



Board Agenda Item 9

DATE: November 15, 2016

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Regulation of Telecommunication Facilities within Public Rights-of-Way in
Unincorporated Areas of Fresno County

RECOMMENDED ACTION(S):

- 1. Consider and adopt Resolution of Intention initiating amendments to various section of the Fresno County Ordinance Code addressing the construction of telecommunication facilities and related improvements within the public rights-of-way in the unincorporated areas of Fresno County.**
- 2. Consider and adopt Interim Urgency Ordinance pursuant to Government Code Section 65858 establishing a moratorium on the construction of telecommunication facilities and related improvements within the public rights-of-way in the unincorporated areas of Fresno County. Adoption of the initial Interim Urgency Ordinance is effective for a period of up to 45 days unless earlier terminated or extended (4/5 vote).**
- 3. Determine that the approval of the Resolution of Intention and the adoption of the Interim Urgency Ordinance are exempt from the requirements of the California Environmental Quality Act, Public Resources Code section 21000, et seq., and direct staff to file a Notice of Exemption with the Office of the Fresno County Clerk.**

Approval of the recommended actions would allow staff an opportunity to research and develop proposed regulations and standards addressing the construction of communication facilities within Fresno County's rights-of-way.

ALTERNATIVE ACTION(S):

Determine that initiation of the proposed Ordinance amendment process is not necessary and determine that the specific findings cannot be made pursuant to Government Code Section 65858, and take no action on the recommended action. If this occurs, the Department would approve requests for telecommunication facilities within the public right-of-way without benefit of a process or standards to review such requests.

FISCAL IMPACT:

Approval of the recommended action represents a Net County Cost of approximately \$8,000, which would be absorbed within the Department's existing FY 2016-17 budget in Public Works and Planning Org 4360.

DISCUSSION:

The Department has received multiple requests for issuance of encroachment permits from a telecommunication company proposing to construct towers up to 120 feet in height within the County's public road right-of-way. The proposed towers were described as "utility infrastructure facilities". The applicant described itself as a certified public utility company regulated by the California Public Utility Commission to provide telephone related services, such as facilities based competitive local exchange and interchange services. The applicant noted that in order to meet the demand for connectivity, it is deploying a hybrid transport network that will provide high-speed, high-capacity bandwidth in order to facilitate the next generation of devices and data-driven devices. The new network is intended to support a variety of technologies and services that require connectivity to the internet, including, but not limited to: driverless and connected vehicles (commercial, personal and agricultural); remote weather stations; and mobile service providers. According to the applicant, the proposed towers and facilities are not dedicated to any particular customer, and, to the extent capacity on the structures is available, would be available to be used by other entities, including the County of Fresno.

The County's standards for installing improvements within the right-of-way currently do not address this specific type of installation nor does the County have a defined process to evaluate these types of requests. What the applicant has described, would typically be classified as a cellular tower which requires the approval of a conditional use permit at public hearing before the Planning Commission or Board of Supervisors upon appeal.

The County of Fresno designs roads in accordance with industry standards; specifically, the County uses State Department of Transportation (Caltrans) Highway Design Manual (HDM) and American Association of State Highway and Transportation Official (AASHTO) guideline standards. A safety standard designed into the road is the Clear Recovery Zone (CRZ). This CRZ is generally the road "shoulder" areas, nearest the edges of the right-of-way (ROW). The Caltrans HDM requires a minimum width of 20 feet of CRZ for conventional highways (such as County rural roads). The CRZ affords the drivers of errant vehicles the opportunity to regain control of their vehicle, or pull off the road safely to allow other traffic to pass by.

The Caltrans HDM standard allows certain "necessary highway features" to reside within the CRZ. These necessary highway features are fixed objects generally limited to sign posts, light standards, bridge piers, abutments, retaining walls, and/or noise barriers located closer to the edge of traveled way than the 20-foot required for a conventional highway. When such fixed objects must to be located within the CRZ, the objects should be designed to be made yielding or shielded by a guardrail, barrier or crash cushion.

Section 1450 of the Streets and Highways Code covers encroachments of the county highway. It defines a structure of any kind which is placed in the highway. Section 1480.5 allows for the removal of an encroachment which is a traffic hazard.

Utility (wooden, slender) poles, sign posts, and traffic signals meet the criteria of breakaway, or traffic handling necessary highway features. A 120-ft tall, 4-ft diameter reinforced concrete and steel tower is an unyielding obstruction in the ROW that is not forgiving to an errant driver who collides with it; thus, the tower does not meet this criteria.

In order to adopt an Interim Urgency Ordinance, the Board must make specific findings pursuant to Government Code Section 65858 as follows:

1. That there is a current and immediate threat to the public health, or welfare; and
2. That the approval of additional entitlements for the land use would result in that threat to public health, safety, or welfare.

If adopted, the Interim Urgency Ordinance would be in effect for 45 days and could be extended once for 22 months and 15 days for a total period not to exceed two years. It is anticipated that the additional extension will be needed in order to allow adequate time to prepare and complete processing of the Ordinance amendment.

The Recommended Actions are Exempt from CEQA

Staff has determined that approval of the Recommended Actions are exempt from the requirements of CEQA. Approval of the Resolution of Intention directs County staff to make necessary investigations and studies as may be required to amend the Fresno County Zoning Ordinance to address the County's regulation of telecommunications facilities within the County's rights-of-way, and set dates for the prescribed public hearings, and give proper notice thereof. Such work by County staff does not have the potential to and will not result in a direct or reasonably foreseeable indirect physical change in the environment.

The adoption of the Interim Urgency Ordinance temporarily prohibits the establishment, location, installation, development, or construction of telecommunications facilities in the County's rights-of-way in all Zoning Districts, which will have the effect of temporarily prohibiting a direct or reasonably foreseeable indirect physical change in the environment. Therefore, the adoption of the Interim Urgency Ordinance will not have the potential to nor will it result in direct or reasonably foreseeable indirect physical change in the environment.

For the foregoing reasons, neither the approval of the Resolution of Intention nor the adoption of the Interim Urgency Ordinance will result in a direct or reasonably foreseeable indirect change in the environment, nor are either actions a "project" under CEQA, and both are exempt from further CEQA review under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Resolution of Intention
On file with Clerk - Interim Urgency Ordinance

CAO ANALYST:

John Hays