

STAFF REPORT

Report date: May 19, 2021

Application/project name: Small Wireless Facilities
Text Amendment

Application Numbers: TA2021-0001

Proposal: The City proposes to amend the Beaverton Development Code (BDC) to update Wireless Communication Facilities regulations. The amendment specifically removes regulations on small wireless facilities from the Beaverton Development Code to create a separate regulatory process and proposes to update the Wireless Communication Facilities regulations that remain in the BDC to be consistent with federal regulations. The proposal affects Chapters 20, 40, 60, 70, and 90 of the Development Code and creates a separate Small Wireless Facilities policy document.

Proposal location: Citywide

Applicant: City of Beaverton

Recommendation: Staff recommend the Planning Commission review the proposal, take public testimony, deliberate on the proposal, and make a recommendation to City Council.

Contact information:

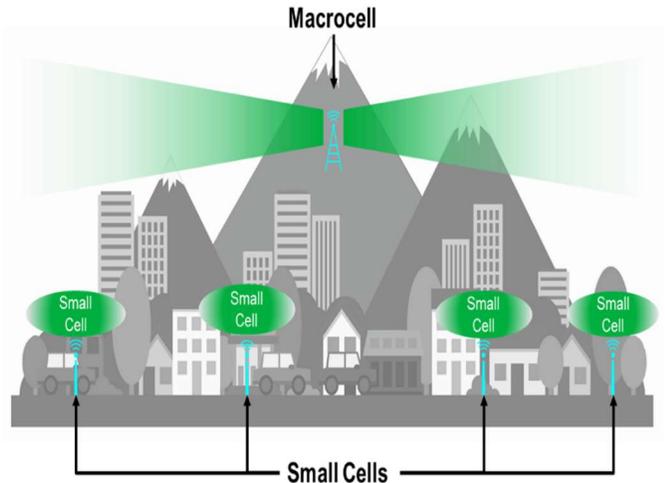
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Text Amendment Summary

Background

The Beaverton Development Code (BDC) regulates the installation of wireless communication facilities (WCF), which covers any facility that transmit radio frequency. For many years the focus has been on large cellular towers, installed on private property, working to provide coverage throughout the City. However, with the changes in technology and the increased use by consumers, the wireless carriers are looking to install new smaller technology to improve capacity, which also requires more facilities. The carriers are looking to installations in the public right-of-way to improve signal capacity. In 2017 the City amended the BDC to address WCF in the ROW and compliance with FCC regulations pertaining to collocation of WCF; however, this update did not specifically address small wireless facilities (SWF).



Since the adoption of the 2017 Wireless Facilities update, the City has been looking to further refine WCF policies to better address small wireless facilities and issues with the 2017 update related to collocation. An inter-departmental project team was convened in 2018 to evaluate City options to respond to the demand for more wireless facilities in the City by service providers while ensuring the interests of the City are being met. In September 2018, the Federal Communication Commission (FCC) adopted new regulations limiting control of small wireless facilities installations by local jurisdictions. The FCC's regulations require cities to approve these facilities within 60 days (installation on an existing structure) or 90 days (installation on a new structure) and limits the amount cities can charge carriers for application fees and lease on City property.

Staff began navigating the implications of these new FCC regulations regarding how staff would review new small wireless facilities requests and how much the City could charge the carriers for the review. In July 2019, an interim fee structure for use of the ROW and the processing of these facilities was approved by City Council. Staff also created a "Small Cell" application that consolidated the review process for all permitting divisions and departments into one application. Staff began developing new design standards to address the installation of small wireless facilities.

In June 2020, the FCC adopted new rules on "eligible facilities requests," (often referred to as collocation requests) for Wireless Communication Facilities (WCF), such as modifying when the review time begins for these types of application. The scope of the City project expanded

accordingly to address not only SWF, but the WCF regulations in the BDC as well. In August 2020, the 9th Circuit Court ruled on a SWF appeal and upheld many aspects of the FCC's 2018 regulations such as the short review time and the fee limitation; however, the Court vacated and remanded the FCC's aesthetic regulations giving local jurisdictions more flexibility to consider aesthetics in local design standards.

Staff has developed regulations governing both WCF in general and SWF to address the ruling of the 9th Circuit Court as well as the new FCC requirements for eligible facilities request. The overall proposed approach includes the following:

1. *New Design Standards and Policies for SWF.* Remove all review of SWF both public and private from the BDC and create a new policy document with the new rules and processes that addresses SWF separate from other WCF. These design standards as well as the review process are to be codified in the new Small Wireless Facilities Policy document.
2. *Beaverton Development Code Amendments.* Changes to the BDC not only address removing SWF regulations, but also propose changes to the WCF regulations to comply with FCC rules related to collocation of wireless facilities.

Small Wireless Facilities Policy Document

This document consolidates the review process for all small wireless facilities both in the ROW and private properties into one document that can be updated by City Council resolution in the future. This approach was taken due to the FCC's restrictive timeline that does not distinguish between ROW and private properties and makes it impractical to review proposed SWF through the land use process. The SWF Policy document includes the following:

- Review procedure including noticing, decision, and appeal.
- Preferred locations based on zoning district and street classification.
- Preferred design options and specific standards for each design option.
- Procedure for reviewing proposed pre-approved designs.
- Adjustment process for unique circumstances that may arise.

Additionally, the SWF Policy removes review of proposed SWF from the Development Code in order to allow FCC review timeframes to be met and for quicker updates to the policy, to accommodate the dynamic nature of this technology and shifting regulatory requirements.

Updates to the Beaverton Development Code

The proposed amendments to the BDC are needed to update the regulations affected by FCC rule changes, remove regulations pertaining to SWF, and to make clarifications to the WCF regulations. The following is an overview of changes proposed to the BDC:

Chapter 20 Land Uses:

- Remove references to WCF in the right-of-way regarding development standards and land use types.

Chapter 40 Applications:

- Update the Temporary Use application for Temporary Structures to address temporary WCF.
- Update the Wireless Facilities Application approval criteria, for all types, to ensure the design requirements are compliant with the FCC's updates.

Chapter 60 Special Requirements:

- Specify SWF are exempt from review in the BDC.
- Clarify how the nonconforming use regulations apply to WCF.
- Clarify where WCF installations are prohibited.
- Remove design requirements for WCF in the right-of-way from the BDC to be placed in a new SWF policy document.
- Modify setback and height standards for collocation to comply with FCC regulations.

Chapter 70 Downtown Design District

- Include site development standards for WCF.
- Remove references to WCF in the right-of-way regarding development standards and land use types.

Chapter 90 Definitions:

- New definitions pertinent to WCF and references to applicable FCC definitions.
- Update definitions to be consistent across FCC, BDC, and the new small wireless facilities policy document.

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Exhibits

- Exhibit A Small Wireless Facilities Policy Document
- Exhibit B Modified Development Code Text
- Exhibit C Analysis of Proposed Changes in the Development Code by Chapters
- Exhibit D Proposed Development Code
- Exhibit E Public Comments (None Received)

Stakeholder Comments

Through the two-year process of developing the SWF Policy Document and the proposed changes to the BDC, staff has met with stakeholders such as City Council, Planning Commission, BCCI, and industry representatives. While the hearing process with the Planning Commission and City Council will provide additional opportunities to collect and address comments from the Community, the following are some comments received with staff's recommendations:

City Council Comments

Staff has met with City Council throughout the development the SWF Policy Document and the proposed update to the BDC to ensure policies are consistent with Council's view. At the most recent Council work session on March 2, 2021 along with their direction to move forward with this text amendment, staff received the following feedback:

- *Noticing Process:* Even with significant time constraints associated with the processing of Small Wireless Facilities applications, the Council reiterated their desire to include noticing as an aspect of the approval process. The proposed policy document includes two types of noticing to respond to this request.
 - Noticing required for applications before their approval, and
 - Construction noticing for SWF applications with a pre-approved design and location.
- *Appeal Process:* The Council requested an appeals process be provided. The proposed appeals process is to be administrative. The original approval is by the Director; therefore, the appeals process decision-maker is the City Manager.
- *Inclusion of Small Wireless Facilities on Wood Utility Poles:* The Council raised concerns with allowing small wireless facilities on wood utility poles. The Small Wireless Facilities Policy document establishes a hierarchy of preferred design options. While wood poles are not the most preferred option, the design hierarchy identifies them as a higher design preference than installation of new "single-use" poles. This addresses the concerns of Council regarding the proliferation of new poles.

Industry Representatives Comments

Staff met with industry representatives throughout the project. Staff provided industry representatives opportunities to review draft language and provided them notice of work sessions and hearings. The following are some of the feedback provided to staff:

- *Fixed Design Standards.* *The proposed SWF Policy Document contains too prescriptive standards that may not accommodate the needs of all carriers.* The SWF Policy Document contains preferences on the types of facilities to be installed and include design standards to minimize visual impacts. Carriers expressed their concern that their standard equipment will not meet the standards such as maximum dimensions and volume. The design standards established were based on feedback provided by the stakeholders to limit the visual impact to the community. Modification of the size restrictions outlined in the Policy document can be evaluated by the Commission and alternative sizes may be recommended by the Commission to City Council.
- *Public Engagement Requirements.* Industry representatives commented that due to the limits of the FCC “shot clock,” meaningful public engagement prior to approval is not feasible and recommends notification prior to construction not approval and no appeals process. Staff identified processes in which notification and appeals can be incorporated in the City’s approval process which is outlined in Figure 1 found in the report.
- *Establish a Deviation Process.* The industry representatives were concerned that the Pre-Approved Process in the SWF Policy Document did not adequately address “meaningful” relief methods. Staff proposed an adjustment process in the SWF Policy to address unique circumstances that impede a proposed SWF from meeting the Policies and Standards. The adjustment process requires additional findings in which the applicant will need to identify the unforeseen circumstances that warrant the adjustment.

TA2021-0001 ANALYSIS AND FINDINGS FOR TEXT AMENDMENT

Recommendation: Based on the facts and findings presented below, staff recommends the Planning Commission review the proposal, take public testimony, deliberate on the proposal, and make a recommendation to City Council.

Section 40.85.05 Purpose

The purpose of a Text Amendment application is to provide a mechanism for legislative amendments to the Development Code. It is recognized that such amendments may be necessary from time to time to reflect changing community conditions, needs, and desires, to fulfill regional obligations, and to address changes in the law. This Section is carried out by the approval criteria listed herein.

Section 40.85.15.1.C Approval Criteria:

Section 40.85.15.1.C of the Code specifies that in order to approve a Text Amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all the criteria specified in Section 40.85.15.1.C.1-7 are satisfied. The following are the findings of fact for TA2021-0001 Small Wireless Facilities Text Amendment:

Section 40.85.15.1.C.1

The proposal satisfies the threshold requirements for a Text Amendment application.

FINDING:

Section 40.85.15.1.A specifies that an application for a text amendment shall be required when there is proposed any change to the BDC, excluding changes to the zoning map. TA2021-0001 proposes to make changes to BDC Chapters 20,40, 60, 70 and 90, specifically to the City's WCF regulations. The proposal is to remove SWF regulations from the BDC and adopt a new policy document, as shown in Exhibits A and B.

Conclusion: Therefore, staff finds the amendment meets the criterion for approval.

Section 40.85.15.1.C.2

All City application fees related to the application under consideration by the decision-making authority have been submitted.

FINDING:

Policy Number 470.001 of the City's Administrative Policies and Procedures manual states that fees for a City initiated application are not required where the application fee would be paid from the City's General Fund. The Planning Division, which is a General Fund program, initiated the application. Therefore, the payment of an application fee is not required.

Conclusion: Therefore, staff finds the criterion is not applicable to the amendment.

Section 40.85.15.1.C.3

The proposed text amendment is consistent with the provisions of the Metro Urban Growth Management Functional Plan.

FINDING:

Metro's Urban Growth Management Functional Plan (UGMFP) is the document that defines how local governments are to implement the Metro Regional Goals and Objectives. The UGMFP is made of 11 titles. The applicable titles are addressed below:

Title 1: Housing Capacity

This title addresses how cities and counties maintain or increase housing capacity. The proposed amendment is to the City's WCF and SWF regulations focusing on the deployment of wireless facilities. The amendment does not affect housing capacity and will not impact compliance with this title.

Title 3: Water Quality and Flood Management

This title addresses water uses and resources within water quality and flood management areas. The proposed amendment is to the City's WCF and SWF regulations focusing on the deployment of wireless facilities. The amendment does not affect water quality and flood plain management as new deployment are required to meet all necessary environmental regulations and therefore not impact compliance with this title.

Title 7: Housing Choice

This title addresses establishment of affordable housing and methods to encourage affordable housing. The proposed amendment is to the City's WCF and SWF regulations focusing on the deployment of wireless facilities. The amendment does not affect housing opportunities and will not impact this title.

Title 8: Compliance Procedures

Title 8 establishes a process for determining whether City or county comprehensive plans and land use regulations substantially comply with requirements of the Functional Plan and requires cities to submit proposed comprehensive plan amendments to Metro for their review. Metro requires the City to submit the proposed amendment to Metro at least 35 days before the first evidentiary hearing, which is the Planning Commission hearing. The City provided the notice on April 22, 2021, more than 35 days before the Planning Commission hearing. The City has not received any comments from Metro. The proposed amendment complies with this title.

Title 12: Protection of Residential Neighborhoods

This title protects existing neighborhoods and provides adequate level of public services. The proposed amendment is to the City's WCF and SWF regulations focusing on design standards that address the aesthetics of SWF while permitting more facilities in areas such as the right-of-way. The amendment does not affect the protection of residential neighborhoods and will not impact compliance with this title.

Title 13: Nature in Neighborhoods

This title addresses conservation of streamside corridor systems. The proposed amendment is to the City's WCF and SWF regulations focusing on the deployment of wireless facilities. Regulations around development near sensitive areas will apply to deployment requests. The amendment does not affect protection of viable stream corridors and will not impact compliance with this title.

Conclusion: Staff finds that the proposed text amendment is consistent with the applicable provisions of the UGMFP. Therefore, staff finds the amendment meets the criterion for approval.

Section 40.85.15.1.C.4

The proposed text amendment is consistent with the City's Comprehensive Plan.

FINDING:

Beaverton's Comprehensive Plan provides policy direction on matters related to future growth and physical development of the City including land use, economy, transportation, housing, natural resources, and other relevant topics. Oregon state law requires all cities and counties to prepare and adopt comprehensive plans that are consistent with Statewide Planning Goals. The proposed changes in this text amendment do not create any new policies or regulations in the BDC, but instead are to update codes to align with the federal requirements established by the FCC. As a result of the restrictive nature of the regulations established by the FCC the City proposes to remove the processing, review, and approval of SWF from the BDC to a separate policy document. The applicable goals and policies of Comprehensive Plan are addressed

below, and the following are staff's findings in response to the applicable goals and policies:

Chapter Three: Land Use

Goal 3.4.1 Provide effective and inclusive planning and development review services

- b) Ensure that land use planning, notification, and public involvement procedures and processes are inclusive and provide meaningful opportunities for engagement by all community members.*

The BDC outlines specific processes for noticing applications and the appeals process that includes a minimum of 20-days for public comment and a 10-day appeal period. With the FCC shot clock requiring the complete processing of SWF in some cases less than 60 days, this makes following the noticing and appeal requirements in the BDC difficult. The proposed amendment removes the review of SWF from the BDC to its own policy document. In the policy document for SWF, noticing is provided either prior to approval or prior to construction. Figure 1 outlines the proposed review process for SWF identifying the time needed for the City to meet the FCC timeline while providing both noticing and appeal opportunities.

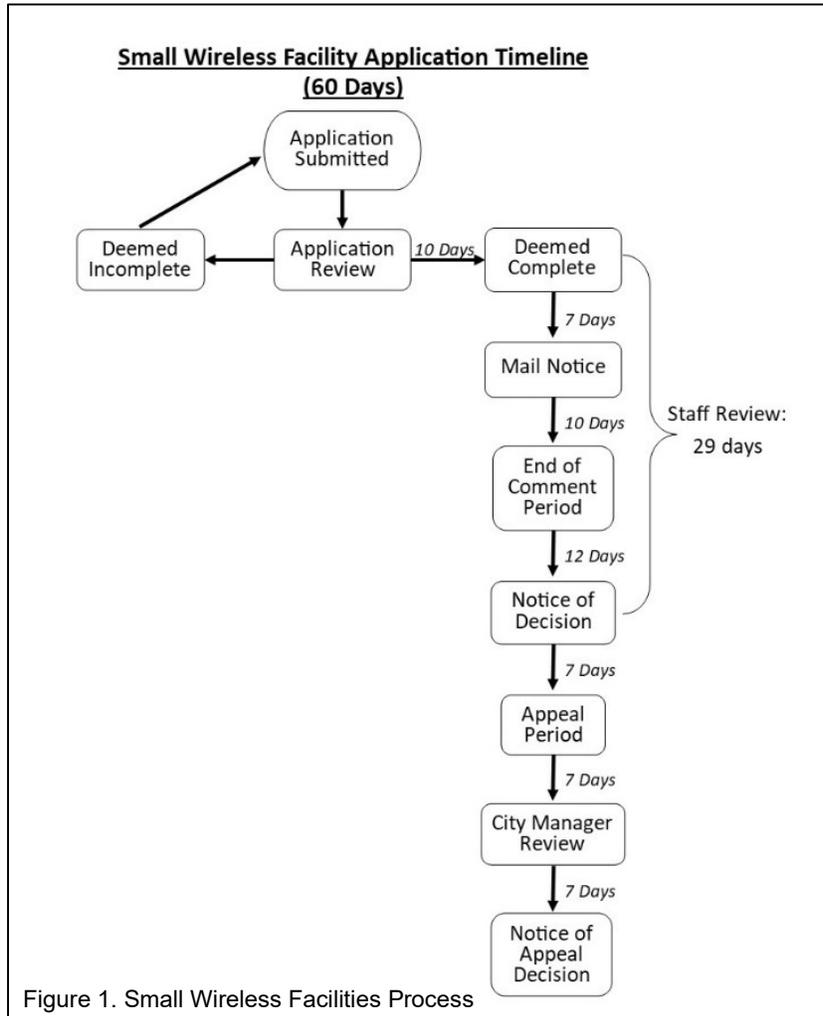


Figure 1. Small Wireless Facilities Process

For projects containing a preferred location and design, the review time can be reduced since locations and designs can be vetted through a public process. Staff proposes a construction notice process for applications containing a preferred location and design. This noticing requires industry representatives to inform the surrounding property owners

and occupants of an approved SWF in the area prior to construction and to report to the City any comments received by the community on their installation.

By removing the review of SWF from the BDC and establishing a noticing and appeals process within the federally mandated time frame, the new SWF policy document provides public participation opportunities within the FCC's "shot clock."

Chapter 9 Economy Element

Goal 9.2.1 Provide Programs and Services that Support Existing Businesses and Attract New Businesses

i Continuously improve and streamline the city's development review and permitting process with input from the business community

The proposed text amendment is to create a new review process for SWF that takes into consideration the requirements of the FCC's limited review time. The FCC's regulations require local jurisdiction to process SWF and colocation of WCF within a timeframe that is not consistent to the timing provided in the BDC to increase the speed of deployment. The review and processing of SWF is to be removed from the BDC into a separate SWF policy document to accommodate this shorter review period. Additionally, by removing the regulations from the BDC, future modifications to the standards in the SWF policy are not required to complete the text amendments process, which is a benefit to the dynamic nature of the technology.

The proposed text amendments will support the provision of wireless communications services to Beaverton residents, businesses, and visitors. This supports existing Beaverton businesses and creates an environment that will be attractive to new businesses.

Telecommunication facilities are integral to the economic infrastructure of the City and the streamlining of processes to approve such facilities will have a positive impact on the economy of the City.

Conclusion: Therefore, staff finds the amendment meets the criterion for approval.

Section 40.85.15.1.C.5

The proposed text amendment is consistent with other provisions within the City's Development Code.

FINDING:

The proposed text amendment aligns the Beaverton Development Code with Federal regulations pertaining to WCF by eliminating conflicting regulations, clarifying Development Code provisions that are difficult to apply because of inconsistency between local and federal definitions, and moving regulations for Small Wireless Facilities to a separate policy document.

For example, FCC rules require Small Wireless Facilities applications to be decided within 60 or 90 days, while the Beaverton Development Code establishes timeframes for review of applications that can significantly exceed those limits. Removing those applications from the Development Code resolves the conflict.

The text amendment also proposes to remove the setback and height requirements of the zoning district for collocation if the FCC thresholds for an eligible facility are met. For collocations that exceed the City's maximum height for a WCF, the City currently requires an adjustment or variance approval. However, if the collocation requests meet the FCC's definition of an eligible facility the City would have to approve the height whether it did or did not meet the approval criteria of the variance or adjustment application. The proposed amendment updates the WCF regulations to remove such inconsistencies with the FCC requirements.

Conclusion: Therefore, staff finds the amendment meets the criterion for approval.

Section 40.85.15.1.C.6

The proposed amendment is consistent with all applicable City ordinance requirements and regulations.

FINDING:

The proposed amendment would align BDC regulations with federal regulations pertaining to WCF and eliminate or reduce conflict between requirements at different levels of government. In addition, the new SWF policy document (Exhibit A) shifts review of SWF away from the BDC, creating a separate process that allows the review to meet the restrictive timelines from the FCC.

The City's Engineering Design Manual (EDM), provides installation standards for telecommunication facilities of both above and inground equipment, and the City's Code Chapter 4.15 regulates utility facilities in the right-of-way. With the new policy documents and updates to the BDC, WCF including SWF request will need to meet the requirements of these ordinances and regulations. The proposed amendment does not affect these requirements.

Conclusion: Therefore, staff finds the amendment meets the criterion for approval.

Section 40.85.15.1.C.7

Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

FINDING:

The text amendment proposes updates to the WCF to provide clarity in the regulations and comply with federal regulations. The proposal included the removal of regulations pertaining to Small Wireless Facilities be placed in separate policy document. The proposed Small Wireless Facilities policy document is being presented concurrently with the proposed modifications to the BDC. Staff finds this document has been submitted for approval in the proper sequence.

Conclusion: Therefore, staff finds the amendment meets the criterion for approval

Other applicable approval criteria

As a post-acknowledgement amendment to the City's Code, the proposed text amendment is subject to ORS 197.175(1), which requires that the City demonstrate that the proposed text amendment be consistent with the relevant Statewide Planning Goals. Staff have determined that the following goals apply.

FINDING:

Goal 1 Citizen Involvement: *To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.*

Consistent with procedures outlined in the BDC, notice of the proposed text amendment was sent to all NAC chairs, the Chair of the BCCI, Washington County's Department of Land Use and Transportation, and the Department of Land Conservation and Development. Copies of the hearing notice were posted at City Hall and the City Library, and published in the newspaper, consistent with Type 4 noticing requirements. A notice was also posted on the City's website. Staff finds that the City has provided adequate notice and opportunity for public involvement.

Goal 2 Land Use Planning: *To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate actual basis for such decisions and actions.*

Changes to the BDC require a Type 4 review process, which includes noticing and a public comment period, prior to a hearing before the Planning Commission. The hearing is open to the public and includes an opportunity to receive public testimony. At the conclusion of the hearing, the Planning Commission can continue the hearing to a later date, keep the record open for more information or make a recommendation to the City

Council, the ultimate decision-making authority. Prior to adoption of the any text amendments, the City Council will consider all the evidence in the record, including any testimony provided at the Planning Commission hearing and any recommended changes to the proposal.

Staff finds that the proposed text amendment fits within the established process and framework. Furthermore, the findings contained within this report establish an adequate factual basis for the proposal.

Goal 6 Air, Water and Land Resources Quality: *To maintain and improve the quality of air, water and land resources of the state.*

The proposed amendment creates a separate regulatory process for SWF and updates the WCF to align with FCC regulations. Staff finds that the proposal will not exempt WCF and SWF from regulations pertaining to the protection of air, water and land resources and therefore will not have a negative impact on the air, water, or land resources quality of the state.

Goal 9 Economy of State: *To diversify and improve the economy of the state.*

Staff finds that the proposal continues to allow for WCF and SWF while streamlining and clarifying the process for approvals of new and modified facilities. Additionally, by removing the regulations from the BDC, future modifications to the standards in the SWF policy will be subject to City Council review, but not the BDC text amendment process, which allows the City to respond appropriately to the dynamic nature of the technology. Telecommunication facilities are integral to the economic infrastructure of the state and the streamlining of processes to approve such facilities will have a positive impact on the economy of the state.

Goal 10 Housing: *To provide for the housing needs of the citizens of the state.*

The proposed text amendment will does not alter the potential for any property to be developed with housing, nor does it alter regulations governing design and construction of housing.

Staff finds the proposal will not have a negative impact to housing as it does not affect development opportunities for housing or will not negatively impact the opportunity for needed housing to be developed in the City.

Goal 11 Public Facilities and Services: *To plan and develop a timely, orderly, and efficient arrangement of public facilities and service to serve as a framework for urban and rural development.*

The proposed amendment modifies the WCF regulations in the BDC, including removing references to SWF to comply with the FCC regulations. While the BDC prohibits installation of new WCF in the right-of-way, the SWF policy document includes

standards and processes to allow for these facilities in the ROW to comply with the FCC requirements. The FCC regulations require cities to review SWF within 60 or 90 days to encourage faster deployments. By updating the City's regulations to comply with the FCC's the City's policy will allow the carriers to provide more services in the City. The SWF policy includes standards for the design of these facilities to limit impact of these facilities, including impacts on the ROW. Staff finds that the proposal will support the City's ability to provide the necessary services in a timely manner.

Goal 12 Transportation: *To provide and encourage a safe, convenient and economic transportation system.*

The proposed amendment modifies the WCF regulations in the BDC, including removing references to SWF to comply with the FCC regulations. While the BDC prohibits installation of new WCF in the right-of-way, the SWF policy document includes standards and processes to allow for these facilities in the ROW to comply with the FCC requirements. Standards in the design of SWF in the ROW are outlined in this new policy document establishing both preferred locations and designs for these facilities. Staff finds that the proposal provides regulations that encourage safe design of these facilities in the right-of-way while limiting aesthetic impacts along the ROW and therefore will not have a negative effect on the transportation system of the City or surrounding area. All future development will be reviewed through the applicable land use review procedures specified in the Code.

Goal 13 Energy Conservation: *To conserve energy.*

The proposed amendment modifies the WCF regulations in the BDC, including removing references to SWF to comply with the FCC regulations. While both WCF and SWF require electrical service, the proposed regulations do not affect electrical connections to these facilities. Additionally, carriers will work with PGE to address their electrical needs and show they meet PGE requirements. Staff finds that the proposed changes will not change the City's ability to conserve energy or promote energy-efficiency measures.

Goal 14 Urbanization: *To provide for an orderly and efficient transition from rural to urban land use.*

Staff finds that the proposal only applies to already urbanized land and therefore does not alter the transition from rural to urban land use. Therefore, this land use goal does not apply.

State Land Use Goal Compliance Summary: Therefore, staff finds that the proposed text amendment complies with all the applicable Statewide Planning Goals.

Conclusion: Therefore, staff finds the criterion is met.

Conclusion and Recommendation

Based on the facts and findings presented, staff offers the following recommendation for the conduct of the May 26, 2021 public hearing for TA2021-0001 Small Wireless Facilities Text Amendment:

- A. Conduct the public hearing and receive all public testimony relating to the proposal.
- B. Considering the public testimony and the facts and findings presented in the staff report, deliberate on policy issues and other issues identified by the Commission or the public.
- C. Recommend **APPROVAL** of text amendment application TA2021-0001 Small Wireless Facilities Text Amendment to the City Council.