



AGENDA REPORT

Meeting of the San Marcos Planning Commission

MEETING DATE: June 30, 2014
SUBJECT: Proposed replacement of Chapter 20.465 (Wireless Telecommunications Facilities) of the San Marcos Municipal Code (SMMC) and affected sections of SMMC Title 20
CASE: P13-0065 (Text Amendment 13-001)

Recommendation

That the City Council consider approving modifications to the SMMC that would supersede and replace Chapter 20.465 of the SMMC in its entirety, as well as the affected sections of SMMC Title 20, and that the City Council consider approving an Addendum to the General Plan Program FEIR that was prepared and adopted for the update to SMMC Chapter 20.465.

Introduction

The City currently regulates Wireless Telecommunications Facilities (WTFs) pursuant to San Marcos Municipal Code Chapter 20.465. The existing zoning regulations were designed to encourage wireless telecommunications facilities to be located on City owned property, on commercial/industrial sites and to incorporate a camouflaged design. WTFs that meet these requirements can be processed administratively by right. If a proposed WTF does not meet the "by right" requirements, the application requires compliance with the Conditional Use Permit process, which requires action by the Planning Commission. The current zoning regulations do not explicitly identify submittal and design requirements for sites that are processed with a Conditional Use Permit (for example, sites within residential and agricultural zones). The proposed revisions to Chapter 20.465 provide a uniform and comprehensive set of procedures and standards for the development, siting, installation, and removal of WTFs, Amateur Radio Facilities, and Over-the-Air Receiving Devices (e.g., television antennas and certain types of satellite antennas) within the City.

Federal Law:

Federal law as interpreted by court decisions preserves a local jurisdiction's authority to regulate WTFs, but with restrictions set forth in the Telecommunications Act of 1996 (TCA) Section 704 and 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012.



TCA Section 704 provides that the City may not “unreasonably discriminate” against any provider; the City may not prevent the completion of a provider’s network; the City must process applications in a “reasonable” timeframe (further clarified to include specific “shot clock” timelines); and that the City cannot deny an application based on perceived health risks associated with RF Emissions. Section 6409(a) provides that “[a] state or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station . . .”

Background

In the fall of 2013, an application for a Conditional Use Permit to allow the construction of a WTF within a residential area was approved by the Planning Commission. Some residents in the surrounding area expressed concerns about locating proposed wireless telecommunications facilities within residential areas, as well as about how proposed WTFs within residential areas are regulated by the City. The Planning Commission’s decision on the Conditional Use Permit was appealed to the City Council. On October 22, 2013, the City Council upheld the approval of the WTF, however, the City Council directed staff to update the Telecommunications Ordinance and obtain the Planning Commission recommendation on proposed revisions within 60 days (See Attachment C, December 2013 Planning Commission Staff Report and Attachment D, January 2014 City Council Staff Report for additional background).

Staff completed a comprehensive revision to Chapter 20.465, conducted a public workshop, and the Planning Commission recommended approval of the draft ordinance within the 60 days. The January draft ordinance was structured to establish a regulatory framework that complies with federal regulations for processing proposed wireless telecommunications facility applications. The draft ordinance incorporated reasonable regulations and procedures that addressed community siting and aesthetic concerns while complying with applicable state and federal laws. The draft ordinance was organized into the following sections: Purpose, Applicability, Permit requirements for all WTFs; Location Criteria; Application Content (submittal requirements); Design and Development Standards used by staff to review applications; Maintenance and Operation; Abandonment and Discontinuance of WTFs; Duration of Permits; As-Built requirements; change or transfer of ownership requirements; regulations for Amateur Radio Facilities and Over-the-Air Receiving Devices; compliance obligations; appeal and enforcement procedures; and definitions.

The January draft ordinance also identified administrative or public hearing processing procedures for proposed applications located within “preferred locations” and “discouraged locations,” respectfully, and due to public concerns about potential “tree farms,” the draft regulations limited the maximum number of WTFs per parcel to one (1) within a residential or agricultural zone/area. In the event a wireless telecommunications carrier substantiated that a second wireless telecommunications facility



on an agricultural/residential parcel was necessary in order to close a significant coverage gap, the draft regulations required a minimum 1,000' separation between wireless telecommunications facilities in order to mitigate potential visual impacts.

On January 14, 2014 the City Council directed staff to make further revisions to the proposed ordinance, and to process it for return consideration by the City Council. Specifically, the City Council directed staff to re-evaluate:

- Maximum number of WTs on a parcel;
- Consider allowing more than one WT in agricultural/residential areas based on lot size;
- Eliminate the minimum 1,000' separation between existing and proposed WTs within agricultural and residential zones/areas and allow clustering of WTs;
- Include regulations for smaller technology (referred to at that time as "DAS, or "Distributed Antenna Systems")

To prevent approval of applications that would not comply with the future regulations for the areas that were of concern, staff was also directed to return to the City Council with a temporary moratorium on the issuance of discretionary or ministerial permits for the installation, change or relocation of antennas and related wireless telecommunications facilities within specified areas of the City. The City Council adopted the urgency moratorium ordinance on January 28, 2014 and extended the moratorium on March 11, 2014. The moratorium remains in effect until a new ordinance is adopted or January 21, 2015, whichever occurs first.

Staff prepared a revised draft ordinance and presented it at a public workshop on April 2, 2014. Several comments were received from the public as well as wireless industry representatives, and staff further refined the draft ordinance and published it to the City's website on May 22, 2014 to allow a thirty (30) day public review period prior to the Planning Commission hearing. The draft ordinance includes redlined text that identifies all changes recommended to the January draft ordinance. Staff has also prepared a summary to identify specific sections that have been revised (See Attachment E).

Public Comment:

Several public comments (Attachment F) on the draft ordinance have been submitted, specifically on the following sections: Purpose (type of technology that should be required); General Regulations for WTs (specifically regarding the maximum height, number of WTs allowed in residential/agricultural zones/areas; setbacks; and legal access); Location Criteria (preferred and discouraged location lists); Application Content (independent 3rd party analysis); Design and Development Standards (to the sections "all facilities" and "public right-of-way installations"); Maintenance Operations Standards (maintenance hours); and FCC Compliance (RF emission reports). Additionally, there have been



requests for a Citizen Cell Review Council and an integrated 1, 3, 5 year plan. Conversely, there have been comments from the wireless industry attorneys opposing this concept.

Discussion

Most of the January draft ordinance remains intact, including the permit structure (administrative wireless telecommunications facility permit for proposed facilities in “preferred locations” and a Conditional Use Permit for proposed wireless telecommunications facilities in “discouraged locations”). However, several sections have been modified to address the City Council’s direction. The significant modifications include the following:

20.465.040(D)(1): Siting requirements and guidelines.

This section regulates the number of wireless telecommunications facilities that are allowed within residential and agricultural areas/zones:

parcel size	
Less than 1.0 acre	A WTF should not be located on a parcel this size
Between 1.0-5.0 acre	No more than (1) WTF
Between 5.1 - 10.0 acre	No more than (2) WFTs
Greater than 10.1 acres	No more than (3) WFTs

The January draft ordinance restricted the maximum number of stand alone wireless telecommunications facilities in the residential/agriculture zones/areas to one (1); and if a carrier could substantiate an additional wireless telecommunications facility was required on the same parcel to close a significant gap in coverage (as allowed per federal law), a minimum of 1,000’ separation was required. The revised ordinance will allow for a maximum of three wireless telecommunications facilities, depending on parcel size regardless if collocated or stand alone, and encourages collocation and/or clustering when feasible.

Other modifications to this section (20.465.040(D)(2)) include the setback standard for standalone wireless telecommunications facilities in the agricultural zone:

In agricultural zones, a minimum of one hundred (100’) from the property line or one hundred-ten percent (110%) of the height of the wireless telecommunications tower, whichever is greater. The Agricultural zone development standards include an allowance for non-residential structures (such as barns) to exceed the allowed height if the proposed non-residential structure is one-hundred feet (100’) from the property line. The proposed setback of one hundred feet measured from the property line of



the subject site property for a proposed wireless communication facility will be consistent with an existing development standard of the Agricultural zones.

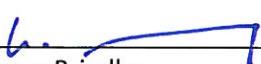
The City Council also directed staff to evaluate regulations that would encourage the use of smaller technology. Public comment requested the City mandate the use of "DAS" (Distributed Antenna Systems" in lieu of macro sites. Federal law does not allow the city to mandate what type of technology a wireless carrier uses; however, the City can encourage the use of smaller technology where feasible. Since terminology changes as technology changes, rather than use the term "DAS" in the draft ordinance, smaller technology is referred to as "compact cell" facilities and is defined as a wireless telecommunications facility with a single Base Station that occupies no greater than eight cubic feet and utilizes three (3) or fewer antennas each occupying no greater than three (3) cubic feet." The draft ordinance includes an addition to the "Purpose" section (20.465.010(C)) to "Encourage the deployment of smaller, less intrusive wireless facilities to supplement existing larger wireless facilities." In addition, language has been added to other sections of the ordinance to encourage the use of smaller technology and Section 20.465.070(E)-Public Right-Of-Way Installations has been expanded to include regulations for location, type, number, and design of antennas allowed, and base station standards.

All revisions to the draft ordinance are included in Attachment E.

Attachment(s)

- A Requested Action
- B Addendum to General Plan & Zoning Ordinance Update FEIR (SCH No. 2011071028)
- C December 18, 2013 Planning Commission Staff Report
- D January 14, 2014 City Council Staff Report
- E Summary of revisions, by section, to the January 2014 Draft Telecommunications Ordinance)
- F Public Comments

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ATTACHMENT A
Requested Action

Recommend approval to the City Council Text Amendment 13-001 to supersede and replace Chapter 20.465 of the San Marcos Municipal Code (SMMC) (Telecommunications Facilities) and affected sections of SMMC Title 20, and that the City Council consider approving an Addendum to the General Plan Program Final Environmental Impact Report that was prepared and adopted for the update SMMC Chapter 20.465.

AGENDA ITEM NO. _____



ATTACHMENT B
Addendum to General Plan &
Zoning Ordinance Update FEIR (SCH No. 2011071028)

AGENDA ITEM NO. _____