



The FCC “Small Cell” Order

What is Happening at the FCC

- On September 26, 2018, the FCC released an Order limiting local authority to control the placement of small wireless facilities.
- The Order primarily focuses on placement of “small cells” in rights of way (RoW).
- Among other things, courts in California and elsewhere had concluded that denying an application for a wireless facility violated federal law if the applicant could show that (a) absent approval, there would be a “significant gap” in service; and (b) the applicant’s proposal was the least intrusive means of closing that gap. The FCC Order rejects that standard. This standard is included in the Hillsborough Municipal Code, so the Town’s Code will need to be updated to comply with the Order.
- Previously, localities had 90 days to act on applications for placement of wireless facilities on existing RoW structures, and 150 days to act on applications that involved placement of new poles. For small cells, the deadlines are shortened to 60 and 90 days for facilities in the rights of way.
- The FCC adopted a test for whether placement could be regulated on aesthetic grounds: “Aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.”
- There are other important elements of the Order affecting access to street lights, traffic signals, and fees that can be charged for applications and for use of public property in the rights of way.
- **The Order will become effective on January 13, 2019, unless stayed or delayed. This is true even though the FCC concedes that changing local ordinances to comply with its new standards will take 180 days.**

How Communities Are Responding

- The FCC Order will be appealed to a U.S. Court of Appeals. The Town of Hillsborough will be part of a large, nationwide coalition filing an appeal as the City Council has authorized the Town to fight the FCC Order.
- The FCC Order is not stayed by the appeal. Several communities will be filing a request with the FCC to stay the order pending appeal.

- Communities are taking immediate steps to review local ordinances in light of the FCC Order, so that amendments are in place by the date the FCC Order goes into effect. Hillsborough will be doing the same.

How You Can Respond

- You can ask your Senators and Representative to support a resolution overturning the regulations under the Congressional Review Act. Filing at the FCC will not change the rules.
- We will be posting the order and a more detailed summary online – and working on amendments after receiving public input so that we can maintain control over wireless placement to the extent possible. Please keep watching for that information.