

LEGISLATIVE DIGEST

[Public Works Code - Personal Wireless Service Facility Site Permits]

Ordinance amending the Public Works Code to modify certain of the requirements for obtaining Personal Wireless Service Facility Site Permits, including the requirements for public notice and adjustment of permit fees; and affirming the Planning Department’s determination under the California Environmental Quality Act.

Existing Law

Among other things, Article 25 of the Public Works Code allows the City and County of San Francisco (“City”) to regulate the location and design of a personal wireless service facility (“Wireless Facility”). Article 25 requires a permit issued by Public Works to install a Wireless Facility on a utility, transit or street light pole in the public right-of-way (“Wireless Permit”).

Article 25 requires other City departments to review applications for Wireless Permits. Public Works may not issue a Wireless Permit without the approval of these other departments:

- The Planning Department and/or the Recreation Park Department must review an application for a Wireless Permit in specified locations based on the aesthetic standards contained in Article 25.
- The Department of Public Health must review an application for a Wireless Permit to determine whether: (i) any potential human exposure to radio frequency (“RF”) emissions from a proposed Wireless Facility would comply with the Federal Communications Commission (“FCC”) regulations¹; and (ii) potential noise from the proposed Wireless Facility would be not greater than 45 dBA as measured at a distance three feet from any residential building facade.

Article 25 requires public notice that Public Works has issued a tentative approval an application for a Wireless Permit and allows local residents and business owners to protest the issuance of the proposed Wireless Permit. If a protest is filed, Public Works will conduct a hearing before issuing a Wireless Permit. Public Works will only issue the Wireless Permit if the Director of Public Works determines after the

¹ Under federal law, the City cannot impose standards related to the “environmental effects” of RF emissions that exceed those contained in the FCC’s regulations. See 47 U.S.C. § 332(c)(7)(B)(iv).

hearing that the applicant complied with all of the requirements of Article 25. The Wireless Permit may then be appealed to the Board of Appeals.

Amendments to Current Law

The proposed Ordinance would amend Article 25 to expedite the permitting process in order that: (1) wireless carriers in San Francisco will be able to timely deploy the facilities necessary to improve their services and provide 5G service; and (2) the City will comply with federal law as recently interpreted by the Federal Communications Commission (“FCC”). The proposed Ordinance accomplishes those goals by doing three things.

First, the proposed Ordinance would repeal those provisions that require tentative approvals of Wireless Permit applications and allow for protests and public hearings if protests are submitted. The FCC has interpreted federal law to require a final determination on these types of applications within 60 days. Under present law, Public Works cannot meet the 60-day requirement. The tentative approval, protest, and public hearing requirements are the major reasons the permitting process takes longer than 60 days.

Second, the proposed Ordinance would require Public Works to work with the Planning Department and the Recreation and Park Department to develop objective standards to determine whether an application for a Wireless Permit satisfies Article 25’s aesthetic criteria. Article 25’s aesthetic standards are subjective. The FCC has interpreted federal law to require the use of objective standards. In addition, using objective standards to review Permit applications—rather than subjective ones—will expedite the permitting process. Once Public Works has adopted objective standards, neither the Planning Department nor the Recreation and Park Department will have to review any applications for Wireless Permits that meet those standards.

Third, the proposed Ordinance would repeal those provisions that require Wireless Permits to install Wireless Facilities on San Francisco Public Utilities Commission (“SFPUC”)-owned streetlight poles and San Francisco Municipal Transportation Agency (“SFMTA”)-owned transit poles. Because the SFPUC and SFMTA own these poles, they can impose the City’s aesthetic standards through their pole licenses. Through their license agreements, these agencies can also require wireless carriers to demonstrate compliance with the FCC’s RF emissions regulations. Finally, the FCC has interpreted federal law to require that both the license and Wireless Permit be issued within 60 days. If a Wireless Permit is required for City-owned poles, it will be difficult for the City to issue both the license and Wireless Permit in 60 days.

Background Information

One of the purposes of the proposed Ordinance is to ensure that the City's permitting process for Wireless Facilities complies with federal laws. In its *Declaratory Ruling and Third Report and Order in the Wireless and Wireline Proceedings* (Sept. 26, 2018) ("*FCC Order*")², the FCC construed two federal laws limiting state and local government authority to regulate telecommunications services³ that implicate Article 25's requirements.

The *FCC Order* finds that those federal laws did not prohibit state and local governments from addressing aesthetic concerns when issuing permits for small wireless facilities on utility poles. But, the FCC ruled that any such aesthetic requirements must be reasonable, objective, publicly available, and applied to other entities in similar situations.

The *FCC Order* also finds that under federal law state and local governments must issue final determinations on applications for permits to small wireless facilities on utility poles within 60 days of receipt of the application.

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² San Francisco and other local governments have sought federal court review of the *FCC Order*. While those petitions were filed in different appeals courts, they have all been consolidated and will be heard by the Ninth Circuit Court of Appeals in San Francisco. The Ninth Circuit has ordered the briefing in those appeals be completed by September 18, 2019. No date has been set for oral argument.

³ See 47 U.S.C. §§ 253, 332(c)(7).