



# Wireless Update

Shot Clocks, Deemed Granted Remedies and Fee Challenges

League of California Cities

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## Agenda



- Intros
- Shot clocks & deemed granted remedies
- Fees

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## Presenters



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## Summary of Wireless Shot Clocks & Deemed Granted Remedies



FCC Category	Applicable Shot Clock	Deemed Granted Remedy
Eligible Facilities Requests (EFR) Must involve modification to existing wireless facility (tower or base station) and meet size and other requirements to qualify as EFR	60 days	Federal
Small Wireless Facility (SWF) Must be personal wireless services facility that meets size and other requirements to qualify as SWF.	Placement on existing structure (need not be existing wireless facility)	60 days
	New	90 days
Collocations Must involve placement of personal wireless services facility (that does not qualify as EFR or SWF) on existing structure which need not have wireless facility already on it	90 days	California
Other Personal wireless services facility that does not fall in any other category	150 days	California
California Category	Applicable Shot Clock	Deemed Granted Remedy
Gov. Code 65850.75 State Generator Law (in effect only until 1/1/2024) Must involve qualifying emergency standby generator for macro cell tower site	60 days	California

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## Summary of NOI Deadlines



Category	NOI Deadlines
<u>Eligible Facilities Requests (EFR)</u>	Initial Submission: 30 days Resubmissions: 10 days
<u>Small Cells (Small Wireless Facility (SWF))</u>	Initial Submission: 10 days* Resubmissions: 10 days *First NOI resets shot clock
<u>Collocations</u>	Initial Submission: 30 days Resubmissions: 10 days
<u>Other</u>	Initial Submission: 30 days Resubmissions: 10 days
<u>CA Emergency Generator (AB 2421)</u>	Initial Submission: 10 days* Resubmissions: 10 days* *All NOIs reset shot clock

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## “Deemed Granted” Remedies



- 47 CFR 1.6100(c)(4) (EFRs)
  - deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

## “Deemed Granted” Remedies



- Gov. Code 65850.75 (emergency generators):
  - Completed application that is not approved or denied within 60 days of receipt or upon expiration of any tolling period shall be deemed approved
    - No explicit notice requirement
  - Locality can revoke in some circumstances, e.g. if violate building and fire safety codes

## “Deemed Granted” Remedies



- Gov. Code 65964.1 (other FCC shot clocks)
  - Applicant must have provided all required notices and notice to jurisdiction
  - Jurisdiction has 30 days to seek judicial review of the operation of this section on the application
  - Does not apply to proposed placements on fire department facilities

## Questions



- Can your administrative processes, including appeals, be completed within the applicable shot clocks?
- Are staff aware of the ways and timelines to stop the running of the shot clocks?
- Are your denials and reasons for denial issued contemporaneously?
- How are decisions communicated to applicants?
- Are you ready to respond to deemed granted letters?

## Overview of Typical Updated Regulatory Structure



### Zoning Code

- Remove any regulation of wireless facilities in PROW
- Update processes
- Update standards
- Update forms

### Municipal Code

- Add regulation of PROW facilities
- Create processes
- Create standards by resolution
- Update forms
- Adopt form of Master License Agreement (if City-owned streetlights)

## Practical Advice for City Attorneys



- Know your limitations and tap into your experts
- Ensure staff is trained on applicable shot clocks
- Opportunity for Master License Agreements – may streamline processing individual requests and shot clock complexity
- Review and update your forms, applications, and wireless ordinance

## Limitations on Fees under State Law



- Proposition 26
- Mitigation Fee Act
- Telecommunications Infrastructure Act
- Public Utilities Code section 7901

## Proposition 26



- Adopted by voter initiative in 2010
- Added a definition for “tax” under article XIII C, section 1(e) of the California Constitution
- All fees are taxes subject to voter approval unless exempt
- Shifted the burden of proof

## Proposition 26



- Relevant exemptions include:
  - (1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege
  - (2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product
  - (3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof

## California Mitigation Fee Act



- Government Code section 66000 et seq.
- Governs fees on development, fees on permitting, and other regulatory fees
- Creates procedural and substantive requirements for certain types of fees
- Must be harmonized with Proposition 26



## California Mitigation Fee Act



- Government Code section 66014 governs permitting fees:
  - Notwithstanding any other provision of law, when a local agency charges fees for zoning variances; zoning changes; use permits; [...] or under any other authority; those fees may not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of the fee charged in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue

## California Mitigation Fee Act



- Government Code section 66016 governs procedure for adopting permitting fees
  - Regular meeting
  - Data must be available 10 days prior
  - Mailed notice to persons that have requested mailed notice

## California Mitigation Fee Act



- Government Code section 66022 limits time for filing challenges to such fees to 120 days from adoption
- Automatic increases are subject to similar 120 day challenge period as to increase

## Telecommunications Infrastructure Act



- Applies standards similar to Mitigation Fee Act to telephone corporations
- Government Code section 50030 states:
  - any permit fee imposed by a city ... for the placement installation, repair, or upgrading of telecommunications facilities such as lines, poles, or antennas by a telephone corporation...shall not exceed the reasonable costs of providing the service for which the fee is charged and shall not be levied for general revenue purposes

## Public Utilities Code section 7901



- Telephone companies can use public rights-of-way without compensation per state statutory franchise
- Applies to wireless companies and facilities
- However, use of City property within public rights-of-way is not regulated at state level except municipal utilities' utility poles
  - Small cell bills have been vetoed
  - But FCC Small Cell Order's limits have been upheld by Ninth Circuit

## Federal Limits on Small Cell Fees



- FCC held fees must be (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) non-discriminatory
- FCC set "safe harbors" – fees that are presumptively consistent with Section 253(c)
- One-time fees [non-recurring fees for reviewing application for placement]
  - On existing poles, \$500 for up to five small wireless facilities PLUS \$100 for any additional facility
  - For wireless facilities on new poles, \$1,000 per pole
- Recurring fees [rents and other fees] "\$270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW..."

## Examples of Fees



- Encroachment permit fees
- Application processing fees
- Excavation permit fees
- Street use fees
- Variable inspection fees
- Annual administrative fees

## Practical Advice for City Attorneys



- Application processing fees and legal risk
  - *Town of Hillsborough*
  - Community impact
  - Gift of Public Funds
- Other Fees and legal risk
  - *City of Glendale*
  - Understand all agency fees applicable to a wireless application



## Questions?

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