



City of Sunnyvale

Agenda Item

19-0384

Agenda Date: 6/24/2019

REPORT TO PLANNING COMMISSION

SUBJECT

Updates to the Design Criteria for Wireless Telecommunication Facilities in the Public Right-of-Way: Forward a Recommendation to the City Council to Adopt a Resolution Updating the Design Criteria for Processing Wireless Communication Facilities in the Public Right-of-Way, and Find that the Action is Exempt from CEQA Pursuant to CEQA Guideline Section 15061(b) (3), and 15378(b).

REPORT IN BRIEF

In 1997, the City adopted comprehensive zoning regulations regarding wireless telecommunication facilities on private property (Sunnyvale Municipal Code Chapter 19.54). The Code was amended in 2013 to include wireless facilities in the Public Right-of-Way (ROW) and was accompanied by a resolution with the *Approving Criteria for Design Review of Wireless Telecommunication Facilities Located in the ROW*, (Design Criteria). Since 2013, wireless telecommunications applications in the ROW have been reviewed using these Design Criteria. After using the criteria for a few years, staff has found that some of the criteria are too subjective and do not always lead to a design that meets the City's aesthetic standards or locational preferences. Additionally, in the past few years, the Federal Communications Commission (FCC) has increasingly limited the ability of local agencies to regulate telecommunications facilities in the public right-of-way. Local agencies do have authority under state law to regulate the time, place, and manner of such facilities, including aesthetics. Under FCC rules, however, aesthetic criteria must be objective rather than subjective. This means that the criteria must be defined by quantifiable factors (e.g., size, height, distance, etc.) rather than traditional planning language such as neighborhood compatibility or community character. In addition, the FCC rules prohibit agencies from adopting or applying aesthetic criteria in a way that would have the effect of prohibiting wireless service. This means that requirements cannot be technically impossible or prohibitively expensive for the carrier to implement.

Staff is proposing modifications to the Design Criteria to make the criteria more objective and to clarify the process for reviewing applications. The updated Design Criteria are intended to meet the following four goals:

1. Minimizing the aesthetic impact of wireless facilities in the public right-of-way to the extent feasible, consistent with applicable law.
2. Enhancing the aesthetics of wireless facilities through the use of objective and enforceable design criteria.
3. Clarifying terminology and criteria through use of definitions, illustration, and examples.
4. Clarifying of the level of decision-making authority (staff-level vs. Planning Commission).

This report addresses wireless telecommunication facilities located within the public ROW only (i.e., not on private property).

The City Council is scheduled to consider this item on July 16, 2019.

BACKGROUND

The City's discretion to review wireless telecommunication facilities in the ROW is limited by the Federal Telecommunications Act of 1996 and California Government Code Sections 65850.6 and 65964.1. Federal law prohibits the City from discriminating among wireless service providers and from regulating based on electromagnetic radiation of wireless services. Federal law provides local jurisdictions limited review authority over the aesthetic quality of wireless telecommunication facilities. Additionally, California Public Utilities Code Sections 7901-7901.1 gives telecommunication companies the right to install wireless telecommunication facilities in the ROW on existing utility poles and light poles subject to approval of the pole owner and subject to local "time, place, and manner" requirements. Most utility poles in Sunnyvale are owned by the Northern California Joint Pole Association, which is a consortium of utilities and other entities such as PG&E and Comcast.

In order to use City-owned light poles, wireless carriers must enter into a separate lease or license agreement with the City. Since the mid-2000s, the City has not allowed telecommunications equipment on light poles. Because carriers are restricted to utility poles, they may have only a limited number of feasible sites for their equipment in a given coverage area. On May 21, 2019, the City Council authorized the City Manager to execute the first license agreement with AT&T to install wireless telecommunication facilities in the ROW on city-owned light poles (RTC No.19-0523). Making light poles available for wireless installations may help reduce potential conflicts with neighbors over aesthetics.

The Design Criteria for facilities in the ROW has provided the decision-makers, staff, the community and applicants, with guidance that generally leads to well-designed telecommunication facilities, even though the City review is limited. For instance, the City cannot require a wireless carrier to use a building or existing structure in place of a utility pole in the ROW. However, since the City can review the wireless facilities in the ROW for aesthetic quality, design criteria remain useful. The increased number of applications for wireless telecommunications facilities in the ROW has shown that the Design Criteria could be improved to clarify the review process and create more objective standards.

EXISTING POLICY**GENERAL PLAN****Chapter 3 - Land Use and Transportation**

Goal LT-4 - An attractive community for residents and businesses in combination with the city's community design sub-element, ensure that all areas of the city are attractive and that the city's image is enhanced by principles of good urban design while valued elements of the community fabric are preserved.

Policy LT-4.1 Preserve and enhance an attractive community, with a positive image, a sense of place, landscaping, and a human scale.

Policy LT-5.3 Require new development, renovation, and redevelopment to be compatible and well-integrated with existing residential neighborhoods.

Policy LT-6.1 Improve and preserve the character and cohesiveness of existing residential neighborhoods.

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Goal LT-4 - Create an attractive street environment which will complement private and public properties and be comfortable for residents and visitors.

Chapter 4 - Community Character

Policy CC-2.2 Minimize elements which clutter the roadway and look unattractive.

SUNNYVALE MUNICIPAL CODE

Section 19.54.160 - Telecommunication Facilities in the ROW

This Section was adopted by the City Council in 2013 and regulates all development activity of wireless telecommunication facilities in the ROW. The full text of this Section can be found in Attachment 6.

DESIGN CRITERIA

Approving Criteria for Design Review of Wireless Telecommunication Facility Located in the Right-of-Way

The Design Criteria (for telecommunications facilities in the ROW) adopted by the City Council in 2013 provide guidance to wireless carriers and staff. The Design Criteria has been a valuable tool used to promote the City's aesthetic goals; however, there is room for improvement. See Attachment 4 for the existing Design Criteria.

COUNCIL POLICY

Policy 7.2.16 - Telecommunications

This policy was adopted by the City Council in 1996 to define the City's roles as regulator, service provider and facilitator for telecommunications resources provided to the community. The policy promotes the City's position on maintaining local regulatory authority over telecommunications facilities within the City. See Attachment 5 for the full text of the adopted Council Policy.

FEDERAL LAW

Wireless telecommunication is governed by federal law, principally the Telecommunications Act of 1996 and associated federal regulations and FCC orders interpreting the Act. These statutes, regulations, and orders largely preempt local authority over telecommunication facilities, while allowing limited review of installations to ensure public safety and aesthetics. Due to a perception that excessive local regulation could inhibit the roll-out of the next generation of wireless broadband service, the FCC has imposed increasingly strict limits on local regulation.

The most recent action by the FCC was FCC Order 18-133, issued on September 26, 2018, entitled: *Acceleration of Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*. The Order went into effect on January 14, 2019. It interprets the Telecommunications Act of 1996 to preempt local regulations that "effectively prohibit" wireless service; it establishes rules that require cities to allow "small cell" facilities (as defined in federal regulations) in the public ROW; limits the fees that can be charged; and establishes "shot clock" timelines by which cities must take action on small cell applications. This order builds on previous FCC orders that impose "shot clocks" and limit local authority over other wireless installations and co-locations (not just those meeting the "small cell" definition). Under the FCC Order, any local regulation that "effectively prohibits" wireless service is preempted and is unenforceable. In addition, the Order prohibits the use of subjective design criteria.

ENVIRONMENTAL REVIEW

The action being considered is exempt from California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b) (3), as it has no potential for a significant effect on the environment. In addition, the updates are not a "project" within the meaning of CEQA under CEQA Guidelines, Sections 15378(b), because CEQA does not apply to general policy-making and adoption of procedures where there is no possibility that the activity in question will have a potential to result in direct or a reasonably foreseeable indirect physical change in the environment. The actual installation of wireless facilities in the right-of-way is subject to the Class 3 CEQA Exemption for small structures (Section 15303 of the CEQA Guidelines).

DISCUSSION

The goals of updating the Design Criteria are:

1. **Clarify review process.** Separate the criteria into two sections: one for determining the review process, the second to include the goals and policies related to design. The current criteria comingle the review thresholds and design guidelines, which has been a confusing aspect of the guidelines.
2. **Update design guidelines.** Provide updated design criteria to reflect lessons learned in reviewing applications, and to prepare for the upcoming 5G build-out. As the 5G buildout will have a smaller coverage area it will require denser deployment, potentially increasing the number of applications received. Clear guidelines will help facilitate the requirements for streamlined review.

Current Review Procedure

All wireless telecommunications applications in the ROW are reviewed using the Design Review process that is described in the zoning code section on wireless telecommunication facilities in the ROW. The review procedure is as follows:

- **Staff-level Design Review.** Applications that meet the Design Criteria and are located more than 300 feet away from sensitive areas such as, a public park, a public school or a heritage resource or a landmark site.
- **Planning Commission Design Review.** Projects that do not meet the design criteria, or that are located within 300 feet of the sensitive areas (mentioned above).

Current Design Criteria

The current Design Criteria provide valuable direction for applicants but may be too subjective and not go far enough in describing the aesthetic outcome that the City envisions. One example of subjectivity from the current Design Criteria is the requirement that "applicants should avoid placing a wireless telecommunication facility within the primary view." In this example, 'primary view' is subject to individual judgment because the Design Criteria does not describe the angle of vision, direction of view (from the street or from within the building), and views from different areas within the building. Therefore, one of the goals of the update is to create more objective design criteria including definitions.

Proposed Updates

The proposed updates to the Design Criteria clarify and expand the existing criteria with objective definitions, examples, and illustrations. The proposed updates strengthen the aesthetic vision of the City while aligning with the recent FCC Order to ensure that applicants are designing the best

possible wireless telecommunication facility. Additionally, the proposed updates provide guidance to applicants and staff, so that the City can efficiently review applications for wireless telecommunication facilities in the ROW.

The updated Design Criteria is separated into two sections, Level of Review and Objective Design Criteria. If all criteria under the Level of Review section are met, the application is reviewed by the Director of Community Development without a public hearing. If any of the Level of Review standards are not met, the application shall be reviewed by the Planning Commission. Regardless of the level of review, all decision-making bodies use the Design Criteria to make decisions on the application.

Based on the location of the equipment cabinets, the Objective Design Criteria section is classified into the following subsections:

- General Criteria (applicable to all facilities in ROW);
- Design Criteria for Pole Mounted Equipment Cabinets in ROW; and
- Design Criteria for Ground-Mounted Equipment Cabinets in ROW (the antenna location will likely be the same regardless of the equipment location).

The proposed updates to the Design Criteria, which are Exhibit A to the authorizing Resolution, are in Attachment 2. Attachment 3 contains tables that compare the existing and proposed Design Criteria.

Review of Other Jurisdictions

Other jurisdictions' standards for processing wireless telecommunications facilities in the ROW were researched. See Attachment 7 for a comparison of telecommunication standards in other jurisdictions. Many of the nearby cities have adopted objective standards in the past two years and are comparable to the changes proposed in this report. One major difference between Sunnyvale's requirements and other jurisdictions is that the Planning Division reviews applications in the ROW, whereas other jurisdictions process these applications through the Public Works Department. Most of the other jurisdictions surveyed use basic design and location standards, in addition to the other standards typically used by their respective Public Works Departments to analyze applications in the ROW. Additionally, in most of the other jurisdictions the public outreach effort is led by the applicant, and not the City. Staff finds that the proposed overall review standards for the City of Sunnyvale provide more clarity and objective design review standards than those in other jurisdictions in the region.

FISCAL IMPACT

The proposed updates to the Design Criteria for Wireless Telecommunications Facilities in the ROW would have no fiscal impact.

PUBLIC CONTACT

Public contact regarding this item was made through the following ways:

1. Posting the Agenda for the Planning Commission on the City's official notice bulletin board outside City Hall and by making the agenda and report available at the Sunnyvale Public Library and on the City's website;
2. Publication in the *Sun* newspaper at least 10 days prior to the hearings;
3. E-mail notification of the hearing dates sent to interested parties;
4. 180 notices mailed to interested parties;
5. A Study Session with the Planning Commission held on March 25, 2019; and
6. Two outreach meetings held in the afternoon and evening on April 2, 2019.

Planning Commission Study Session

A presentation was made to the Planning Commission on March 25, 2019. The presentation included staff recommendations on modifications to the Design Criteria. The Planning Commission voiced general support for modifications to the standards to provide better direction and guidance.

Community Outreach Meeting

A community outreach meeting was held on April 2, 2019 and six members of the public attended. Some of the attendees were property owners who live next to proposed or recently entitled telecommunication facilities in the ROW, and others were community members who are generally interested in the topic. The following topics/questions were discussed at the meeting:

- The applicability of the updated standards to existing utility poles, monopoles, and cell towers;
- What legal limitations staff has for processing applications;
- Support for providing more clarity in the design criteria; and
- General questions regarding application review with respect to collocation and cumulative radiofrequency (RF) readings.

Outreach Meeting with Wireless Carriers

Staff met with industry representatives (four people total) on April 2, 2019, to discuss and better understand their concerns and questions with the proposed modifications to the Design Criteria. In that meeting, staff also asked questions of the carriers to learn more about the emerging 5G technology. Staff received valuable comments from the industry representatives which were used to finalize the staff recommended Design Criteria (e.g., creating a definition for “least intrusive feasible”). Some of the topics/concerns discussed at the meeting include:

- Using primary view for pole selection can be prohibitive;
- Applying pole spacing standards for individual carriers;
- Including greater maximum allowed pole height and pole height increase to streamline staff level wireless telecommunication facility processing;
- Increasing the maximum allowed size of the antenna enclosure, over the FCC standard for small cell facilities; and
- Using qualifier “if feasible” instead of “if practical.”

In addition to the comments received at the outreach session, staff also received correspondence from industry representatives after the outreach meeting (see Attachment 9). These e-mails and letters suggest that a few of the City’s proposed standards are too restrictive as proposed and would require Planning Commission hearings for many common situations found in Sunnyvale’s ROW. In response to these concerns, staff adjusted a few of the criteria to account for some of these common situations (e.g., pole height maximum increased to account for the current heights of the existing utility poles in the City).

Staff also revised the criteria to make it more clear that the criteria and the concept of “least intrusive feasible design” are intended to be objective rather than subjective. The idea is that the selected design should most closely meet the criteria compared to other feasible options. The criteria are, essentially, a menu of options. It is not necessary to meet every one of the criteria if there is no other feasible design option or location in the ROW that would meet the carrier’s need for wireless coverage in that location. Staff also expanded the definition of “feasible” to clarify that this is also an objective standard. The question is essentially whether an option is technically impossible or possible

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only at a cost that would exceed the economic value of the facility for the carrier. For example, undergrounding equipment is often technically impossible because of site constraints, such as a high water table. Undergrounding can also be cost-prohibitive because the added expense of installation and maintenance would exceed the economic value of the installation. Therefore, a blanket requirement that all equipment be undergrounded could have the effect of prohibiting wireless service and would be preempted by federal law.

Information on the wireless telecommunication facility applications that the City has processed since 2016 can be found in Attachment 8, the City has approved 21 of the 35 applications submitted in that period; however, many of the applications required re-design and resubmittals by applicants before they were approved.

ALTERNATIVES

Forward a Recommendation to the City Council to:

1. Adopt a Resolution (Attachment 2 to the report) to Update the Design Criteria for Processing Wireless Telecommunication Facilities in the Public Right-of-Way, and Find that the Action is Exempt from CEQA Pursuant to CEQA Guideline Section 15061(b)(3), and 15378(b).
2. Adopt a Resolution Updating the Design Criteria for Processing Wireless Telecommunication Facilities in the Public Right-of-Way with changes, and Find that the Action is Exempt from CEQA Pursuant to CEQA Guideline Section 15061(b)(3), and 15378(b) with modifications.
3. Take no action and maintain the existing Design Criteria for Processing Wireless Telecommunication Facilities in the ROW.

RECOMMENDATION

Alternative 1: Forward a Recommendation to the City Council to Adopt a Resolution (Attachment 2 to the report) to Update the design criteria for Processing wireless telecommunication facilities in the Public Right-of-Way, and Find that the Action is Exempt from CEQA Pursuant to CEQA Guideline Section 15061(b) (3), and 15378(b).

Adoption of the updated Design Criteria will provide better direction and guidance to wireless carriers, staff, the Planning Commission, and the City Council when designing and reviewing applications for wireless telecommunication facilities in the ROW. The recommended Design Criteria also maintains local authority in preserving the aesthetic integrity of the City's ROW while maintaining alliance with Federal and State law.

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ATTACHMENTS

1. Reserved for Report to Council
2. Draft Resolution and Design Criteria (for Processing Telecommunication Facilities in the Public Right-of-Way)
3. Comparison of Existing and Proposed Design Criteria

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4. Resolution No. 626-13 (Design Criteria)
5. Council Policy 7.2.16 on Telecommunications
6. Sunnyvale Municipal Code Section 19.54.160 - Telecommunication Facilities in the ROW
7. Telecommunication Standards of other Jurisdictions
8. Telecommunication Projects Since 2016
9. Public Comments