

**From:** [Gutierrez, Lennies](#)  
**To:** [Mary Jeyaprakash](#)  
**Subject:** RE: Comcast Inquiry - Sunnyvale Telecommunications Right of Way  
**Date:** Thursday, March 28, 2019 5:16:01 PM

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Hi Mary,

We have reviewed the items internally and do not have comments or concerns at this time.

Thank you.

Lennies

**Lennies M. Gutiérrez**

Director of Government Affairs  
South Bay and Southern Peninsula - Comcast California  
1900 S 10<sup>th</sup> Street, San Jose, CA 95112  
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**From:** Mary Jeyaprakash <[MJeyaprakash@sunnyvale.ca.gov](mailto:MJeyaprakash@sunnyvale.ca.gov)>  
**Sent:** Tuesday, March 26, 2019 11:54 AM  
**To:** Gutierrez, Lennies <[Lennies\\_Gutierrez@cable.comcast.com](mailto:Lennies_Gutierrez@cable.comcast.com)>  
**Subject:** [EXTERNAL] RE: Comcast Inquiry - Sunnyvale Telecommunications Right of Way

Great! Sounds good.

Thanks,

**MARY JEYAPRAKASH**

**Associate Planner**

Community Development Department  
City of Sunnyvale  
Phone: 408-730-7449

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**From:** Gutierrez, Lennies [[mailto:Lennies\\_Gutierrez@comcast.com](mailto:Lennies_Gutierrez@comcast.com)]  
**Sent:** Tuesday, March 26, 2019 11:48 AM  
**To:** Mary Jeyaprakash <[MJeyaprakash@sunnyvale.ca.gov](mailto:MJeyaprakash@sunnyvale.ca.gov)>  
**Subject:** RE: Comcast Inquiry - Sunnyvale Telecommunications Right of Way

Hi Mary,

Thank you for the information and attachments. I'll forward over to our Director of Franchise Operations and will be sure to provide feedback. I'm not sure if we can attend the April 2<sup>nd</sup> meeting

but will offer our comments at the meeting or before then.

Have a good day.

Lennies

**Lennies M. Gutiérrez**

Director of Government Affairs

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**From:** Mary Jeyaprakash <[MJeyaprakash@sunnyvale.ca.gov](mailto:MJeyaprakash@sunnyvale.ca.gov)>

**Sent:** Tuesday, March 26, 2019 10:55 AM

**To:** Gutierrez, Lennies <[Lennies\\_Gutierrez@cable.comcast.com](mailto:Lennies_Gutierrez@cable.comcast.com)>

**Subject:** [EXTERNAL] RE: Comcast Inquiry - Sunnyvale Telecommunications Right of Way

Hello Lennies,

There was no Planning Commission on March 25<sup>th</sup>. We had a Study Session with the Planning Commissioners yesterday. Please see below for an invitation we prepared for an outreach meeting on April 2, 2019.

Please join us to discuss updates to Sunnyvale's small cell wireless telecommunications facility Design Guidelines for facilities in the public right-of-way.

The City adopted regulations in 2012 to require applications for small cell wireless telecommunications facilities within the public right-of-way to be submitted to the Planning Division. We are considering changes to the Design Guidelines to add clarity and to align with the federal regulations.

Staff will review the City's regulatory authority within the confines of the federal regulation (47 USC § 332(c)(7)) and proposed updates to the Design Guidelines based on the recent federal regulation (FCC Small Cell Order #18-133).

**Please join City staff to discuss the updates:**

**When:           Tuesday, April 2, 2019  
                      3:00 PM**

**Where: Sunnyvale City Hall  
West Conference Room  
456 W Olive Avenue, Sunnyvale 94086**

The following documents are attached with this email.

1. Print version of this email;
2. Existing Design Guidelines;
3. Proposed Design Guidelines;

If you cannot make it to the outreach meeting and would like to provide input on the proposed updates or would like to be added to an interest list to receive future e-mail notifications on the subject, please contact Mary Jeyaprakash (Associate Planner, Planning Division) at [mjeyaprakash@sunnyvale.ca.gov](mailto:mjeyaprakash@sunnyvale.ca.gov) or (408) 730-7449.

We are trying to invite as many people as possible with this notice, please feel free to forward the information along to interested parties and post this notice where appropriate.

Thanks,

**MARY JEYAPRAKASH**

**Associate Planner**

Community Development Department  
City of Sunnyvale  
Phone: 408-730-7449

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**From:** Gutierrez, Lennies [[mailto:Lennies\\_Gutierrez@comcast.com](mailto:Lennies_Gutierrez@comcast.com)]  
**Sent:** Monday, March 25, 2019 10:41 AM  
**To:** Mary Jeyaprakash <[MJeyaprakash@sunnyvale.ca.gov](mailto:MJeyaprakash@sunnyvale.ca.gov)>  
**Subject:** Comcast Inquiry - Sunnyvale Telecommunications Right of Way

Hello Mary,

Can you provide more context on this agenda item below set for the Planning Commission today?  
There wasn't any info available yet online.

**SUBJECT**

Title

Telecommunications Facilities in Right of Way - Overview of Design Criteria

**Project Planner:**

Mary Jeyaprakash, 408-730-7449, [mjeyaprakash@sunnyvale.ca.gov](mailto:mjeyaprakash@sunnyvale.ca.gov)

Thank you.

Lennies

**Lennies M. Gutiérrez**

Director of Government Affairs

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TELEPHONE 415 / 288-4000  
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April 5, 2019

**VIA EMAIL**

Andy Miner  
Mary Jeyaprakash  
Planning and Building Department  
City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, California 94086

Re: Draft Criteria and Design Guidelines for Processing  
Small Cell Wireless Applications

Dear Andy and Mary:

We write on behalf of Verizon Wireless regarding the draft *Criteria and Design Guidelines for Processing Small Cell Wireless Applications* (the “Draft Guidelines”). Verizon Wireless appreciates the City’s participatory approach to guidelines development and the opportunity to meet on April 2, 2019. In our review of the Draft Guidelines, we note several provisions that are inconsistent with the recent Federal Communications Commission (“FCC”) order addressing appropriate small cell approval criteria. Various location restrictions may contradict state law granting telephone corporations such as Verizon Wireless a statewide right to their equipment along any right-of-way. We encourage staff to revise the Draft Guidelines prior to a presentation to the Planning Commission.

To expedite deployment of small cells and new wireless technology, the FCC adopted an order in September to provide guidance on approval criteria for small cells. *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) (the “Small Cells Order”). The FCC defined “small wireless facilities” with specific height and equipment dimension thresholds. 47 C.F.R. § 1.6002(l). Among other topics, the FCC addressed appropriate aesthetic criteria for qualifying small cells, concluding that they must be: “(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.” *Id.*, ¶ 86. “Reasonable” standards are “technically feasible” and meant to avoid “out-of-character deployments.” *Id.*, ¶ 87. Objective standards must “incorporate clearly-defined and ascertainable standards, applied in a

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principled manner.” *Id.*, ¶ 88. Paragraphs below reference the section numbers of the Draft Guidelines.

## **II. Review Procedures**

The Draft Guidelines allow for noticed administrative review for facilities meeting certain standards, some of which are preempted, as we explain below. A Planning Commission hearing is required for facilities that do not meet those standards or are referred by the Director of Community Development. This is similar to the current process.

Because the FCC’s Small Cells Order requires objective, expedited review, all small cells should be approved administratively with no notice or appeal. Notice, public comment, and Commission or Council appeal hearings introduce discretion to the process and invite subjective determinations. Under objective standards, any decision body should reach the same conclusions, and Commission review is unnecessary. Public comment and personal concerns cannot be a factor for objective standards which are published in advance. The FCC’s new “Shot Clock” rules for local approval of small cells require a decision within 60 days for existing poles, or 90 days for new/replacement poles. 47 C.F.R. § 1.6003(c). An administrative process is appropriate for objective, expedited review. Small cell applications should be reviewed by the Director or staff.

### **A. Design Review with Notice and No Hearing (Administrative)**

Non-compliance with the following standards would escalate an application to the Planning Commission, but, again, all small cells should be approved administratively.

**1. Not within primary view of residence on same side of street.** “Primary view” is defined in Section I(4) to refer to views from private residences. We note that as defined (and depicted in the definition), a “primary view” could include a pole along a property line—placement that is encouraged in Section III(A)(2). “Primary view” should not be considered as the basis for location regulation as that could be prohibitive as explained below.

**3. Maximum height increase does not exceed 10 percent and 4. Total height does not exceed 50 feet.** Both standards 3 and 4 are mandatory, but they are inconsistent with the FCC’s definition of small cell. For example, one FCC height threshold is that small cells should not “extend existing structures...to a height of more than 50 feet *or* by more than 10 percent, *whichever is greater.*” 47 C.F.R. § 1.6002(l)(1)(iii). The City should simply restate the height allowances in the FCC’s small cell definition.

**7. No new overhead lines.** This standard would forbid new power or fiber backhaul lines. Provided by different companies, those service lines are beyond the scope of a small cell as defined by the FCC and should not be considered as part a small cell permit. Further, new aerial lines are not “out-of-character” where there are existing aerial lines, and the standard is unreasonable, particularly for utility poles.

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**8. 300-foot setback from parks, schools or landmarks.** This and other location standards (such those of Section III(A)(2)) could exclude small cells from a number of areas with potentially high demand. Location restrictions that exclude stretches of right-of-way contradict state and federal law. Public Utilities Code Section 7901 grants telephone corporations the right to place their equipment along *any* right-of-way. Eliminating long stretches of right-of-way would also constitute a prohibition of service under the federal Telecommunications Act, as the FCC affirmed that small cells are critical to densifying wireless networks and enhancing service. 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II); Small Cells Order, ¶¶ 37-40.

Alone and in conjunction, the various location restrictions of the Draft Guidelines could eliminate many rights-of-way, and there should be an exception where there are no other options to serve a small cell target area. To be reasonable, location restrictions should be qualified “if there is no technically feasible alternative within 200 feet along the subject right-of-way.”

### **III. Location and Design Guidelines**

#### **A. Guidelines for All Wireless Facilities.**

**1. Least intrusive feasible design.** This standard requires the smallest feasible antenna matching the shape and width of a pole. The “least intrusive” standard is subjective, whereas the FCC requires objective review of small cells. Further, the subjective antenna restrictions would limit antenna options and place the City in a position to dictate the technology used by Verizon Wireless. However, that intrudes on the exclusive federal authority over the technical and operational aspects of wireless technology. *See New York SMSA Ltd. Partnership v. Town of Clarkstown*, 612 F.3d 97 (2nd Cir. 2010).

**2. Least intrusive location.** Again, the “least intrusive” standard is subjective. For location in particular, it implies that the City may prefer and require relocation to a different pole, leaving applicants to guess at the outcome of their applications, which the FCC disfavors. Small Cells Order, ¶ 88. “Least intrusive” concepts should be stricken. The example standards are objective: avoiding poles within 50 feet of corners or five feet of a driveway, and placement at parcel lines. However, as explained, these should be qualified “if there is no technically feasible alternative within 200 feet along the subject right-of-way” to avoid a prohibition. Requiring placement adjacent to trees or foliage to reduce visual impact is subjective and problematic, and this could be encouraged though optional.

**5. Equipment on pole unless ground-mounting reduces visual impact.** This is subjective. The City should allow both pole-mounted and ground-mounted equipment under objective standards.

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## **B. Guidelines for Pole-Mounted Equipment**


**1. Least intrusive feasible design.** This is another subjective “least intrusive” standard, as are standards for “smallest size” and matching shape and width. Verizon Wireless would be pleased to provide examples of planned small cells and specifications to be the basis for objective standards. Objective aesthetic criteria could include stacking equipment vertically and concealing non-antenna equipment within a single shroud, to the extent technically feasible.

## **C. Guidelines for Ground-Mounted Equipment.**

**1. Least intrusive feasible design.** Again, the “least intrusive” standard is subjective. If other utilities place ground-mounted cabinets in Sunnyvale, the City should, at a minimum, accommodate the same size cabinets for Verizon Wireless to avoid discriminating.

Verizon Wireless appreciates the opportunity to provide advance input on the Draft Guidelines. We encourage staff to make revisions to avoid conflict with state and federal law.

Very truly yours,



Paul B. Albritton

cc: Rebecca Moon, Esq.  
Melissa Tronquet, Esq.  
Amber Blizinski