AMENDMENTS TO BMC CHAPTER 16.10 AND PROW PERMITTING GUIDELINES

May 19, 2020
Legal Background: Framework

- Regulation of wireless facilities is subject to:
  - Federal Telecommunications Act of 1996 and FCC rules
  - Cal. Public Utilities Code

- Federal law preempts state and local regulations based on health impact of wireless facilities

- 2018 FCC rules create a new regulatory classification for small wireless facilities
Legal Background: FCC Rules

- Local jurisdictions retain ability to regulate the aesthetics and location of small wireless facilities (subject to limitations)

- Local regulations must:
  1. Not “materially inhibit” provision of wireless services
  2. Be objective and published in advanced
  3. Be “no more burdensome than those the state or locality applies to similar infrastructure deployments

- Applications subject to 60- or 90-day “shot clock”

- Limits on pole attachment fees
Legal Background: COB Permits

- City permits for wireless facilities on private property subject to BMC Chapter 23C.17
- Installations in PROW governed by BMC Chapter 16.10 (2009)
- PROW permits subject to Aesthetic Guidelines (2011)
Technical Background

- Small Cell Technology
  - Low-powered
  - Short-range
  - Will support rollout and “densification” of 5G networks
  - Typically installed in PROW
Technical Background

- Small Cell Technology
Goals

- Revise ordinance and guidelines for PROW permitting to account for regulatory and technological changes
- Adopt clear and enforceable standards to allow for processing of small cell facility applications
- Retain local control over aesthetics and placement of facilities in the PROW
- Retain flexibility to amend guidelines in the event of regulatory changes or other legal developments
Proposed Ordinance Amendments

- Clarifies financial security requirements
- Conforms RF exposure verification requirements to legal standards
- Amends pre-application requirements
Proposed Ordinance Amendments

- Modifies appeal provisions
- Allows for permit modification or revocation if legal standards for placement or design of facilities changes
- Requires a review of guidelines if federal regulations are modified or invalidated
- Authorizes the City Manager to adopt guidelines to implement PROW permitting requirements
Proposed Permitting Guidelines

- Apply to all substantially similar infrastructure deployments in PROW (i.e., not just small cell facilities)
- Define application procedures
- Establish standard conditions of approval
Proposed Permitting Guidelines

- Establish standards for “most preferred” location:
  1. Manufacturing/commercial districts
  2. Residential districts
  3. Within 200 feet of City park, City landmark, or state-designated historic resource

- Strong preference against sites in residential districts

- Set design standards, including height, volume, and visibility
QUESTIONS?