



City of Sunnyvale

Agenda Item

20-0834

Agenda Date: 11/9/2020

REPORT TO PLANNING COMMISSION

SUBJECT

Forward a Recommendation to Introduce an Ordinance to amend Chapter 19.54. (Wireless Telecommunication Facilities) and Find that the Action is Exempt from California Environmental Quality Act (CEQA) Pursuant to CEQA Guidelines Sections 15061(b) (3), and 15378(b).

BACKGROUND

The proposed ordinance would amend Section 19.54.160 of the Sunnyvale Municipal Code (SMC) pertaining to wireless telecommunication facilities in the public right-of-way. Currently, all such installations require a telecommunication facility permit from the Department of Community Development (CDD). Issuance of this discretionary zoning permit requires notice to neighbors within 300 feet of the installation and either a staff level decision with appeal to the Planning Commission, or a public hearing before the Planning Commission with appeal to the City Council. By contrast, other uses of the right-of-way are typically authorized by the Department of Public Works through encroachment permits and license agreements under SMC Chapter 13.08, which are ministerial in nature, do not require public notice or public hearings, and are not subject to review by the Planning Commission or City Council.

The City adopted SMC Section 19.54.160 to address community concerns about unsightly or intrusive telecommunications equipment in their neighborhoods. In the ensuing years, however, federal law has increasingly restricted the City's authority over wireless telecommunication facilities in the Right of Way (ROW). Although the City may impose reasonable aesthetic standards, the standards must be objective and cannot have the effect of prohibiting wireless service. In addition, the City must comply with relatively short deadlines (known as "shot clocks") established by the Federal Communications Commission (FCC) orders for processing wireless applications.

In 2019, the City Council authorized the City Manager to enter into Master License Agreements (MLAs) with AT&T and Verizon for the use of City-owned light poles for wireless telecommunication antennas and associated equipment (RTC No.19-0523 and No. 19-1214). Through these agreements, Public Works and Planning staff will work together to review each proposed installation and ensure that the installations comply with the requirements in the MLAs as well as the City's adopted Design Standards for wireless telecommunication facilities. The use of light poles will also give the carriers more options for placement of antennas, which may reduce the potential for conflict with nearby residents. Once Planning and DPW have approved the installation under the MLA, requiring an additional zoning permit is redundant and creates unnecessary work for Planning staff, especially in light of the short deadlines that apply to wireless applications. In addition, a public hearing before Planning Commission or City Council may not be truly meaningful for the public given the limited scope of review.

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The proposed amendment to SMC Section 19.54.160 will not change how the City processes other applications for wireless facilities. In particular, installations that are not covered by an MLA will still be required to obtain a telecommunications facility permit.

The City Council is scheduled to consider this item on December 1, 2020.

EXISTING POLICY

SUNNYVALE MUNICIPAL CODE

Section 19.54.160 - Telecommunication Facilities in the Public ROW

The regulations adopted by the City Council in 2013 require applications for wireless telecommunication facilities in the public ROW to be submitted to the Planning Division for review using the Design Criteria. The Code further requires a carrier to initiate a lease with the City for City light structures before applying for a planning permit. In 2019, the City authorized the first MLA to allow AT&T to install wireless telecommunication facilities on City-owned light poles.

DESIGN CRITERIA

Design Criteria for Processing Wireless Communication Facilities in the Public ROW

The 2013 resolution adopted by the City Council provided guidance to wireless carriers and staff to review wireless telecommunication facilities in the ROW. A subsequent resolution was adopted by the City Council in 2019 to clarify the review process and updated the Design Criteria with objective standards. See Attachment 5 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 role 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 6 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 wireless telecommunication applications in the ROW.

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

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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

Over the past several years, the City has received an increasing number of applications for installation of wireless telecommunications antennas on utility poles in the public ROW. California Public Utilities Code Section 7901 gives utility companies the right to put their equipment in the public right-of-way, subject to the City’s reasonable time, place, and manner regulations. Telecommunication facilities have additional rights to use the ROW under federal law and associated regulations and orders issued by the FCC.

The City typically regulates the use of the ROW through encroachment permits issued by the Public Works Department (Sunnyvale Municipal Code Chapter 13.08). In addition, in 2013, the City Council adopted SMC Section 19.54.160, which requires wireless telecommunication facilities in the ROW to have a discretionary permit from CDD. The City Council also adopted Design Guidelines for telecommunication facilities in the ROW, which were last updated in 2019 (RTC No. 19-0700). The Council adopted the Design Criteria to ensure wireless facilities in the ROW meet appropriate design standards. At the time the Design Criteria document was originally adopted in 2013, the City did not allow wireless facilities on City-owned light poles. As a result, carriers in Sunnyvale were limited to placing the equipment on electric utility poles, which in Sunnyvale, are mostly privately owned. With the requirement for a Master Lease Agreement and pre-approved designs, a separate Planning application is redundant. The Planning review would not achieve a better facility design because the designs are established by the MLA.

There are currently two carriers that have approved MLAs with the City: AT&T and Verizon. If another carrier wanted to use City light poles, they would be required to enter into an MLA; otherwise, they would need to use existing poles in the ROW other than City poles and be required to go through the Planning permit process. Staff anticipates that at least one more carrier will request a MLA.

It is anticipated that future wireless telecommunications technology will significantly increase the number of sites needed for successful coverage and capacity for the carriers. Wireless carriers are preparing for the deployment of fifth generation wireless systems (i.e., 5G) technology as it becomes available (estimated in 2021) and are estimating this may result in as many as 500 installations per carrier, or 1,500 installations total if there are three carriers with a MLA.

As currently required by SMC Section 19.54.160, each wireless application requires a public notice to property owners and tenants within 300 feet of the site. The effort in sending out that many notices combined with the fact the design is already established by the MLA would create unnecessary work for the Planning Division, without providing a meaningful opportunity for members of the public to influence the outcome, due to legal limitations on the City’s ability to deny applications.

The following paragraphs describe the current review procedure and identifies the redundancy, then provides a proposed review procedure, and justification for the proposed changes.

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Current Review Procedure for Carriers with an Approved MLA

The existing review process for wireless telecommunications facilities on City-owned light poles includes the following four steps:

- **Master License Agreement:** Any wireless carrier who proposes to install a wireless telecommunication facility on City-owned utility poles must first establish an MLA with the City. The MLA establishes guiding procedures, terms, conditions, and an approved design template for the wireless telecommunication facilities. This effort is led by the Department of Public Works (DPW) with the Planning Division providing feedback in design template to ensure the established design meets the adopted Design Criteria. This process allows for public input at the City Council hearing when the Council authorizes the MLA. Once approved, the MLA allows the carrier to install facilities consistent with the approved design (Attachment 4 contains a sample of the City's MLA with Verizon).
- **Preliminary Design Review (Voluntary Step):** In this voluntary step, wireless carriers submit potential specific wireless facility locations on City poles consistent with the approved MLA. Planning staff reviews the locations and provides feedback about the pole chosen and opportunities for better locations if the location is found to be inconsistent with the Design Criteria. Planning staff also provides information about the level of Design Review (staff or Planning Commission) appropriate for each proposed wireless telecommunication facility. The Preliminary Review is led by Planning with involvement from DPW.
- **Design Review:** All wireless telecommunications applications in the ROW are reviewed individually as part of a formal Planning submittal. Planning staff reviews the application for consistency with the Design Criteria and the Department of Public Works staff reviews the application for consistency with the MLA. Wireless facilities on City poles in the ROW are currently reviewed the same as applications on the standard wood poles (controlled by the Northern California Joint Pole Authority) in the ROW. The levels of review are as follows:
 - **Staff-level Design Review.** Applications that meet the Level of Review criteria described in the Design Criteria are reviewed by staff with 300 foot public noticing but no public hearing.
 - **Planning Commission Design Review.** If any of the Level of Review standards of the Design Criteria are not met, the application is reviewed by the Planning Commission with 300-foot public noticing and a public hearing.
- **Encroachment Permit:** Upon approval of the MLA and Design Review, the wireless carrier is required to complete the City's encroachment permit process, led by DPW, to verify compliance with the MLA and obtain the permit needed for excavation in the public right-of-way to install the facility.

Concerns with the Current Review Procedure for MLA Wireless Facilities

1. **Redundancy of design review:** The design of a wireless facility on a City pole as part of an MLA is reviewed by Planning staff for conformance with the Design Criteria. The design template is a part of the MLA and is reviewed by City Council. The review of individual applications by the carriers for sites and designs included in the MLA would be a repeat of the effort and would likely not result in changes in design.
2. **Public noticing mailing efforts:** The Zoning Code currently requires public noticing to

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property owners and tenants within 300 feet of a wireless facility regardless of review level (staff or Planning Commission). The noticing and process allows public comment on the design and the option for a member of the public to appeal the Planning permit decision. If the upcoming 5G technology results in 1,500 individual facilities, thousands of public notices would need to be sent out by staff (each facility could generate the need for 40-100 notices). This would significantly increase workload for involved staff to a potentially overwhelming level.

3. **Limited review options by decision body:** Planning staff, Planning Commission and City Council are limited to reviewing design concerns, only, of proposed wireless facilities. The design of wireless facilities on City poles is established as part of the MLA. Requiring a separate review of the design would not result in a new design. Also, when provided a notice, a member of the public may think the design could be revised or the application denied, which are not likely given the MLA allowances. Members of the public often raise concerns that are outside of the City's purview. For example, neighbors may object to wireless installations because of health concerns about radiofrequency (RF) emissions, which federal law prohibits the City from considering as long as the installation meets federal RF standards. Members of the public also commonly argue that the installation will affect their property values, which is not an objective design consideration that the City can use as a basis for regulation.
4. **Encroachment Permit Review:** When an application for an individual encroachment permit is reviewed, the design is reviewed again for consistency with the approved light pole and equipment design by DPW. However, the Design Review process is still important for providers who do not choose to go through the MLA process, or those who choose to go on non-City utility poles, because in those cases it is still necessary to review individual facility permits to ensure compliance with the Design Criteria.

Proposed Review Procedure

The goal of the proposed Ordinance amendment is to streamline the application review process for both staff and the telecommunications companies who choose to go through the MLA process. Eliminating the Design Review process for wireless carriers who have a MLA is justified in that staff reviews the design in the MLA stage against the Design Criteria and verifies design consistency during encroachment permit review. The high number of Design Review applications anticipated as part of the 5G rollout would overwhelm the Planning Division especially with the strict timeline in which these applications need to be reviewed/approved per the most recent FCC order (60 days for existing poles and 90 days for replacement poles, known as the "shot clock").

Additional workload factors include:

- The high number of installations likely to occur for at least three wireless carriers;
- The volume of workload necessary for individual applications for Design Reviews, including response to public comments;
- The FCC's reduced shot clock time limits.

Given all these factors, staff recommends the elimination of the Planning Design Review Step **only** for carriers with an approved MLA.

The process for wireless facilities when part of an MLA is shown below (Attachment 3 is a comparison of the existing and proposed application review processes):

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- The MLA allows:
 - No more than 20 requests for use of City poles at one time;
 - Wireless facilities on concrete marbelite and fluted metal poles only. Wireless facilities are not allowed on decorative poles (e.g., Downtown Specific Plan and Peery Park Specific Plan areas) because the City has not approved a compatible design for these types of poles; however, the wireless carriers are working on amending their MLAs to include appropriate decorative pole designs.
- City review during the encroachment permit process:
 - Review of the selection of the pole type, if it is included in the design template of the MLA;
 - The Traffic Control Plan to evaluate safety and compliance with Caltrans's standards;
 - Wireless carrier's Site License Supplement Agreement with the City to use specific City poles;
 - The design of the proposed wireless facility and compatibility with the design template of the MLA; and
 - The structural stability of the existing pole, if the proposal does not replace the existing pole, and the adequacy of electrical needs of the replacement light pole (e.g., the voltage drop or power source).

ORDINANCE AMENDMENT

The goal of the proposed code amendment is to remove the requirement for a separate Planning application for wireless facilities subject to an executed MLA. Any wireless facility in the ROW not using a City pole and subject to an MLA with the City would continue to require a Planning permit as described in SMC Chapter 19.54. Also, Planning staff uses the Council adopted Wireless Facility Design Criteria in the review of the design template included in the MLA, so the same standards will be used regardless of the application type.

The proposed Ordinance could result in carriers choosing to use the sleeker design included as part of the design template in the MLAs because of the streamlined process.

Public noticing will no longer occur during the encroachment permit/design review process for carriers with an approved MLA. Prior to the Council hearing for the authorization of a MLA, staff could enhance the standard agenda notice for the upcoming Council meeting thereby providing an opportunity for public input on the design at the MLA stage. Note that the design is not likely to change significantly between carriers.

FISCAL IMPACT

The proposed amendments to SMC Chapter 19.54. (Wireless Telecommunication Facilities) would have no fiscal impact.

PUBLIC CONTACT

As of the date of staff report preparation, staff has received no comments on the item.

Notice of Public Hearing, Staff Report and Agenda:

- Published in the *Sun* newspaper
- Posted on the City of Sunnyvale's Web site;

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- Agenda posted on the City's official notice bulletin board;
- E-mail notices sent to interested parties, including neighborhood association contacts and wireless carriers.

ALTERNATIVES

Recommend that the City Council:

1. Introduce an Ordinance (Attachment 2 to the report) to amend Sunnyvale Municipal Code Chapter 19.54. (Wireless Telecommunication Facilities) and Find that the Action is Exempt from CEQA Pursuant to CEQA Guidelines Sections 15061(b)(3), and 15378(b).
2. Introduce an Ordinance (Attachment 2 to the report) to amend Sunnyvale Municipal Code Chapter 19.54. (Wireless Telecommunication Facilities) with modifications and Find that the Action is Exempt from CEQA Pursuant to CEQA Guidelines Sections 15061(b)(3), and 15378(b).
3. Take no action and maintain the existing Sunnyvale Municipal Code Chapter 19.54. (Wireless Telecommunication Facilities), which maintains the current four step process.

STAFF RECOMMENDATION

Alternative 1: Forward a Recommendation to City Council to Introduce an Ordinance (Attachment 2 to the report) to amend Sunnyvale Municipal Code Chapter 19.54. (Wireless Telecommunication Facilities) and Find that the Action is Exempt from CEQA Pursuant to CEQA Guideline Section 15061(b)(3), and 15378(b).

Amendment of the Ordinance will streamline the process for reviewing applications for wireless telecommunication facilities on City-owned light poles for carriers with an approved MLA by eliminating the Design Review process requirement. Local authority will be maintained in preserving the aesthetic integrity for wireless telecommunications facilities in the City's ROW during both the MLA and encroachment permit processes. Although the proposed update eliminates the public noticing associated with the Design Review, the process will include an opportunity to participate and comment when a MLA is reviewed by the City Council before adoption and staff is ensuring good design is achieved in accordance with the Design Criteria.

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Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Reserved for Report to Council
2. Draft Ordinance
3. Comparison of Existing and Proposed Application Review Process
4. Master License Agreement for 4G Verizon
5. Resolution and Design Criteria for Processing Telecommunication Facilities in the Public Right-of-Way
6. Council Policy 7.2.16 on Telecommunications