screenwalls, or concealed by any other means so long as the project does not substantially compromise the aesthetics of the building.” If a proposed facility is “concealed”, then “the antennas and equipment may be placed anywhere on the property without regard to separation from other uses.” In other words, if a carrier can conceal a facility within the C, O, or I zones, then there are no buffer zones or other requirements to distance the facility from another use.

If a facility cannot be concealed, then it must be “camouflaged”. The ordinance defines “camouflaged” as a facility that is “designed to be compatible with the surroundings.” The ordinance provides examples and explains that “antennas may be camouflaged in a faux tree, faux bush, flagpole, or otherwise designed in a manner to be compatible with the appurtenant architecture, building, or natural surroundings.”

The ordinance maintains “buffer zones” around certain uses for those facilities that are camouflaged instead of concealed. Camouflaged facilities “must be located a minimum of 300’ away from the following: existing dwelling units (but not accessory structures, detached garages, sheds, poolhouses, etc.); senior care or nursing homes and assisted living facilities; public or private schools for children (including nursery schools); and neighborhood parks, community parks, or regional parks, as designated in the General Plan.”¹

The second locational priority (for A, P, P&I, and M-U) encourages, but does not require, facilities to be concealed. If a facility is concealed then there are no buffer zones or other requirements to distance the facility from a particular use. At a minimum, all facilities must be camouflaged and may not be located within 300 feet of: existing dwelling units (but not accessory structures, detached garages, sheds, poolhouses, etc.); senior care or nursing homes and assisted living facilities; public or private schools for children (including nursery schools); and neighborhood parks, community parks, or regional parks, as designated in the General Plan.”

c. Water Tank Sites

As discussed above, subject to certain requirements, wireless facilities will be permitted in the C, O, I, A, P, P&I, and M-U zoning districts. Wireless facilities will be prohibited in all other zoning districts within the City unless the facility is located on a parcel or adjacent to a parcel with a City water tank. Carriers are encouraged to conceal those facilities but are, at a minimum, required to camouflage the facility. Moreover, facilities must be located within 200 feet of a City water tank and at least 200 feet away from any existing dwelling unit.

¹ Table 6-1 of the General Plan identifies 53 locations as “neighborhood, community, and regional parks”. The 300’ distance requirements would apply to each of these locations for camouflaged facilities.

Opening up water tank sites as possible locations for carriers has many benefits. First, it may provide a means for a carrier to close a significant gap in coverage in sections of town that do not contain any of the allowed zoning districts. Second, as a landlord, the City would receive lease revenue from the carrier. Third and most significant, as the landlord, the City has an additional means of control regarding the aesthetics of the proposed facility as well as any proposed modifications or expansions of the facility. This is particularly important as federal law continues to evolve in a manner that strips control from state and local government. As an example, the Middle Class Relief and Job Creation Act of 2012 is a federal law that provides that a state or local government “may not deny, and shall approve, any request for collocation, removal, or replacement of transmission equipment on an existing wireless tower or base station, provided this action does not substantially change the physical dimensions of the tower or base station.” (Emphasis added.)

d. Exception to Locational Requirements to Meet State or Federal Law

While the proposed amendments to the Locational Requirements should provide carriers with a means of being able to close significant gaps in coverage, there is a possibility that a carrier may not be able to do so. In the event a carrier can demonstrate that it needs to locate a facility in a location that would not be allowed under the Locational Standards, the City has the ability to review a carrier’s application for another location. To that end, section 18.110.050(A)(6) of the proposed ordinance states: “Exception Required to Meet State or Federal Law: The decision-making body may grant an exception to any requirement of this ordinance, including the Locational Priorities in this section, if the applicant can show that strict compliance with the code would violate federal or state law.

3. Application Requirements

Staff has revised section 18.110.040 (Submittals) to better reflect what information is needed from an applicant in order for city staff, or the City’s peer-review consultant, to evaluate a carrier’s application. This section makes clear that the carrier is responsible for paying the costs for the City to hire an expert to review the carrier’s submittals and do an independent analysis on such things as the carrier’s RF emission report, its analysis of coverage gaps, alternative site analysis, etc.

4. Length of Permit Approvals

In 2006, state law changed to require that permits issued to a carrier be a minimum of 10 years. (The current ordinance requires carriers to renew their permits every five years.) The ordinance has been modified to comply with the change in law.

5. Public Noticing

The current ordinance requires staff to provide notice to all property owners within 600 feet of a proposed facility. Staff proposes to change the public noticing requirements to 300' to be consistent with what is required by state law and to be consistent with the 300' "buffer zones". Additionally, staff proposes a clarification in the ordinance which is consistent with how other design review applications are handled. Specifically, the proposed ordinance clarifies that notice not be provided where the facility will be "concealed", e.g., hidden on the roof of a building and concealed by a screenwall.

6. Changes to Other Sections of the Zoning Code

There are eight sections of the Zoning Code that prohibit certain uses from locating within 300 feet of a wireless facility. Those uses include, but are not limited to, convalescent hospitals, rest homes, nursing homes and senior care/assisted living facilities, private schools, nursery schools, childcare centers, parks, playgrounds, golf courses, and zoos. Staff recommends removing language in the code which limits one of the listed businesses or uses above from being able to locate in proximity to a wireless facility. Under the current zoning code, for example, staff has had to deny an application for a nursery school that sought to locate in a building that was within 300 feet of another building where a wireless facility was concealed on the roof. Staff suggests that the City's zoning code should not prevent certain businesses or uses from being able to locate near an existing wireless facility. Accordingly, staff proposes those amendments shown in Exhibit D.

PUBLIC NOTICE

Notice of this application has been published in The Valley Times and in the Pleasanton Weekly as an upcoming agenda item for the November 13, 2013 Planning Commission meeting. As of the time this report was prepared, one person had contacted staff and asked for a copy of the staff report and draft ordinance. Staff did not receive any comments pertaining to these amendments.

ENVIRONMENTAL ASSESSMENT

Amendments of this nature pertaining to minor alterations in land use regulation are categorically exempt from the requirements of the California Environmental Quality Act (CEQA, section 15061(b)(3)). Therefore, no environmental documentation accompanies this report.

CONCLUSION

The proposed changes to the Pleasanton Municipal Code are intended to improve cellular voice and cellular data coverage. Staff believes that the proposed Code amendments will result in improved coverage for residents, businesses, and visitors while at the same time maintaining the aesthetic qualities that the citizens of Pleasanton desire.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission adopt a resolution recommending approval of P13-2449 to the City Council with the proposed amendments shown in Exhibits A, B, and D.