

PUBLIC HEARINGS/GENERAL BUSINESS

2. [19-0384](#) 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).

Assistant Director Andrew Miner introduced the agenda item and stated that it represents staff's effort to improve upon the existing design guidelines.

Associate Planner Mary Jeyaprakash presented the staff report.

Vice Chair Simons stated that the Commission has required landscaping, decoration, and reductions in equipment to minimize the aesthetic impact of wireless telecommunication facilities and asked how these mitigation measures would be implemented in the context of the proposed guidelines. Assistant Director Miner responded that staff will continue to work with applicants on the design and location of equipment and gather feedback from the surrounding neighbors, but that those efforts are not detailed in the proposed guidelines. Rather, he stated that an important goal of the proposed guidelines is to create a more objective design criteria by clarifying terminology and establishing definitions. He added that location requirements for the facilities would not change. Vice Chair Simons confirmed with Assistant Director Miner that neighbors can still appeal the proposed projects and that the Commission may still review these types of projects as each is different and every situation cannot be captured in the proposed guidelines.

Assistant Director Miner stated that an attorney representing Verizon Wireless submitted a letter regarding the proposed guidelines after the agenda was posted.

Vice Chair Simons stated Verizon Wireless's interest in establishing exclusively objective criteria and asked staff if the Commission would still be able to implement the previously mentioned mitigation measures given the shift toward more objective standards. Senior Assistant City Attorney Rebecca Moon stated that the City has the ability to regulate aesthetics but that the Federal Communications Commission (FCC) requires the City to have objective standards for regulating aesthetics, accomplished by defining the standards and then applying them to each project.

Vice Chair Simons asked if the proposed objective criteria would have inhibited the Commission's previous mitigation measures for more aesthetically pleasing equipment designs. Senior Assistant City Attorney Moon stated that the City needs to be objective and define appropriate aesthetic design. Vice Chair Simons stated his concern that some applicants may not have the equipment that conforms to the definition of aesthetically pleasing. Senior Assistant City Attorney Moon stated that the FCC is promoting a policy that encourages small cell deployment and the perception is that local regulations are impeding the initiative; therefore, the FCC is placing more restrictions on municipalities. She added that the bollards added to the previous project was a rare example of a safety concern and that she believes we cannot make an applicant install and maintain landscaping. Vice Chair Simons and Assistant Director Miner stated that private property owners have had the option of installing and maintaining landscaping for the equipment on their property.

Senior Assistant City Attorney Moon clarified that the proposed guidelines pertain to just those facilities located in the public right-of-way and that the City has more control over the design on City-owned facilities. Assistant Director Miner stated that the proposed guidelines are as objective as possible and clearly define the City's expectations, such as by defining the least intrusive feasible location and the smallest size antenna technically feasible. Vice Chair Simons stated his concern that mitigation efforts would not be possible with the objective standards. He confirmed with Assistant Director Miner that the proposed guidelines would still allow the Commission to handle review rare instances where additional mitigation efforts might be needed and that staff would continue to work with the applicant prior to approval to try and avoid the need for mitigation efforts.

Senior Assistant City Attorney Moon stated that the goal of the objective criteria is for the applicant to understand the City's expectations up front and then choose a least intrusive feasible design that most closely meets the criteria. She added that the Commissioners must apply the design guidelines with appeals.

Commissioner Weiss asked staff if other providers have access to City-owned poles other than AT&T. Assistant Director Miner responded that AT&T is the only provider with a current agreement but that Verizon Wireless has demonstrated interest in an agreement. He added that there are only two possible design options for City-owned poles which leaves less discretion to the applicant.

Commissioner Weiss asked which government entity regulates radio frequency (RF) emissions. Assistant Director Miner stated that the Environmental Protection Agency creates the RF emissions standards, the FCC implements and enforces them, and each carrier is aware of the standards that must be met. He added that the City asks for reports from the carriers demonstrating that they meet the established RF emissions standards and that by law the City cannot establish its own standards. Commissioner Weiss asked if staff ever work with carriers to further confirm that they meet the RF emissions standards. Assistant Director Miner responded that in some cases, staff has asked carriers to measure RF emissions prior to and after equipment installation.

Commissioner Weiss stated her suggestion to add the term great room to the definition of primary view based on the layout of many Sunnyvale homes.

Commissioner Olevson asked why the City does not require automatic undergrounding of equipment like the City of Palo Alto. Assistant Director Miner stated that the undergrounding is typically restricted to downtown Palo Alto, that the City of Palo Alto recently amended its standards to not require undergrounding in every instance, and that it is a utility provider and therefore has more discretion on the design of equipment on its poles. He stated that staff has studied the feasibility of undergrounding and determined that there is not adequate space for vaulting for those poles located in the public right-of-way, but that it may be possible in the future for downtown Sunnyvale. He added that undergrounding is difficult for carriers and some have forgone proposed projects that required it.

Commissioner Harrison asked staff why the ten projects listed in the staff report were withdrawn. Associated Planner Jeyaprakash stated that they were paused or withdrawn because they did not meet various design criteria. Assistant Director Miner stated an example of a proposed project that the applicant placed on hold to research an agreement with the City that would solve its coverage issues in consideration of a neighbor who had serious health concerns regarding the proposed project.

Commissioner Harrison asked staff about the addition of new overhead lines. Senior Assistant City Attorney Moon stated that none of the requirements in the proposed guidelines are blanket requirements. Assistant Director Miner clarified that proposed projects without new overhead lines would be reviewed at the staff level and those with new overhead lines would require review by the Planning Commission. He disagreed with the communication from the attorney that states that carriers are restricted by PG&E from receiving power; rather, power is available and the logistics must be coordinated.

Commissioner Harrison asked staff to explain how the City can establish the objective criteria and concurrently claim that it is not limited to reviewing proposed projects based solely on that objective criteria. Senior Assistant City Attorney Moon stated that the telecommunication industry argues that local jurisdictions cannot regulate aesthetics but it is her legal opinion that the City does have the ability. She stated that the City must be objective with its criteria but that it must be flexible enough to allow for small cell installations, for if the objective standards are infeasible for carriers and prevents small cell installations, then that would be a violation of federal law. Assistant Director Miner stated that the proposed guidelines are based on recently adopted FCC standards and staff's experience with the carriers. He stated that the proposed guidelines attempt to create as much clarity and authority at the staff level so that proposed projects are not unnecessarily reviewed by the Commission.

Commissioner Harrison asked how staff intends to define the smallest design and least intrusive feasible as equipment shapes and sizes change over time. Assistant Director Miner stated that the proposed guidelines would be adopted by a resolution and would not become part of the zoning code, partly to adapt to changes that may take place.

Commissioner Harrison stated that she is in favor of the smallest size and least intrusive feasible language and stated the attorney's argument that those concepts are not objective. Senior Assistant City Attorney Moon stated her opinion that the criteria is objective and that the City does not have the ability to dictate certain equipment because staff does not have the expertise, the carriers are different, and the technology is constantly changing. Assistant Director Miner stated that staff has tried to define least intrusive feasible as much as possible from a non-RF engineering perspective, keeping in mind carriers' needs and staff's responsibility to protect the neighborhoods and educate the community about the process.

Commissioner Harrison asked staff to comment on the attorney's claim that prohibiting a wireless telecommunication facility within 300 feet of another one restrains Verizon Wireless's ability to do business. Senior Assistant City Attorney Moon stated that if a carrier demonstrates that it needs a pole to improve its coverage needs and that it has exhausted all options to find another pole not within 300 feet of another one, then it is possible that the installation could be reviewed by the Commission. Assistant Director Miner stated that the requirement attempts to prevent the installation of successive equipment down residential streets. He stated that the proposed guidelines could be changed to specify that proposed projects located within 300 feet of another installation be reviewed by the Planning Commission but added that the request would most likely be rare if City poles were to become available to carriers.

Chair Howard opened the Public Hearing.

Corrie Engelson stated her concern with the oversaturation of installations in neighborhoods and her interest in the proposed guidelines preventing installations within 300 feet of any other type of installation. She also stated her preference for landscaping to obscure views of equipment and suggested that some homeowners may be amenable to paying for equipment undergrounding.

Teague Soderman, Sunnyvale resident, stated that the definition of primary view should include home offices, that installations should not be within the primary view of properties on both sides of the street, and that heritage and heritage-sized trees located next to installations should be protected.

Commissioner Howe confirmed with Assistant Director Miner that the proposed guidelines state that installations are prohibited from being within 300 feet of other installations in the public right-of-way. Associated Planner Jeyaprakash stated that the emissions report submitted by applicants includes a cumulative measure of any emissions picked up from other installations.

Ginbar Ketema, representing Verizon Wireless, thanked staff for taking their feedback into consideration with the final draft of the proposed guidelines and stated the company's interest in a concrete set of objective standards for design criteria.

Commissioner Harrison asked Ms. Ketema her opinion for how the City can improve the proposed design guidelines to better define equipment dimensions that minimize

the negative visual impact, considering that some equipment may have less volume but more negative visual impact. Ms. Ketema stated that a master license agreement with the City would limit the design options but that there would still be a need for the proposed design guidelines for installations on non-City-owned structures. Commissioner Harrison confirmed with Ms. Ketema that Verizon Wireless strives to produce and install equipment that is the least visually impactful. Ms. Ketema stated that the phrase least intrusive feasible is subjective to her and hard to identify because equipment is constantly changing.

Vice Chair Simons asked Ms. Ketema if it would be useful to include a stipulation in the proposed guidelines that equipment be upgraded if there is a less intrusive design available. Ms. Ketema stated that it would be reasonable.

Chair Howard closed the Public Hearing.

Vice Chair Simons clarified for Senior Assistant City Attorney Moon that there has been a process for carriers to re-apply during which time the City could require new or modified equipment if less intrusive options were available. Senior Assistant City Attorney Moon stated that the ordinance reads that the City would have to initiate a permit revocation process to enforce the equipment upgrade, permit revocations usually taking place only in egregious situations. Vice Chair Simons asked staff under what circumstances could upgraded equipment be installed. Senior Assistant City Attorney Moon stated that it is difficult to require modifications after permit issuance. Vice Chair Simons confirmed with Assistant Director Miner that staff review hardware upgrade applications. Assistant Director Miner stated that requiring upgraded equipment after the initial installation is too big a burden for the carriers and that upgrading would not take place very often as equipment will most likely not drastically reduce in size soon. Assistant Director Miner clarified for Vice Chair Simons that the requirement for carriers to re-apply every two years pertains to installations located anywhere in the city.

MOTION: Commissioner Howe moved and Vice Chair Simons seconded the motion for 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 Guidelines Section 15061(b)(3) and 15378(b).

Commissioner Howe stated that he would be reluctant to have a wireless

telecommunication facility in his neighborhood, but the City does not have much discretion on the subject due to federal law.

Vice Chair Simons stated that he is unsure how to define least intrusive feasible and is therefore not comfortable recommending changes to the proposed guidelines.

Assistant Director Miner confirmed with Commissioner Howe that the motion is exactly the staff recommendation.

Vice Chair Simons stated his preference that all installations be as aesthetically pleasing as possible throughout the city and added that downtown has different needs that may require an aesthetic different than the rest of the city. He stated his frustration with the review process for wireless telecommunication facilities, his belief that the city benefits from small cell installations, his desire for least intrusive designs, and his perception that there would be less authority to improve the aesthetics of installations if the proposed guidelines were adopted. He added that he will support the motion.

FRIENDLY AMENDMENT: Commissioner Harrison offered a friendly amendment to specify that a proposed wireless telecommunication facility in the public right-of-way within 300 feet of another wireless telecommunication facility in the public right-of-way be reviewed by the Commission.

Commissioner Harrison clarified her friendly amendment and stated that it is in response to the attorney's letter that claims that not allowing an installation in the public right-of-way within 300 feet of another installation in the public right-of-way violates federal law and would not be prohibitive if the Commission were to review in these instances.

Chair Howard confirmed with Assistant Director Miner that the proposed guidelines prohibit installations in the public right-of-way from being located within 300 feet of each other with no option for Commission review.

Commissioner Howe confirmed with Assistant Director Miner that the 30 sites under review that were listed for the Commission are not located within 300 feet of each other.

Commissioner Howe and Vice Chair Simons accepted the friendly amendment.

Commissioner Harrison stated that she will support the motion and added that the proposed guidelines are not arbitrarily subjective but are descriptions of objective criteria.

Chair Howard stated that he will support the motion and thanked Associate Planner Jeyaprakash and staff for their diligence on the issue. He stated that the proposed guidelines appear to conform to the latest federal laws and regulations and balances the concerns of the Sunnyvale and telecommunication communities. He also thanked Commissioner Harrison for the addition of the friendly amendment.

Chair Howard summarized the motion.

The motion carried by the following vote:

Yes: 7 - Commissioner Weiss
Chair Howard
Commissioner Howe
Commissioner Olevson
Vice Chair Simons
Commissioner Rheaume
Commissioner Harrison

No: 0

Assistant Director Miner stated that this recommendation will be forwarded to the City Council for consideration at the Tuesday, July 16, 2019 meeting.