

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ADOPTING OBJECTIVE DESIGN CRITERIA FOR WIRELESS COMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

WHEREAS, pursuant to California Constitution Article XI, Section 7; California Government Code Section 37100, and other applicable laws, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the Sunnyvale General Plan, Goal LT-4, requires that City codes, standards, and development review processes be used to ensure that all areas of the City are attractive and that the City’s image in enhanced through principles of good urban design; and

WHEREAS, there is a strong public interest in ensuring that unsightly facilities in the public right-of-way do not create visual blight and detract from the City’s goals to create a vital, enjoyable, and comfortable environment for residents and visitors; and

WHEREAS, the City of Sunnyvale regulates wireless communication facilities (WCFs) both on private property and within the public right-of-way by regulations contained within Sunnyvale Municipal Code Chapter 19.54; and

WHEREAS, Section 19.54.160(a) of the Sunnyvale Municipal Code provides that the City Council shall, by resolution, establish design criteria and guidelines for review of WCFs in the public right-of-way; and

WHEREAS, in 2013, the City Council adopted Resolution No. 626-13, “Approving Criteria for Design Review of Wireless Communication Facilities Located in the ROW” (“Design Criteria”); and

WHEREAS, since the adoption of the Design Criteria in 2013, significant changes in federal laws that affect local authority over WCFs and other related infrastructure deployments have occurred, and local authority over WCFs may be further impacted by pending legislative, judicial, and regulatory proceedings at both the state and federal level; and

WHEREAS, despite the above changes to the law, both state and federal law continue to recognize that cities have the authority to enact reasonable regulations governing the time, place, and manner of WCFs in the public right-of-way, including objective aesthetic criteria that protect the public interest in having an attractive community, as long as those regulations do not have the effect of prohibiting the provision of wireless service; and

WHEREAS, given the evolving legal landscape and to ensure that the City can continue to regulate the aesthetics of WCFs in the public right-of-way, staff has developed updated, objective Design Criteria for Wireless Communication Facilities in the Public Right-of-Way; and

WHEREAS, the intent of the updated Design Criteria is to create objective aesthetic standards for processing WCF applications that do not require personal or subjective judgment by a public official and are verifiable by reference to written criteria that are knowable to both the applicant and public officials; and

WHEREAS, these objective criteria will be used to ensure that if there is more than one feasible design option for a particular installation, the provider will choose the option that has the least aesthetic impact on the surrounding residents and community; and

WHEREAS, on March 25, 2019, the Planning Commission held a study session to review the updated Design Criteria; and

WHEREAS, on April 2, 2019, two community outreach meetings were held for the public and the other wireless carriers to review the proposed modifications to the Design Criteria, and such meetings resulted in changes in the Design Criteria to address concerns that were brought up in the community outreach meetings; and

WHEREAS, on June 24, 2019, the Planning Commission held a hearing and recommended to the City Council adoption of the updated Design Criteria as set forth in Exhibit A, attached and incorporated by reference herein; and

WHEREAS, the adoption of the updated Design Criteria is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Sections 15061(b)(3) and 15378(b), because it can be seen with certainty that the adoption of these Design Criteria will not have a significant effect on the environment; and

WHEREAS, the City Council desires to update the Design Criteria for processing wireless communication facilities in the public right-of-way.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The above recitals are incorporated herein as findings for approval of the updated Design Criteria for Processing Wireless Communication Facilities in the Public Right-of-Way.
2. The Design Criteria for Processing Wireless Communication Facilities in the Public Right-of-Way, attached hereto as Exhibit A, are hereby adopted and fully replaces the 2013 Criteria for Design Review of Wireless Communication Facilities Located in the Right-of-Way.
3. The City Council finds that this resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) and Section 15378(b).
4. This Resolution shall become effective on July 16, 2019.

Adopted by the City Council at a regular meeting held on \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:  
RECUSAL:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
(SEAL)

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## **EXHIBIT A**

# **Draft Design Criteria for Processing Wireless Communication Facilities in the Public Right-of-Way**

RESOLUTION NO. **XXX**-19

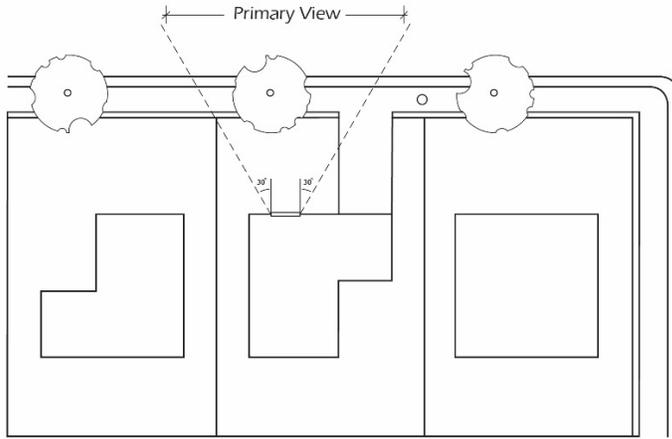
## **DESIGN CRITERIA FOR PROCESSING WIRELESS COMMUNICATION FACILITIES IN THE PUBLIC RIGHT OF WAY**

### **I. PURPOSE**

The following guidelines are intended to promote the goals and policies of the Sunnyvale General Plan which call for attractive streetscapes and well-designed development that is compatible with surrounding properties. The City recognizes that telecommunication providers have a need to use the public right-of-way to meet the community's needs for wireless service. At the same time, there is a strong public interest in ensuring that unsightly facilities do not create visual blight and detract from the City's goals to create a vital, enjoyable, and comfortable environment for residents and visitors. The guidelines are intended to create objective design criteria that will provide direction to staff and applicants and ensure consistency in the design review process.

### **II. DEFINITIONS**

- 1. Antenna** means a cellular device designed to transmit or receive electromagnetic energy to provide wireless service.
- 2. Equipment Cabinet** means all associated equipment to which a cellular antenna is attached. Equipment Cabinet includes, but is not limited to, back-up generators, power supply units, remote radio units, cabinets, cables, and connectors.
- 3. Least Intrusive Feasible** means that if there is more than one option for location or design that would meet the needs of the applicant to provide wireless service, the chosen option should most closely meet the design criteria in these Guidelines, unless that option is impossible for technical reasons, or is only possible at a cost that would exceed the economic value of the facility such that the requirement would have the effect of prohibiting wireless service.
- 4. Residence** means the dwelling unit (single-family, two-family, multiple-family or accessory units) used exclusively for residential purposes.



\* Not Drawn To Scale

5. **Primary View** means within the 30-degree cone-of-vision measured from the outside edges of the windows or doors facing the pole and leading from the living room or family room of a residence or first habitable floor of a non-residential building, located on same side of the street as the pole. Bedrooms, offices, hallways, additional living area, patio, balcony, and yards shall not be considered a living room or a family room. Primary view includes view of the pole along the front of an interior property and side (reducible front) of a corner property.
6. **Primary Driveway** is the driveway that leads to the required covered parking or to the main entrance of the house, if the house has more than one driveway.
7. **Small Cell Wireless Facility** has the meaning defined by 47 CFR 1.1312(e)(2).
8. **Wireless Facility** means a wireless communication facility in the public right-of-way.

### III. LEVEL OF REVIEW

#### A. Director of Community Development Review with Notice and No Public Hearing

An application shall be determined without a public hearing by the Director of Community Development, or his or her designee, if all the following are met:

1. The proposed Wireless Facility either:
  - a) Meets the definition of a Small Cell Wireless Facility as defined in II.7 of these guidelines; or
  - b) Does not meet the definition of a Small Cell Wireless Facility but, meet the following,
    - i. The maximum proposed pole height (including the antenna) is no more than 65 feet, or the total height increase of the pole does not exceed 12 feet, whichever is greater;
    - ii. The antenna enclosure is no more than 4.5 cubic feet in volume; and
    - iii. The combined size of pre-existing and proposed equipment cabinets on the pole does not exceed 28 cubic feet in volume.
2. The proposed Wireless Facility is placed on a pole located more than 300 feet from any property line of a public park, public school, or heritage resource or landmark.
3. The proposed Wireless Facility is not located within a Primary View.

4. No new overhead lines (phone or power) will be added to serve the Wireless Facility.

**B. Planning Commission Review**

The Planning Commission shall determine all applications that cannot be decided by the Director of Community Development as provided above.

**IV. OBJECTIVE DESIGN CRITERIA**

The following criteria shall be used by the Director of Community Development or Planning Commission to determine whether to approve or deny a Design Review application. Applicants should meet the design criteria to the extent feasible and practical. Consistent with federal law, strict compliance with every one of the criteria is not required if doing so would have the effect of prohibiting wireless service. The purpose of these Guidelines is to achieve the Least Intrusive Feasible location and design based on the application of objective aesthetic standards. In addition to these Guidelines, the applicant shall comply with all other applicable federal, state, and local laws, including but not limited to the City's operational noise standards (Sunnyvale Municipal Code 19.42.030). Ground-mounted equipment, if any, must meet applicable ADA requirements and must not obstruct sidewalks or roadways.

**A. General Criteria**

1. **Primary Views:** The Wireless Facility should not be located within a Primary View.
2. **Over-Concentration:** The Wireless Facility should be located a minimum of 300 feet away from any other wireless facilities located in the public right-of-way.
3. **Visibility/Screening:** The Wireless Facility should be in the Least Intrusive Feasible location in the public right-of-way. Examples of less intrusive locations include, but are not limited to, the following:
  - a. Poles located more than 50 feet from a street corner.
  - b. Poles located next to reducible front yards near the shared property line.
  - c. Poles more than five (5) feet from the primary driveway of a residence.
  - d. Poles adjacent to trees or foliage that provide screening.
4. **Future Undergrounding:** The Wireless Facility should not be placed on a utility pole that is planned for undergrounding by the City. City-owned light poles may be considered in undergrounding areas.
5. **Antennas:** The antennas should be the Least Intrusive Feasible design with regard to appearance and size. Examples of less intrusive designs include, but are not limited to:
  - a. Using the smallest size antenna that is technically feasible and practical.
  - b. The antenna enclosure is no more than 4.5 cubic feet in volume.
  - b. Streamlining the antenna to match the shape, width and color of the pole.

6. **Pole Height:** The maximum proposed pole height (including the antenna) is no more than 65 feet, or the total height increase of the pole does not exceed 12 feet, whichever is greater.
7. **Overhead Lines:** The Wireless Facility should not require new overhead lines (phone or power).
8. **Equipment Cabinets.** Equipment cabinets should be located on a pole, except where ground mounting has less visual impact. For example, ground mounted equipment may be the Least Intrusive Feasible design in a commercial area where the pole is not screened by trees.

#### **B. Pole-Mounted Equipment Cabinets**

1. Equipment cabinets should be the Least Intrusive Feasible design with regard to appearance and size. Examples of less intrusive designs include, but are not limited to:
  - a. Using the smallest size equipment cabinet that is technically feasible.
  - b. Minimizing the number of equipment cabinets.
  - c. The combined size of pre-existing and proposed equipment cabinets on the pole does not exceed 28 cubic feet in volume.
  - d. Providing stackable configuration.
  - e. Streamlining the equipment cabinet(s) to match the shape, width, and color of the existing pole.
2. Cables from equipment cabinets that are not concealed from view should be arranged in a neat and orderly manner that avoids a chaotic or jumbled appearance. Conceal all external conduits, conduit attachments, cables, wires and other connectors from public view, to the extent feasible. Rout all cables, wires and other connectors through conduits within the pole whenever possible.

#### **C. Ground-Mounted Equipment Cabinets**

1. Ground-mounted equipment cabinet should be the Least Intrusive Feasible design with regard to appearance and size. Examples of less intrusive designs include but are not limited to:
  - a. Using the smallest size equipment cabinet that is technically feasible.
  - b. Using “stealth” design or artistic wrapping, such that it is less conspicuous and can hide or blend into the surrounding area.
  - c. Installing the equipment cabinet underground, if practical and feasible.