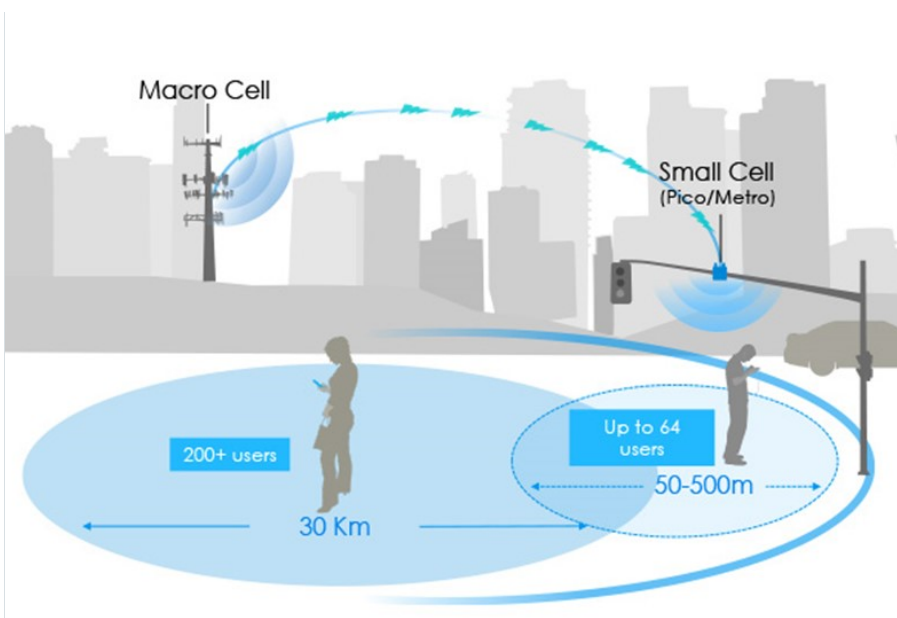




SMALL CELL WIRELESS FACILITIES



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MORE INFORMATION

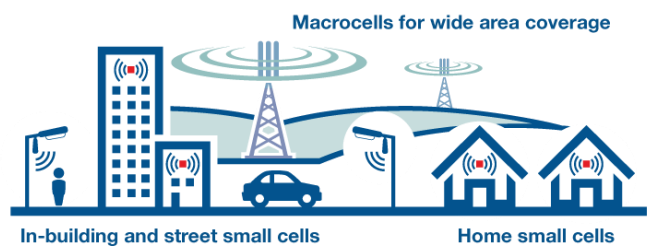
This Fact Sheet and other information on small cell wireless facilities and applications can be found at the Town’s website: www.danville.ca.gov/wireless

To address the potential for any misunderstanding or confusion, the following is an outline of the facts associated with the parameters of the Town’s authority in the area of small cell wireless facility applications.

GOVERNANCE: WHO DECIDES WHAT

What is a small cell wireless facility?

Small cell facilities are a type of wireless broadband infrastructure. They typically take the form of small antennas (3-4 feet tall) that are placed on existing infrastructure (such as utility poles) and are accompanied by equipment cabinets installed lower on the pole. They are relatively new and are taking the place of cell towers (macro cell technology), which can reach up to nearly 100 feet high and are designed to cover larger geographic areas.



Who governs the location of wireless facilities?

While the Town reviews and approves the location of individual wireless applications, it must do so within parameters established by both federal and state laws that limit the Town’s discretion. A summary of these laws can be found in the *Presentation to Town Council by Telecom Law Firm* available at www.danville.ca.gov/wireless



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Collectively, these federal and state laws **prohibit cities** from:

1. *Denying a carrier the ability to provide service* either through explicit prohibitions (example: banning new wireless facilities) or through actions that effectively prohibit service.
2. *Denying wireless applications based on health concerns*, such as those previously expressed about radio frequency emissions.
3. *Stalling or failing to make a decision*. The Telecommunications Act imposes a short time frame, often referred to as a shot clock, for a city to review a wireless application. Failure for a city to act results in the application being automatically approved without the ability to impose conditions of approval.
4. *Denying a carrier from using the public right-of-way* to install their equipment.

What has the Town of Danville done to address this issue?

Recognizing that its existing wireless ordinance, last updated in 1996, did not adequately address new small cell technology, the Town initiated an ordinance update in 2017. The Town Council's direction was to ensure that the new ordinance was as stringent as possible, while remaining in compliance with federal and state laws.

The Town Council and Planning Commission held six public hearings over the course of a year and heard testimony from the public and wireless providers, culminating in the adoption of an updated Wireless Communication Facilities Ordinance ("Wireless Ordinance") on August 21, 2018 (effective September 20, 2018).

What does the Town's Wireless Ordinance do?

The new updated ordinance now:

1. Imposes development standards to address both aesthetics and location preferences by requiring that the carrier provide coverage through the "least intrusive means."
2. Outlines permit and process requirements that allows the Town to meet the short approval time frame (shot clock) established by federal and state law.
3. Complies with new federal and state regulations that have taken effect since the Town's ordinance was initially adopted in 1996.



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What have other cities done?

Like Danville, cities around the country are working to update their wireless ordinances to address small cell facilities in a manner that complies with new federal and state laws. Also, like Danville, these updated ordinances include similar design standards and acknowledge that FCC regulations preempt the consideration of health impacts when reviewing wireless applications.

While some ordinances appear to be more restrictive, they all contain provisions that allow wireless facilities to be approved in order to comply with federal and state law. For example, the City of Mill Valley lists most wireless facilities as “Not Permitted” in residential districts. However, the “Exceptions” section of their ordinance allows the city to approve a wireless installation anywhere, if the city finds that:

1. *Denial of the facility as proposed would violate federal law, state law, or both; or*
2. *A provision of this chapter, as applied to applicant, would deprive applicant of rights under federal law, state law, or both.*

Can potential health effects prevent these installations from being approved?

Federal law (Telecommunications Act of 1996) prohibits cities from considering health impacts when taking an action on a wireless application, if it meets the radio frequency levels established by the FCC.

Can the Town require fiber underground as an alternative?

No, cities cannot regulate the type of technology a cellular carrier chooses to provide. Regardless, fiber optic cable is a wired technology that does not serve wireless roaming devices (such as cellular phones).

Why does the Town’s ordinance streamline the review process?

The Town’s new processes are designed to ensure compliance with the restrictions imposed on a city’s review time frame, given that failure to do so means the application is automatically approved – without the ability for the Town to impose conditions of approval.

Does the Town’s ordinance favor one neighborhood over another?

No. In compliance with state law, the ordinance draws a distinction between wireless applications proposed in the public right-of-way and those proposed on private property. While the Town has less discretion reviewing proposals in the public right-of-way, each category of wireless application (macro or micro cell) is subject to the same development standards of its type regardless of location. On privately owned land, each application is subject to a “location preference” analysis where locations near residential areas and the downtown are *discouraged*.



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Is there a limit to the number of cell facilities in Danville?

Cities cannot deny a carrier the ability to provide service either through explicit or implicit prohibitions (example: banning new wireless facilities or establishing a maximum cap).

Are there other challenges that cities face in regulating wireless installations?

Yes. On September 26, 2018, the FCC issued a new declaratory ruling and order titled “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment” and issued the following statement in support of their actions:

“The FCC is committed to doing our part to help ensure the United States wins the global race to 5G to the benefit of all Americans. Today’s action is the next step in the FCC’s ongoing efforts to remove regulatory barriers that would unlawfully inhibit the deployment of infrastructure necessary to support these new services... We thus find that now is the appropriate time to move forward with an approach geared at the conduct that threatens to limit the deployment of 5G services.”

Source: <https://www.fcc.gov/document/fcc-streamlines-deployment-next-generation-wireless-infrastructure>.

The FCC order imposes new limits on a city’s ability to make decisions based on aesthetics , shortens the review time frame even more, and establishes a new standard of review for courts that is more favorable to wireless providers when a city’s action is legally challenged. The FCC order is scheduled to go into effect on January 24, 2019.

Has the FCC’s new order been challenged?

A number of lawsuits (including one filed by the Town’s outside counsel) have been filed challenging the order and seeking a stay of it’s effective date until the litigation is resolved. Rulings on the stay are expected by the end of the 2018 calendar year. In the meantime, the Town will continue to review applications consistent with its Wireless Ordinance and existing federal law.

In addition to the FCC Order, cities in California are also keeping an eye on a case pending in the California Supreme Court. In that case (T-Mobile West v. City and County of San Francisco), the court will decide whether San Francisco’s ordinance regulating wireless installations in the public right of way based on aesthetics is preempted by state law. The court will likely rule in this case during the first half of 2019.

FOR MORE INFORMATION

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