

ORDINANCE NO. 2017-10RR

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING ARTICLE 34 OF THE ESCONDIDO
ZONING CODE PERTAINING TO WIRELESS
COMMUNICATION FACILITIES WITHIN THE
RIGHT-OF-WAY

Planning Case No. AZ 16-0009

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and City Council on this issue.

SECTION 2. That the City Council has determined that this Zoning Code Amendment is exempt from the California Environmental Quality Act ("CEQA") in conformance with CEQA Guidelines Section 15061(b)(3) "General Rule" and finds that no significant environmental impact will result from approving this code amendment.

SECTION 3. That upon consideration of the staff report; Planning Commission recommendation; Factors to be Considered, attached as Exhibit "A" to this Ordinance and incorporated by this reference; and all public testimony presented at the hearing held on this project, this City Council finds the proposed Zoning Code Amendment is consistent with the General Plan and does not affect any specific plans of the City of Escondido.

SECTION 4. That Article 34 of the Escondido Zoning Code, Section 33-704(k) "Public Right-of-Way" is deleted and replaced with language attached as Exhibit "B" to this Ordinance and incorporated by this reference.

SECTION 5. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 6. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 21st day of June, 2017 by the following vote to wit:

AYES : Councilmembers: DIAZ, GALLO, MASSON, MORASCO, ABED

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:



SAM ABED, Mayor of the
City of Escondido, California

ATTEST:



DIANE HALVERSON, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, DIANE HALVERSON, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2017-10RR passed at a regular meeting of the City Council of the City of Escondido held on the 21st day of June, 2017, after having been read at the regular meeting of said City Council held on the 14th day of June, 2017.



DIANE HALVERSON, City Clerk of the
City of Escondido, California

ORDINANCE NO. 2017-10RR

EXHIBIT "A"

FACTORS TO BE CONSIDERED AZ16-0009

1. Approval of the amendment to Article 34 (Communication Antennas) will not be detrimental to the public health, safety, or welfare or injurious to the property or improvements in the zone or vicinity in which the property is located because Personal Wireless Communication Facilities currently are allowed within the public right-of-way along all zones throughout the City. The proposed amendment further clarifies standards for the development of wireless facilities within the right-of-way; modifies and streamlines the review process by creating a new Wireless Facility Permit; and established clear Design Guidelines for wireless communication facilities within the public right of way. All facilities would continue to be required to conform to FCC "Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation." No development project is proposed.
2. The properties/zones involved are suitable for the uses permitted and would not be detrimental to surrounding properties because the proposed the public right-of-way can adequately accommodate wireless communication facilities and the amendment only includes appropriate processing development standards and processing requirements to evaluate the appropriateness of a proposed wireless facilities proposed within the public right-of-way.
3. Escondido's economy relies on innovation and providing job opportunities for the City's residents. Ubiquitous, high speed mobile broadband is proven to have a significant impact on a country's economic competitiveness and social prosperity. The proposed Zoning Code Amendment facilitates the development of the City's telecommunication network, which is supported by numerous goals and policies. The proposed amendment would be consistent with General Plan Goals and Policies that call for a "Diverse and Economically Prosperous Economy" that address the need to provide broad economic prosperity and support for businesses of all sizes. General Plan Mobility and Infrastructure Goals (Goal 7, page I-19 and Telecommunication Goal 7, page III-51) call for providing quality communication systems that enhance economic viability, governmental efficiency and equitable access for all. The proposed amendment also is consistent with General Plan Economic Prosperity Goals (Goal 9, page I-21) to provide adequate infrastructure to support and maintain the economic vitality of Escondido businesses. Telecommunication Policy 17.8 requires compatible colocation of telecommunication facilities that are designed in a manner to minimize visual impacts on surrounding uses, and Telecommunication Policy 17.9 encourages the City to work with utility companies to provide opportunities for siting telecommunication facilities on city-owned property and public right-of-ways.
4. The proposed code amendment is exempt from environmental review in conformance with CEQA Guideline Section 15061(b)(3). The activity is covered by the general rule that exempts activities that can be seen with certainty to have no possibility for causing a significant effect on the environment. Approval of the proposed amendment to the Escondido Zoning Code would not individually or cumulatively result in the possibility of creating significant effects on the environment because the proposed amendment to the Zoning Code (Article 34) only establishes criteria to assess and process applications for the development of wireless communication facilities within the public right-of-way. The proposed zoning code amendment is not a "physical condition" that will impact the environment for the purposes of CEQA. Therefore, the proposed code amendment is not subject to CEQA under the General Rule and no further environmental review is necessary.
5. The proposed zoning code amendment would not affect any specific plans.

EXHIBIT "B"

Proposed Amendment to Section 33-704 (k) pertaining to Personal Wireless Service Facilities in the Right-of-Way.

- (k) Public Right-of-Way. All requirements of this Article shall apply to the placement, construction, modification or reconstruction of any personal wireless service facilities proposed within the public right-of-way, except to the extent precluded by state or federal law. The following general requirements also shall apply:
- (1) All personal wireless service facilities must comply with the City's requirements for an encroachment permit as set forth in Chapter 23 of this code and any guidelines adopted pursuant to this Article. All applicants shall enter into a license agreement as provided by the City to the extent the facility is proposed to be located on City facilities.
 - (2) Personal wireless service facilities in the right-of-way shall be installed on existing street light poles or substantially similar replacement poles in the same location. Where it has been demonstrated that it is not feasible to locate on an existing street light or similar replacement pole, a wireless facility may install a new streetlight to supplement existing lighting. New or replacement street light poles shall be designed to resemble the appearance and dimensions of a street light typical of the surrounding neighborhood, including size, height, color, materials and style, whenever feasible. Where it has been demonstrated that it is not feasible to locate on a new streetlight, a wireless facility may locate on an existing traffic signal, utility pole, bus stop, or other appropriate vertical structure within the right-of-way. The installation of a new structure, that is not a street light, may be permitted by minor conditional use permit. The installation of a new wooden pole is not permitted.
 - (3) All personal wireless service facilities in the right-of-way shall be sited in order to minimize potential visual and compatibility impacts with adjacent properties. In residential areas, placing wireless facilities along non-classified residential streets and along the front yard of single-family residential properties should be avoided. Wireless facilities must be designed to be visually unobtrusive with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses. The equipment must be painted or textured to match the color or surface of the structure on which they are attached, or otherwise screened to reduce their visibility.
 - (4) No more than two panel antennas may be mounted on a single pole or structure. No antenna may exceed three feet in length. Antennas shall be vertically mounted to a pole or support structure (excluding strand mounts) in compliance with any applicable separation requirements. An antenna enclosure attached to the top of a utility pole or street light shall be cylindrical in shape and shall not exceed four feet in height. New street lights or replacement poles must match the height and design of the existing street light in the same neighborhood. In no case shall a new wireless facility exceed 35 feet in height. The antennas and other related equipment shall be mounted as close to the pole as possible, with no more than a four-inch gap, to minimize impacts to the visual profile. Pole-mounted equipment, exclusive of antennas, shall not exceed seven cubic feet in dimension. Pole-mounted equipment shall not exceed a dimension of 12 inches in width and 12 inches in depth. All conduits, conduit attachments, cables, wires and other connectors must be concealed from public view to the extent feasible.
 - (5) The spacing between existing poles and new personal wireless service facilities must avoid visual clutter and maintain the existing character of the surrounding neighborhood. In residential

areas, an individual wireless carrier must provide a minimum separation of 300 feet from any of their other wireless facilities within the right-of-way.

- (6) No personal wireless service facility may be located within the right-of-way where there are no overhead utility facilities or streetlight poles unless permitted pursuant to a minor conditional use permit. No new overhead wires shall be allowed in areas where undergrounding of utilities has occurred.
- (7) All other non-antenna equipment associated with the personal wireless service facility shall be placed underground, except any required electric meter or disconnect switch associated with an installation on an existing utility pole. Equipment shelters shall not be allowed in the public right-of-way where their presence would interfere with existing uses or infrastructure, and shall be located as to minimize impacts to neighborhood aesthetics, pedestrian access, and vehicular site distance and safety.
- (8) **Wireless Facility Permits.** All new personal wireless service facilities proposed within the right-of-way, collocations or modifications to existing wireless facilities shall require the issuance of a wireless facility permit. The Director may establish the forms and submittal requirements to implement the requirements of this Article. The Director may refer any application for a wireless facility permit to the Planning Commission for consideration at a noticed public hearing.
 - (A) **Administrative Permit.** All proposed facilities which meet all the requirements in this Article and any adopted guidelines may be processed through an Administrative Wireless Facility Permit. The Director shall determine whether an application meets the requirements of this Article and any adopted guidelines. The application shall follow the procedures and fees for a Plot Plan and design review.
 - (B) **Minor Conditional Use Permit.** All other proposed facilities that the Director determines do not meet the requirements of this Article or any adopted guidelines must be processed through a minor conditional use permit. The applicant must pay any necessary application fees in accordance with a minor conditional use permit application.
 - (C) **Zoning Administrator findings.** In addition to the findings in Section 33-1203, the Zoning Administrator must also make the following findings in approving a minor conditional use permit for a personal wireless service facility:
 - I. That the applicant has demonstrated that the site is necessary to close a significant gap in service;
 - II. That the location proposed conforms to the requirements of this Article and any adopted guidelines to the maximum extent possible;
 - III. That the design proposed conforms to the requirements of this Article and any adopted guidelines to the maximum extent possible; and
 - IV. That the applicant has demonstrated a good-faith effort to identify and evaluate more preferred locations and that alternative locations are not feasible or potentially available.
- (9) The City Council may, by resolution, establish additional criteria and guidelines for the location, operation, design and review of personal wireless service facilities in the public right-of-way.