Discussion Item: Update to Zoning Standards For Telecommunications Facilities, continued

PURPOSE AND BACKGROUND

On June 19, 2019, staff presented a Director's Report to the Planning Commission **(Attachment B)** regarding changes to zoning procedures for Telecommunications Facilities. The update would change how the City processes applications for these facilities when located in the public right-of-way (ROW); and is driven by Federal Communications Commission (FCC) Order Regarding Small Cell Wireless Facility Installation (issued September 26, 2018 and effective January 14, 2019; the "FCC Order"). To comply with the Federal Order, staff suggested a ministerial "over-the-counter" review. On May 29, 2019, the Planning and Building Department issued draft design standards for Telecommunications Facilities in the public ROW with a 30-day comment period, as discussed in the report. The final document containing minor revisions is included with this report **(Attachment A)**.

Staff received public comment on the draft design standards prior to and at the June 19, 2019 hearing. The Planning Commission asked staff if they would agree to extend the comment period (which staff agreed to do) and members of the Commission attended a community meeting held with concerned citizens on July 11, 2019; meeting minutes are included with this report **(Attachment C)**. Issues raised by the community and addressed by the Planning Commission, with staff's responses, are as follows:

Health

There are ongoing concerns among members of the community for health associated with Telecommunications facilities; specifically, RF emissions. These concerns extend to the processing and monitoring of new and existing sites, and are heightened with the prospect of additional facilities (due to industry interest) and relaxed restrictions (due to the FCC Order). The Federal government pre-empts local jurisdictions from denying applications for Telecommunications facilities based on health concerns when satisfactory emissions reports have been filed. Interested parties therefore suggest a more stringent process for testing and monitoring emissions at new sites. To ensure compliance with the FCC RF emissions standards, staff has modified the standards to require measurements of actual emissions prior to building permit sign-off. The reports will also require analysis of cumulative RF emissions, including approved facilities that have not yet been constructed. Staff believes these requirements will provide more transparency to show that the new facilities will remain under the FCC thresholds of exposure to the public and workers, which are the only health standards the City is permitted to apply.

Certain commenters suggested requiring the providers to pay for third-party review of RF emissions reports. Some members of the public have raised the suspicion that engineers hired by the Telecommunications companies would be motivated to be dishonest in their findings. Staff doesn't share this assumption. Since these engineers are licensed by the state, failure to perform a competent review or to engage in fraudulent behavior would jeopardize that license. If an engineer engages in such practice there are methods to go through the state licensing authorities to see corrective action is brought and that should be sufficient. In any event, it's not consistent with past practice of various engineers. Staff has seen RF reports that do indicate that proposed facilities will cause an unacceptable level of RF emissions or further worsen an environment already out of conformance and we have used that information to reject locations in the past. Given this, we see no reason why we should apply a blanket distrust in the engineers with this technical skill. Another thought raised at this meeting was that periodic testing of the equipment by an independent engineer separate from the original engineer and who has not been employed by a Telecommunications carrier within five years. Staff cannot accommodate this request for numerous reasons. First, the City can't discriminate against someone for past employment history. Second, the City simply doesn't have the review capacity to continue to review sites that are built and operating and doesn't provide that level of review for any other project type.

Process

Community members expressed concern for process in terms of: transparency; public notification; tracking; mapping; and monitoring. Staff would continue to allow public access to application materials. However, the Planning application may be approved same-day, effectively eliminating an opportunity for community review prior to project approval. Staff shares the community's concern with the federal government's diminution of local control over a land use issue. Unfortunately, as mentioned in the June 19th Director's Report, the City cannot meet the federally-mandated reduced timeframe for project decisions if cases are processed as Planning Commission cases, nor can we legally implement any Planning Commissions decisions that may lead to denying an applicant based on health concerns. This project decision period is not allotted solely to Planning, but to all the City departments as a whole. Failure to get an application through the entirety of the process in that time period would effectively eliminate the City's already scant ability to reject these applications.

However, staff has agreed to post and maintain a corresponding database / map on the City website indicating Telecommunications facilities sites by phase (application; approval; construction; inspection). As discussed in a previous section of this report, staff is looking into greater controls on monitoring during and following construction. Examples of recently-completed Telecommunications facilities located Downtown are included with this report **(Attachment D)**.

Staff has also discussed the public process for these antennas. For these applications staff will require the applicant, at time of submittal to Planning, demonstrate that they held a community meeting regarding this site. The applicant will provide documentation of any outreach they conducted as well as the methodology they used to reach out, date and time of the meeting, number of attendees at the meeting for that particular cell site and any outcomes; in particular, did the applicant agree to modify the project pre-submittal at the request of the community and, if so, what was the nature of the change? As this meeting is before submittal, city staff will not be present, but we will want to know the above information at time of submittal or the application will be deemed incomplete.

Design: Distance Separation & Screening

Draft design standards put forth a 200-foot distance separation between new and existing Telecommunications facilities, as measured by path-of-travel. Some of the telecommunication carriers have questioned the 200-foot distance as being unnecessarily restrictive and possibly discriminatory given that other right-of-way facilities are not typically regulated in this manner. Conversely, some community members suggest 3,000-feet between telecom facilities, as well as a 3,000-foot buffer surrounding Residential Zones, schools, government buildings, hospitals and other similar facilities. Community members had previously sought separations of at least 500-feet, with higher buffering around facilities such as schools. Staff finds that a 3,000-foot distance separation would effectively constitute a ban of any more such telecom facilities within the City; and therefore, would not conform to Federal law and would not likely sustain a legal challenge. Although the FCC Order acknowledged that a local jurisdiction could require some separation between facilities for aesthetic reasons, even a separation requirement of 500-feet may not be defensible if considered for health concerns rather than on the basis of aesthetics alone. Typical Oakland block frontages are 200 to 300 feet in length, so from an aesthetic perspective, 500-feet seems too restrictive as that would cause the spacing to be over multiple residential blocks whereas a smaller spacing still accomplishes the aesthetic goal of reducing visual clutter. Staff believes that 200-feet is a reasonable distance separation between antennas that controls for aesthetics while still preserving adequate coverage and making city facilities available as required. Originally the staff described a "path of travel" method for measuring separation, but has found that technologically that's highly difficult to measure. Therefore, staff will require a 200-foot radius measurement separating the antennas unless, as a result of the required community meeting (as discussed in "Process" above), the applicant agrees to move the proposed antenna to a pole within 200-feet of an already existing antenna site. The applicant would be required to show proof of this.

Industry Comments

Other Comments were received from AT&T and Verizon wireless. One comment was that the City was using an out-of-date definition of collocation. The FCC has amended the definition to call any antennas added to an existing pole as collocation, even those poles without existing wireless infrastructure on them. We have amended this definition.

It was pointed out that the draft standards need a way of allowing for new poles within the right-of-way where none exists and language to describe this possibility was added as well. Verizon raised concerns that screening the antennas could impede signal propagation of higher frequency equipment and wants language that would allow flexibility on screening. The City disagrees. We believe screening is essential to improve the visual character of these sites and as such can't accede to this request, particularly without any proof around this claim. They've also asked for a modification of the timing of the last RF report to 6 weeks after the facility has commenced operation. They claim the City's requirement of prior to building permit sign-off doesn't allow adequate time to secure an engineer to prepare the report. We disagree. We believe this timing issue is not the City's issue to correct and being able to defer the final issuance of the Building Permit pending the submittal of a successful test report is essential to ensure compliance.

AT&T did raise the concern that a 200-foot buffer would be possibly too burdensome and could preclude coverage. The City acknowledges that any distance separation could have potential impacts on the density of antennas but the City believes that this buffer will address aesthetic concerns without effectively prohibiting deployment of these facilities. Staff still believes that 200-feet is a reasonable standard to address concerns over the aesthetic impact of these facilities and have left that standard in place. They raised various technical concerns and problems with the language, some of which have been tweaked for greater clarity and brought up concerns regarding the Utility and Excavation Permit, which DOT has addressed through a modified process.

Resilience and Race and Equity Mandate

The City also must consider the equity issues around providing adequate cell coverage. The modern reality is that many households, particularly of our younger and/or less economically secure residents, no longer are equipped with land lines or Wi-Fi or other means of high-speed internet access. Many are solely reliant on cell phones as a sole or primary means of conducting business, both public and private via phone calls and, more significantly, data usage. The City itself has seen a greater demand for cellular coverage in its facilities from its residents and City Hall itself has been the subject of several upgrades over recent years to greatly strengthen the Wi-Fi and cellular signal strength within City Hall and numerous other public facilities at the request of both staff and residents in order to more allow for the more efficient conduct the public's business.

Given the imposed constraints, however, City staff are still reviewing opportunities to leverage the investment from Telecommunications providers to increase benefits for residents, specifically with the lens of advancing equity in digital access and services. The City aims to follow models like the City of San Jose by using license agreements to encourage investments that address the digital divide, increase the efficiency of City operations, and make Oakland more resilient. For example, expanded broadband infrastructure and public Wi-Fi could address historic inequities as high-speed internet as detailed in 2018 Oakland Equity Indicators Report.

CONCLUSION

The Federal regulatory actions by the FCC have put Oakland as well as every other city and municipality in a bind as we have to respond to their rulemaking. That is the reason for adopting these standards, which the FCC gave the City the right to adopt. The failure to adopt standards would not stop our overall changes to process, would not mean we could continue to bring these items to Planning Commission; it would simply mean we would have no restrictions or controls whatsoever. It could mean Telecommunications facilities anywhere and everywhere, without restraint.

One thing to bear in mind is that most of the process for approving Telecommunications facilities comes from, both now and historically, the Federal government and it is really only that entity that can change these laws in a meaningful way. Certainly, the Planning Commission can't overturn these federal rules and, while engaging our City Council may be helpful on some levels, even the City Council and any ordinance it passes needs to be in conformance with federal law, including with regard to health concerns.

The recent FCC rulings assumes Cities and other municipalities shall make sure its facilities are available to Telecommunications providers in their rights-of-way. This is not a new trend of the current administration but has been a path the Federal government has been on since at least 1996. Indeed, each administration has chipped away at the authority of local jurisdictions to regulate these facilities as they see fit to encourage the development of these facilities. The Federal perspective is that this is essential infrastructure for the future of our nation as we move away from wired devices to faster and mobile internet infrastructure. As long as the Federal government has this viewpoint, it is reasonable to expect more of this in the future.

These Standards are now in effect. Staff continues to monitor the Federal environment on the topic of Telecommunications as well as the progress of the litigation against the two FCC orders last year. Staff reserves the right to modify the guidelines further to react to changing circumstances.

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ATTACHMENTS

A. Final Design Standards for Small Wireless Facilities Located in the Public Right-of Way

B. June 19, 2019 Director's Report with attachments

   a. DRAFT Design Standards for Small Wireless Facilities Located in the Public Right-of Way dated May 29, 2019

   b. Zoning Code Bulletin 2005 Telecom Exclusions revised April 8, 2015

   c. Telecommunications Background

   d. FCC Order https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf

   e. Design Review Exemption checklist (existing)

   f. Public Comment on Draft Design Standards

C. ONAG Community Group July 11, 2019 Meeting Minutes

D. Photographs (Telecommunications Facilities recently installed Downtown in the public right-of-way)

E. Additional Public Comment

CITY OF OAKLAND

DESIGN STANDARDS FOR SMALL WIRELESS FACILITIES LOCATED IN THE PUBLIC RIGHT-OF-WAY

Title, purpose, and applicability.

The purpose and intent of these design standards are to provide a uniform set of standards for the development, location, siting and installation of Small Wireless Facilities located in the public right-of-way. These design standards are intended to balance the needs of wireless communications providers, the regulatory functions of the City of Oakland, the mandates of State and Federal law, and the potential impacts on the community and neighboring property owners in the design and siting of Small Wireless Facilities located in the public right-of-way. The design standards are designed to promote and protect the public health, safety, welfare, and the visual quality of the City of Oakland while encouraging the appropriate development of Small Wireless Facilities, and may be amended from time to time as reasonably necessary to achieve these goals. These design standards shall only apply to Small Wireless Facilities located in the public right-of-way, and shall be in addition to any other design criteria or regulations specified in the Oakland Municipal Code.

Definitions.

The following specific definitions shall apply in reviewing applications according these design standards:

"Antenna" means an apparatus designed for the purpose of emitting radiofrequency radiation, to be operated or operating from a fixed location for the transmission of signals, data, images, and sounds of all kinds.

"Antenna equipment" includes the transmitting device and on-site equipment, switches, wiring, cabling, power sources, shelters, or cabinets.

"Collocation" exists when a wireless communications provider mounts equipment on a pre-existing pole.

"Ornamental pole" refers to poles of the Claremont, Forrest Park, Merriweather, or Washington style, as depicted in Exhibit A to these guidelines.

"Equipment cabinet" means a cabinet or other enclosure used to house equipment used by telecommunications providers at a facility.

"Related equipment" means all equipment ancillary to the transmissions and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable, conduit and connectors, and also includes the antenna equipment and any pre-existing associated equipment on the structure.

"Small Wireless Facilities" means telecommunications facilities that meet each of the following conditions:

(1) The facilities— (i) are mounted on structures fifty (50) feet or less in height including their antennas, or (ii) are mounted on structures no more than ten percent (10%) taller than other

adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent (10%), whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment is no more than three (3) cubic feet in volume;

(3) All other related equipment, including the antenna equipment, is no more than twenty-eight (28) cubic feet in volume;

(4) The facilities do not result in human exposure to radio frequency radiation in excess of the applicable Federal safety standards.

General Development Standards for Small Wireless Facilities Located in the Public Right-of-Way – Department of Transportation.

A. Installation and development.

1. Each request should identify the proposed site using nearest address, nearest assessor parcel number, street light pole number, and mapped coordinates (by GIS or other method approved by City), describing in reasonable detail the type of existing light pole, proposed Small Wireless Facility and method of installation, attachment and connection with utilities and the Network, and a photo simulation from at least three reasonable line-of-site locations near the proposed project site.
2. Small Wireless Facilities shall not be closer than two hundred (200) feet from any other Small Wireless Facility unless the applicant is asked to move a proposed antenna location (See Section H) and by so doing would have to move to within 200-feet of an existing or approved but not yet constructed facility. The applicant will be responsible for submitting evidence at the time of application to the satisfaction of City Planning that they are not within 200-feet of any existing or approved but not yet constructed facility.
3. Small Wireless Facilities in the public right-of-way shall be located on existing non-ornamental light poles, utility poles or other support structures, except as otherwise permitted herein.
4. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.
5. Use of traffic signal poles will not be allowed.
6. New poles will be allowed where there is a demonstrated lack of a suitable pole in existence and where there is a demonstrated need to fill a coverage gap. For the purposes of this section a new pole is defined as a brand new facility, where no pole currently exists, not a replacement pole that has been engineered to carry the weight of an antenna.

B. Permits

1. Permit applications must be approved by the City Planning and/or Building Department and the Real Estate Department. When the installation involves a City pole, the Department of Transportation Streetlighting Administration must also approve the application.

2. The City of Oakland Utility Company Excavation Permit Application is available on the internet. The permit process, timeline and documentation required for review and approve of the work are listed in the application package. First-time applicants are encouraged to contact the senior engineering technician at DOTpermits@oaklandca.gov for a preapplication meeting.

C. Facility, Equipment, Wiring and Cabling

1. Light poles and other city-owned utility poles or other support structures showing signs of damage or corrosion shall be replaced prior to installation. New foundations and pull boxes with bolted covers may be required when replacement of the streetlight pole is necessary.
   a. Replacement poles must match adjacent poles in style and form (round, octagonal, fluted, tapered, etc.)
   b. Existing High Pressure Sodium (HPS) or other non-LED street light fixtures shall be upgraded to LED fixtures as approved by the City.
   c. Over-head wiring connecting the street light fixtures shall be undergrounded as part of the antenna installation work.
   d. Splicing of Telecommunication fibers, conduits, and conductors shall be performed in a Telecommunication pull box.
   e. A 40A fuse shall be installed in the fusible link to be located within the Telecommunication pullbox.
2. Small Wireless Facilities may not be mounted on ornamental poles. The City may approve Small Wireless Facilities located inside of a matching replacement pole capable of containing the facilities entirely within the pole.
3. Small Wireless Facilities may not be mounted on street light poles which has a contactor located on the pole. The contactor has a blue photo-cell mounted on the main street light pole. See example provided in Exhibit C – Street Light pole with contactor.
4. Luminaires to be replaced on existing poles must be re-installed with a LED luminaire approved by the City.
5. Pole number labels, if incorrect or missing, shall be corrected and installed.
6. Poles with previously permitted Telecommunications Facilities require a new permit application for additional antennas.
7. Except for wiring and cabling, Small Wireless Facilities shall be located entirely on the subject pole, including any utility meter, unless the City determines based on evidence provided by the applicant that such installation is infeasible. The maximum dimensions of a ground-mounted equipment cabinets are thirty (30) inches wide by thirty (30) inches deep by four (4) feet high. Ground-mounted equipment cabinets must be square in shape, installed flush to the ground and shall be painted to match features around the existing structure. Ground mounted equipment on sidewalks must not interfere with the flow of pedestrian traffic and must conform to the Americans with Disabilities Act (ADA) in regards to appropriate sidewalk spacing.

8. Telecommunications Facilities shall not interfere with City operations, e.g. sign and signal visibility.

9. Telecommunications Facilities shall be designed in accordance with the requirements for streetlight facilities and appurtenances including: hardware, corrosion protection, signs, labels and matching finish.

D. Construction Period Requirements

1. The applicant must submit fully-dimensioned site plans, elevation drawings and structural calculations prepared, sealed, stamped and signed by a Professional Engineer. Drawings must depict any existing wireless facilities, with all existing transmission equipment identified; other improvements; the proposed facility, with all proposed transmission equipment and other improvements; and the boundaries of the area surrounding the proposed facility and any associated access or utility easements or setbacks.

2. All installation work shall be performed lien-free, in a skillful and workmanlike manner, only by qualified and properly trained persons and appropriately licensed contractors. Contractors should have bonds to guarantee performance of the work all in form and content acceptable to the City.

3. A schedule for the proposed work, as well as the list of all contractors authorized to enter the sites, should be delivered thirty (30) days prior to the installation of the small wireless facility. To the extent reasonably feasible, work shall be coordinated with any parties to perform work jointly in the City's ROW, provided that such parties has obtained any required permits or other approvals from the City applicable thereto.

4. The applicant shall coordinate work to avoid any interference with existing utilities, substructures, facilities and/or operations at the site.

5. When projects require excavation, the City will determine whether surplus conduit is available in the project area and whether joint trenching or boring is feasible.

E. Appearance

1. Antennas shall be covered by appropriate casings that are manufactured, textured and painted to match features found on the existing structure.

2. Equipment cabinets shall be of the same type and design of the surrounding utility structures, and screened from public view by using materials and colors consistent with surrounding backdrop. The equipment cabinet must be maintained per industry standards.

3. All reasonable means of reducing public access to the antennas and equipment must be made, including, but not limited to, placement on structures.

4. Except when Small Wireless Facilities are attached to a wooden pole, exposed wires are not permitted.

5. Small Wireless Facilities must meet the size and height limitations within the definition of Small Wireless Facilities, above.

F. Site Location Preferences

New Small Wireless Facilities in the public right-of-way shall be located in the following areas in order of preference:

a. Areas that are not located adjacent to a public park (city, regional or state); or within a designated Historic Area of Primary Importance (API). or Secondary Importance (ASI).

b. Areas that are located adjacent to a public park (city, regional or state); or within a designated Historic Area of Secondary Importance (ASI).

c. Areas that are located within a designated Historic Area of Primary Importance (API).

Facilities locating in an a-ranked preference area do not require a site alternatives analysis. Facilities proposing to locate in a b- or c-ranked preference area, inclusive, must submit a site alternatives analysis as part of the required application materials. A site alternatives analysis shall, at a minimum, consist of:

1. The identification of all A-ranked preference sites within two-hundred (200) feet of the proposed location. If more than three (3) A-ranked preference sites exist, the three such closest to the proposed location shall be required.
2. Written evidence indicating why each such identified alternative cannot be used. Such evidence shall be in sufficient detail that independent verification, at the applicant's expense, could be obtained if required by the City of Oakland Zoning Manager. Evidence should indicate if the reason an alternative was rejected was technical (e.g. incorrect height, interference from existing Radio Frequency (RF) sources, inability to cover required area) or for other concerns (e.g. refusal to lease, inability to provide utilities).

If the City determines based on the required site alternatives analysis that the preferred-location alternatives are not feasible, then the Small Wireless Facility may be installed in a non-preferred location.

G. Radio Frequency Emissions Standards.

The applicant shall submit written documentation demonstrating that the emissions from the proposed project, combined with the baseline Radio Frequency (RF) emissions condition at the proposed location, are within the limits set by the Federal Communications Commission or any such agency who may be subsequently authorized to establish such standards.

The applicant for all Small Wireless Facilities, including requests for modifications to existing facilities, shall submit the following verification:

1. With the initial application to the Planning Bureau, a RF emissions report, prepared by a licensed professional engineer or other expert, indicating that the emissions from the proposed project, combined with the baseline RF emissions condition at the proposed location and other approved by not yet constructed telecommunications facilities, will be within the current acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards; and
2. Prior to final DOT Permit sign off, a second RF emissions report indicating that the actual, measured emissions from the project upon operation, combined with the baseline RF emissions condition at the project location and other approved by not yet constructed telecommunications facilities, is within the acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards shall be submitted to the Planning Bureau for review.

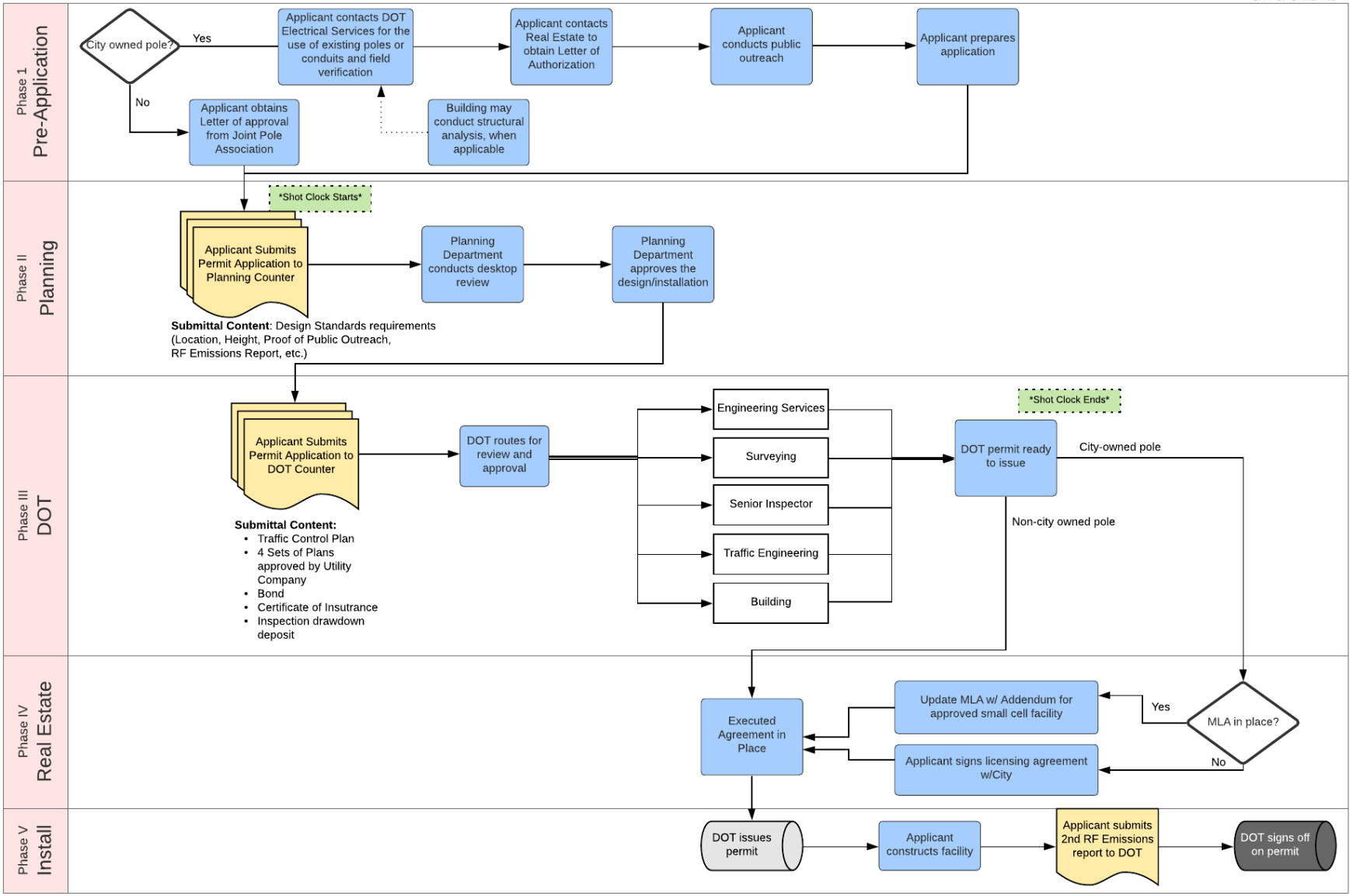
If the RF emissions report show required mitigations to bring the Small Wireless Facility into compliance with the applicable standards, such mitigation measures shall be shown on all plans and constructed as designed. Should any modifications to the exterior appearance be required, DOT will consult with Planning to see if additional Design Review is necessary.

H. Public Outreach

As a requirement of submittal to the Planning Bureau, the applicant shall show proof that they held a community meeting for each site under consideration. The information shall include location, date and time of the meeting, number of attendees and whether any modifications requested by the public were accommodated and what those accommodations are.

Small Wireless Facilities
Review Process

CITY OF OAKLAND



August 16, 2019

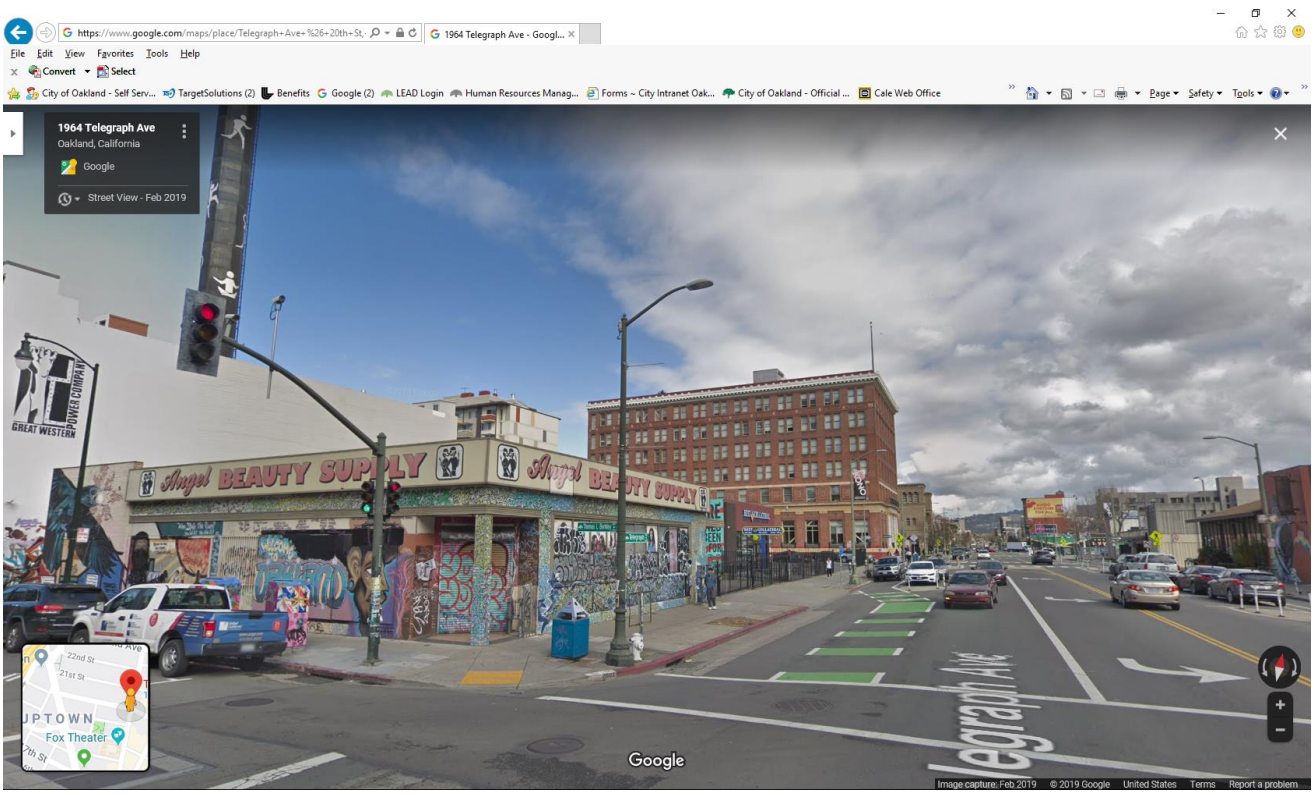
EXHIBIT A - TYPES OF POLE STYLES

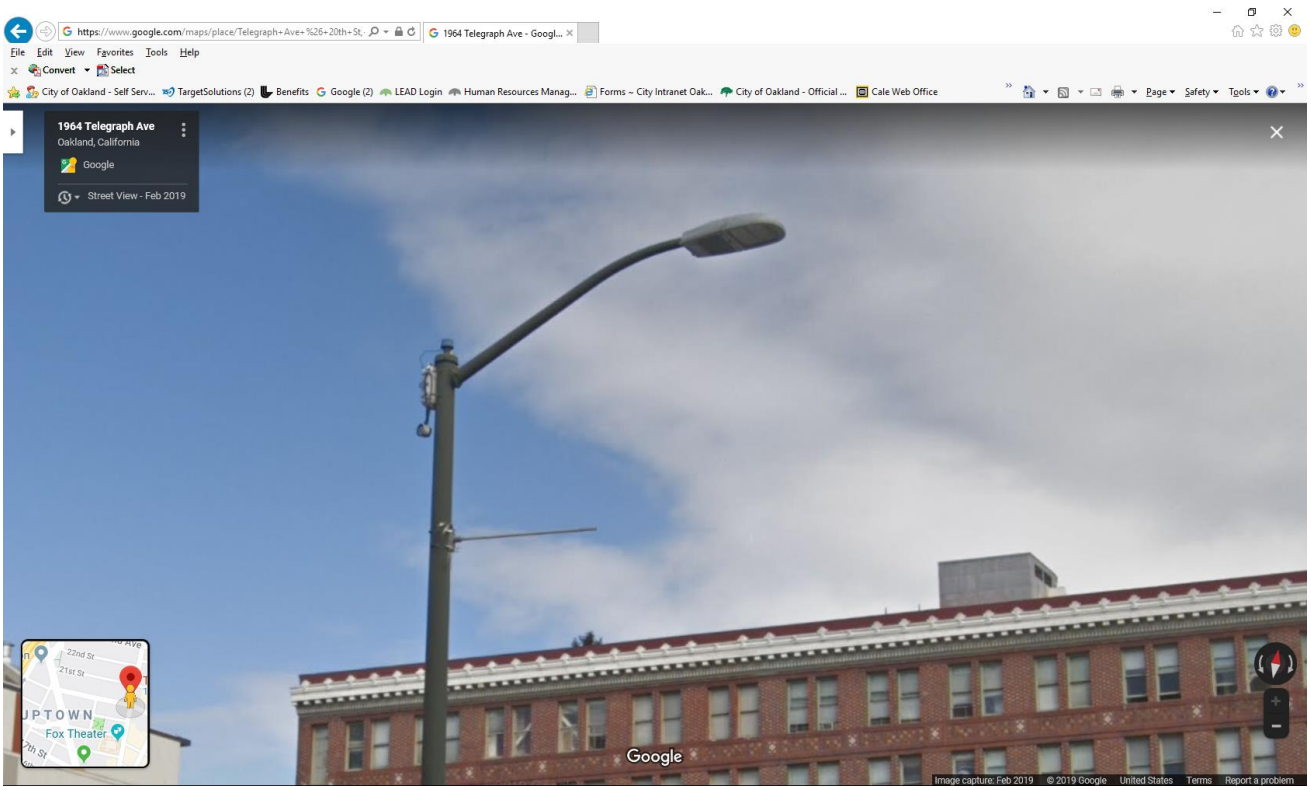
EXHIBIT B – POLE STANDARDS

See Street Light Design Manual here:
http://www2.oaklandnet.com/oakca1/groups/pwa/documents/policy/oak044193.pdf

EXHIBIT C – EXAMPLE STREET LIGHT POLE WITH CONTACTOR

Telegraph Ave. and 20th Street





August 16, 2019

Discussion Item: Update to Zoning Regulations For Telecommunications Facilities

PURPOSE AND BACKGROUND

The purpose of this report is to introduce the Planning Commission to an update to zoning procedures for Telecommunications Facilities. The update would change how the City processes applications for these facilities when located in the public right-of-way (ROW); and is driven by Federal Communications Commission (FCC) Order Regarding Small Cell Wireless Facility Installation (issued September 26, 2018 and effective January 14, 2019; the "FCC Order"). On May 29, 2019 the Planning and Building Department issued draft design standards for Telecommunications Facilities in the public ROW with a 30-day comment period, as discussed in this report **(Attachment A)**. Staff requests feedback from the Planning Commission and all interested parties on the draft design standards prior to finalization and implementation.

This report will describe:

- the background to Telecommunications regulations in Oakland;
- the recent FCC Order;
- the City's draft design standards for Telecommunications Facilities in the public ROW, and;
- next steps to finalize and implement compliant design standards

Background

The City of Oakland's Telecommunications Regulations were adopted in response to previous FCC changes in 1996. Historically in the 1990s and 2000s most telecommunications facilities were sited on rooftops. In the last decade, many small cell sites have been located in the public right-of-way (sidewalk or street) on utility or City street light poles. This generally involves DAS or Small Cell Site technology. Initially, the Planning Bureau did not review the telecommunications applications in the ROW as Planning staff does not typically exercise any review authority over utilities in the ROW. However, in response to a 2009 State Supreme Court decision (*Sprint v. Palos Verdes Estates*) stating that cities could consider aesthetics in making their decisions on such telecommunications facilities, the City has required Design Review for utility pole sites and a Conditional Use Permit and/or Variance for City light pole sites. At the time, this decision was not codified in the City regulations but was memorialized in a Zoning Manager's bulletin as appropriate policy to implement the court's decision.

Staff review sought the smallest possible antenna and equipment, with concealment, minimal view obstructions, and submittal of satisfactory emissions reports. Telecommunications proposals have been controversial in various neighborhoods over the years. The permit process also involves the City's Real Estate Department for City light pole sites as well as the Building Bureau and Department of Transportation (encroachment permit) for all public right-of-way sites. The current review process has been to request a decision by the Planning Commission for proposals located within or adjacent to residential zones. In 2015, subsequent Federal changes relaxed the process for modifications to existing sites. This current Planning process is contained in a Zoning Code Bulletin **(Attachment B)**. The Bulletin would be revised as a result of this update to no longer direct staff to apply the requirements of Title 17.128 to Small Cell Telecommunication facilities in the Public Right of Way. (For additional background information regarding telecommunication regulations in Oakland, see **Attachment C**)

Attachment B

The recent FCC Order permits staff to apply only *objective* standards to Small Cell Telecommunications Facilities in the right of way, in effect eliminating discretionary review of such projects when they meet the City's standards. Additionally, fees must be reduced to an amount that would not cover the costs of discretionary review. The FCC Order further shortened the review timelines that must be adhered to, such that taking each application to the Planning Commission would be impossible. The FCC permits jurisdictions to develop their own design standards (so long as they are considered objective, reasonable and no more burdensome than standards applied to other types of infrastructure deployments), which can include exclusions for items such as proposals on ornamental poles or within historic districts. To that end, staff is soliciting feedback on draft design standards in order to inform the final content of the City's standards. The resulting document will in turn guide the revised telecommunications review process and will ensure that staff will take into account appropriate design standards when reviewing each application. The revised process, pursuant to Federal requirements, would likely consist of review and approval of compliant applications at the permit center. Therefore, pursuant to FCC Order, going forward many telecommunications projects would not involve public notification, discretionary approval, or appeal rights. This is the only feasible way the City can comply with the FCC Order.

FCC Orders 2018-2019

On September 26th, 2018, the Federal Communications Commission adopted the FCC Order with the aim of facilitating the deployment and expansion of the wireless telecommunications network nationwide through the deployment of "small wireless facilities" in public rights-of way in the United States. This order formally went into effect on January 14th, 2019 and applies to 5G as well as 4G technology.

The FCC Order does several things:

1. It requires jurisdictions to make available its facilities within the ROW such as street lights and utility poles to carriers.
2. It establishes new "shot clock" deadlines limiting city review to 60 days for alterations to existing facilities and 90 days for new installations (the previous shot clock provisions were 90 and 150 days respectively).
3. It precludes the prohibition of certain types of technology so long as it is shown to be FCC compliant.
4. It permits cities to adopt aesthetic standards for telecommunications facilities so long as they are A) reasonable, B) no more burdensome than those applied to similar types of utility installations, C) objective and D) published in advance (the FCC Order provided additional time from the date of the ruling for jurisdictions to develop these standards, a process that is ongoing).
5. It directed cities to take a close look at their fees and scale them appropriately. The order goes so far as to suggest fees in the range of $100-500 per site (for reference, the City of Oakland fees to review a telecommunication facility before Planning Commission typically run ~$9,500 per site).

Additionally, in a separate order in August 2018, the FCC also banned moratoriums, both express and *de facto*, on wired and wireless telecommunications equipment, finding such moratoria to violate Federal law. Examples of express moratoria are statutes, regulations or other written legal requirements that expressly prevent or suspend the acceptance, processing or approval of applications of the type covered in the moratorium. *De Facto* moratoriums are actions taken by the agency that, while not expressly codified into law by ordinance, effectively halt the acceptance, processing or approval of applications and where the result is akin to an express moratorium. This order is being litigated but it is currently in force today and all cities, towns and counties must comply. All in all, the FCC made broad and powerful rulings that affect how small-cell telecommunication applications are processed in the United States.

So where does this leave us? These Federal rulings greatly impact the City's ability to process small-cell, ROW telecommunication permits in the manner we've been used to; reviewing the case and then scheduling before Planning Commission. First, the City does not have the staffing resources available to it to guarantee meeting the reduced shot-clock, indeed the City has admittedly struggled to meet the previous, more generous shot-clocks of 90 to 150 days. Second, this Order gives a substantial fee reduction to telecom carriers that would be unsustainable for us to continue to bring these to the Planning Commission as we do now. The fees must be "presumptively reasonable" and the FCC Order suggests values far lower than what the City currently charges. The suggested fees are so low that the City could no longer recover the costs to bring these items to the Planning Commission. Finally, the order essentially requires the City to grant Small Wireless Facilities within the public ROWs unless the facilities fail to meet pre-existing, objective, design standards. This essentially removes these cases from a discretionary process and instead makes them ministerial. Ministerial permits must be granted if they are found to conform to the regulations and any applicable standards. Even our authority over design review has been hindered, withholding discretion over aesthetic review and only allowing the application of pre-written, objective criteria.

https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf

Draft Design Standards
Following are excerpts (underline) and descriptions (*italics*) of pertinent sections of the draft design standards (please note, not all of the standards would be under the purview of the Planning Bureau):

Title, purpose, and applicability.

Design standards address development, location, siting and installation of telecommunications facilities in the public right-of-way; this are typically mounted on utility poles are City street lights

Definitions.

"Small Wireless Facilities" means telecommunications facilities that meet each of the following conditions:

(1) The facilities— (i) are mounted on structures fifty (50) feet or less in height including their antennas, or (ii) are mounted on structures no more than ten percent (10%) taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent (10%), whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment is no more than three (3) cubic feet in volume;

(3) All other related equipment, including the antenna equipment, is no more than twenty-eight (28) cubic feet in volume;

(4) The facilities do not result in human exposure to radio frequency radiation in excess of the applicable Federal safety standards.

The SWF definition would cover most but not necessarily all proposals.

General Development Standards for Small Wireless Facilities Located in the Public Right-of-Way.

A. Installation and development.

A 200-foot distance separation would be required between facilities.

B. Permits

Relevant City departments are listed.

C. Facility, Equipment, Wiring and Cabling

Replacement poles must match original.

No exterior use of ornamental ("decorative") poles.

D. Construction Period Requirements

Detailed construction plans and work schedules shall be required.

E. Appearance

Antennas and equipment shall be concealed in a sheath and painted / texturized to approximate the color and finish of the pole.

F. Site Location Preferences

Historic properties and districts are ineligible unless the City determines there is no feasible alternative.

G. Radio Frequency Emissions Standards.

An initial and final report shall be required evidencing compliance with Federal standards.

Next Steps

The City is currently working on new standards that will apply to Small Wireless Telecommunications Facilities in the ROW. This is a multi-agency process and is being done in large part due to the FCC rule changes. This process is still being finalized but would involve Real Estate, DIT (Department of Information Technology), PBD (Planning and Building Department) and ODOT (Oakland Department of Transportation) in the review process, with the commitment that applications would be processed within the federally mandated 60 days for all processes combined. The following next steps are needed:

- Development of a Design Review Exemption (DRX) checklist specific to applicable telecommunications projects based on the proposed design standards **(Attachment E)**
- Outline the review process at zoning permit counter or in a short period after a counter submittal as DRX permits typically are.
- Apply the Master Fee Schedule $279.99. This fee already exists and is applied to numerous DRX permits.

One aspect of telecommunications review that will not change is for those Telecommunication Facilities proposed on private property. The City will continue to apply the existing zoning regulations within the Planning Code that cover these applications, including Planning Commission review for facilities on private property in Residential Zones.

Outreach

On May 29, 2019, the Planning and Building Department issued draft design standards with a 30-day comment period, as discussed in this report **(Attachment A)**. Public comment received as of the publishing of this report is attached **(Attachment F)**.

RECOMMENDATIONS:

Staff recommends the Planning Commission consider this information, receive public testimony, and provide feedback to staff on the course of action or to return with additional information.

Prepared by:

AUBREY ROSE, AICP
Planner III / Zoning Counter Supervisor

Reviewed by:

ROBERT D. MERKAMP
Zoning Manager

Approved for forwarding to the Planning Commission:

ED MANASSE, Interim Deputy Director
Planning Bureau

ATTACHMENTS

A. DRAFT Design Standards for Small Wireless Facilities Located in the Public Right-of Way dated May 29, 2019

B. Zoning Code Bulletin 2005 Telecom Exclusions revised April 8, 2015

C. Telecommunications Background

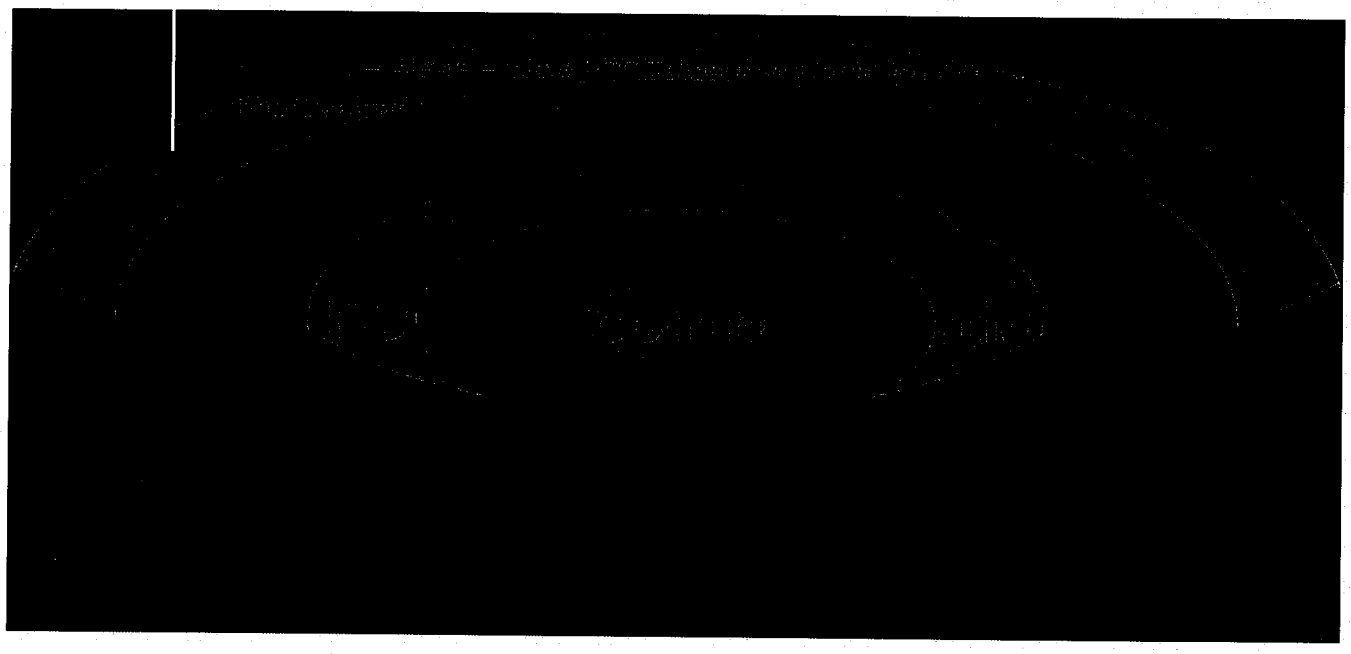
D. FCC Order https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf

E. Design Review Exemption checklist (existing)

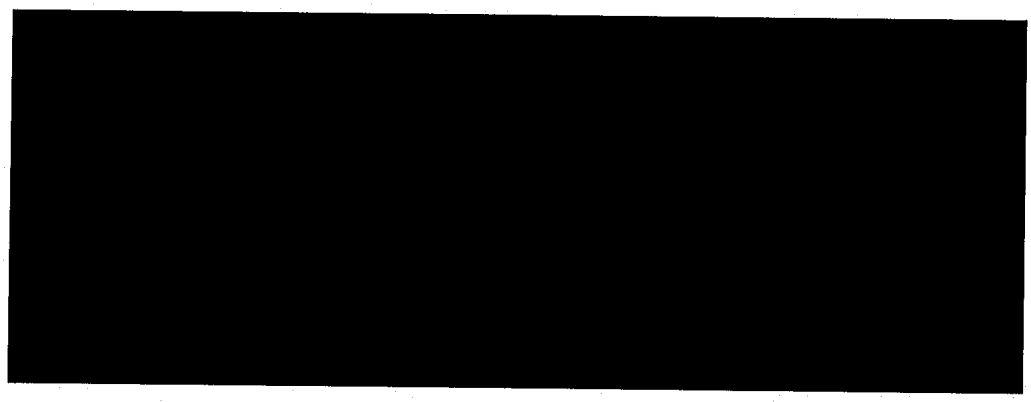
F. Public Comment on draft Design Standards

ATTACHMENT A

DRAFT Design Standards for Small Wireless Facilities Located in the Public Right-of Way dated May 29, 2019



Post Date: Apr 15, 2019



Background:

Small Wireless Facilities (SWF) are antennas that provide cellular and data coverage, helping to form the overall wireless network in the City of Oakland. Effective January 2019, the FCC issued a Declaratory Ruling around telecommunication SWFs. In the Declaratory Ruling, the FCC allowed local entities to review and apply design and siting standards that are objective and encompassing of community aesthetics.

The City of Oakland is creating design and siting standards for these SWFs that are located in the public right-of-way and mounted on telephone and light poles on sidewalks. The forthcoming standards will be applied to new applications for SWFs, giving the City the ability to review these installations for compliance.

Getting Involved:

The City of Oakland wants to make you aware of these new regulations and get your feedback. Once issued, the Planning & Building department will share the standards and encourage open comments from the community for a one-month period. Both community members and telecommunication providers will have the ability to provide feedback.

Staff is preparing these guidelines in accordance with FCC regulations with a 30 day comment period ending close of business Friday June 28, 2019. Click here to view the draft document. Please note, the guidelines will be preliminarily discussed in a Director's Report at the Planning Commission hearing of Wednesday June 19, 2019, at 6:00pm in City Hall. You may submit comments to be considered by the Planning Commission and staff to arose@oaklandca.gov.

Media Contact

L. Autumn King | Public Information Officer | aking2@oaklandca.gov | (510) 220-3101

DRAFT Design Standards for Small Wireless Facilities Located in the Public Right-of-Way

Publish Date: May, 29 2019

DOWNLOAD FILE

Report

Civil Rights Policies &

Procedures

Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

CITY OF OAKLAND

DESIGN STANDARDS FOR SMALL WIRELESS FACILITIES LOCATED IN THE PUBLIC RIGHT-OF-WAY

Title, purpose, and applicability.

The purpose and intent of these design standards are to provide a uniform set of standards for the development, location, siting and installation of Small Wireless Facilities located in the public right-of-way. These design standards are intended to balance the needs of wireless communications providers, the regulatory functions of the City of Oakland, the mandates of State and Federal law, and the potential impacts on the community and neighboring property owners in the design and siting of Small Wireless Facilities located in the public right-of-way. The design standards are designed to promote and protect the public health, safety, welfare, and the visual quality of the City of Oakland while encouraging the appropriate development of Small Wireless Facilities, and may be amended from time to time as reasonably necessary to achieve these goals. These design standards shall only apply to Small Wireless Facilities located in the public right-of-way, and shall be in addition to any other design criteria or regulations specified in the Oakland Municipal Code and any other design or safety standards of other regulatory agencies or entities with jurisdiction over telecommunications facilities in the public right of way.

Definitions.

The following specific definitions shall apply in reviewing applications according these design standards:

"Antenna" means an apparatus designed for the purpose of emitting radiofrequency radiation, to be operated or operating from a fixed location for the transmission of signals, data, images, and sounds of all kinds.

"Antenna equipment" includes the transmitting device and on-site equipment, switches, wiring, cabling, power sources, shelters, or cabinets.

"Collocation" exists when more than one wireless communications provider mounts equipment on a single support structure.

"Concealed from view" means that no part of the antenna may be visible from the public right-of-way within two hundred (200) feet of the antenna.

"Ornamental pole" means poles with fixtures of the Claremont, Forrest Park, Merriweather, or Washington style, as depicted in Exhibit A to these guidelines.

"Equipment cabinet" means a cabinet or other enclosure used to house equipment used by telecommunications providers at a facility.

"Related equipment" means all equipment ancillary to the transmissions and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable, conduit and connectors, and also includes the antenna equipment and any pre-existing associated equipment on the structure.

"Small Wireless Facilities" means telecommunications facilities that meet each of the following conditions:

(1) The facilities— (i) are mounted on structures fifty (50) feet or less in height including their antennas, or (ii) are mounted on structures no more than ten percent (10%) taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent (10%), whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment is no more than three (3) cubic feet in volume;

(3) All other related equipment, including the antenna equipment, is no more than twenty-eight (28) cubic feet in volume;

(4) The facilities do not result in human exposure to radio frequency radiation in excess of the applicable Federal safety standards.

General Development Standards for Small Wireless Facilities Located in the Public Right-of-Way.

A. Installation and development.

1. Each request should identify the proposed site using nearest address, nearest assessor parcel number, street light pole number, and mapped coordinates (by GIS or other method approved by City), describing in reasonable detail the type of existing light pole, proposed Small Wireless Facility and method of installation, attachment and connection with utilities and the Network, and a photo simulation from at least three reasonable line-of-site locations near the proposed project site.
2. Except in cases where collocation is approved, Small Wireless Facilities shall not be closer than two hundred (200) feet from any other Small Wireless Facility located on the same or intersecting street.
3. Small Wireless Facilities in the public right-of-way shall be located on existing non-ornamental light poles, utility poles or other support structures, except as otherwise permitted herein.
4. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.
5. Use of traffic signal poles and streetlight poles with contactors will not be allowed.

B. Permits

1. Permit applications are accepted once the City Planning and/or Building Department and Real Estate Department approve the application. When the installation involves a City pole, the Department of Transportation Streetlighting Administration must also approve the application.
2. The City of Oakland Utility Company Excavation Permit Application is available on the internet. The permit process, timeline and documentation required for review and approve of the work are listed in the application package. First-time applicants are encouraged to contact the senior engineering technician at DOTpermits@oaklandca.gov for a preapplication meeting.

C. Facility, Equipment, Wiring and Cabling

1. Light poles, utility poles or other support structures showing signs of damage or corrosion shall be replaced prior to installation. New foundations and pull boxes with bolted covers may be required when replacement of the streetlight pole is necessary.
   a. Existing poles in the right of way may be replaced with a Smart Pole when applicable.
   b. Replacement poles must match adjacent poles in style and form (round, octagonal, fluted, tapered, etc.)
   c. Existing High Pressure Sodium (HPS) or other non-LED street light fixtures shall be upgraded to LED fixtures as approved by the City.
   d. Over-head wiring connecting the street light fixtures shall be undergrounded as part of the antenna installation work and new foundations with pull boxes will need to be installed.
   e. Splicing of Telecommunication fibers, conduits, and conductors shall be performed in a Telecommunication pull box.
   f. A 40A fuse shall be installed in the fusible link to be located within the Telecommunication pullbox.
   g. Any replacement poles must meet the pole standards within the City's Streetlight Design Manual and/or within the City's Standard Detail for Public Works Construction, Section E, as applicable.
2. Small Wireless Facilities may be not be mounted on ornamental poles. The City may approve Small Wireless Facilities located inside of a matching replacement pole capable of containing the facilities entirely within the pole.
3. Luminaires to be replaced on existing poles must be re-installed with a LED luminaire approved by the City.
4. Pole number labels, if incorrect or missing, shall be corrected and installed.
5. Poles with previously permitted Telecommunications Facilities require a new permit application for additional antennas.
6. Except for wiring and cabling, Small Wireless Facilities shall be located entirely on the subject pole, including any utility meter, unless the City determines based on evidence provided by the applicant and on applicable standards that such installation is infeasible. The maximum dimensions of a ground-mounted equipment cabinets are thirty (30) inches wide by thirty (30) inches deep by four (4) feet high. Ground-mounted equipment cabinets must be square in shape, installed flush to the ground and shall be painted to match features around the existing structure. Ground mounted equipment on sidewalks must not interfere with the flow of pedestrian traffic and must conform to the Americans with Disabilities Act (ADA) in regards to appropriate sidewalk spacing.
7. Telecommunications Facilities shall not interfere with City operations, e.g. sign and signal visibility.
8. Telecommunications Facilities shall be designed in accordance with the requirements for streetlight facilities and appurtenances including: hardware, corrosion protection, signs, labels and matching finish.

D. Construction Period Requirements

1. The applicant must submit fully-dimensioned site plans, elevation drawings and structural calculations prepared, sealed, stamped and signed by a Professional Engineer. Drawings must depict any existing wireless facilities, with all existing transmission equipment identified; other improvements; the proposed facility, with all proposed transmission equipment and other improvements; and the boundaries of the area surrounding the proposed facility and any associated access or utility easements or setbacks.
2. All installation work shall be performed lien-free, in a skillful and workmanlike manner, only by qualified and properly trained persons and appropriately licensed contractors. Contractors should have bonds to guarantee performance of the work all in form and content acceptable to the City.
3. A schedule for the proposed work, as well as the list of all contractors authorized to enter the sites, should be delivered thirty (30) days prior to the installation of the small wireless facility. To the extent reasonably feasible, work shall be coordinated with any parties to perform work jointly in the City's ROW, provided that such parties has obtained any required permits or other approvals from the City applicable thereto.
4. The applicant shall coordinate work to avoid any interference with existing utilities, substructures, facilities and/or operations at the site.
5. When projects require excavation, the applicant shall investigate the availability of surplus conduit in the project area and the feasibility of joint trenching or boring. If the City determines feasible based on information provided by the applicant and based on applicable standards, the use of surplus conduit and/or joint trenching or boring will be required.

E. Appearance

1. Antennas shall be covered by appropriate casings that are manufactured, textured and painted to match features found on the existing structure.
2. Equipment cabinets shall be made compatible with the architecture of the surrounding structures, and screened from public view by using materials and colors consistent with surrounding backdrop. The equipment cabinet must be maintained per industry standards.
3. All reasonable means of reducing public access to the antennas and equipment must be made, including, but not limited to, placement on structures.
4. Except when Small Wireless Facilities are attached to a wooden pole, exposed wires are not permitted.
5. Small Wireless Facilities must meet the size and height limitations within the definition of Small Wireless Facilities, above.

F. Site Location Preferences

New Small Wireless Facilities in the public right-of-way shall be located in the following areas in order of preference:

1. Areas that are not located adjacent to a public park (city, regional or state); or within a designated Historic Area of Primary Importance (API). or Secondary Importance (ASI).
2. Areas that are located adjacent to a public park (city, regional or state); or within a designated Historic Area of Secondary Importance (ASI).

3. Areas that are located within a designated Historic Area of Primary Importance (API).

Facilities locating in an A-ranked preference area do not require a site alternatives analysis. Facilities proposing to locate in a B- or C-ranked preference area, inclusive, must submit a site alternatives analysis as part of the required application materials. A site alternatives analysis shall, at a minimum, consist of:

1. The identification of all A-ranked preference sites within five hundred (500) feet of the proposed location. If more than three (3) A-ranked preference sites exist, the three such closest to the proposed location shall be required.
2. Written evidence indicating why each such identified alternative cannot be used. Such evidence shall be in sufficient detail that independent verification, at the applicant's expense, could be obtained if required by the City of Oakland Zoning Manager. Evidence should indicate if the reason an alternative was rejected was technical (e.g. incorrect height, interference from existing Radio Frequency (RF) sources, inability to cover required area) or for other concerns (e.g. refusal to lease, inability to provide utilities).

If the City determines based on the required site alternatives analysis that the preferred-location alternatives are not feasible, then the Small Wireless Facility may be installed in a non-preferred location.

G. Radio Frequency Emissions Standards.

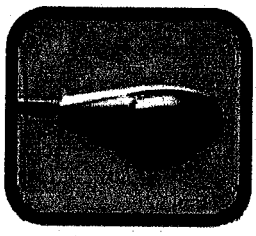
The applicant shall submit written documentation demonstrating that the emissions from the proposed project, combined with the baseline Radio Frequency (RF) emissions condition at the proposed location, are within the limits set by the Federal Communications Commission or any such agency who may be subsequently authorized to establish such standards.

The applicant for all Small Wireless Facilities, including requests for modifications to existing facilities, shall submit the following verification:

1. With the initial application, a RF emissions report, prepared by a licensed professional engineer or other expert, indicating that the emissions from the proposed project, combined with the baseline RF emissions condition at the proposed location, will be within the current acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards; and
2. Prior to final Building Permit sign off, a second RF emissions report indicating that the actual emissions from the project upon operation, combined with the baseline RF emissions condition at the project location, is within the acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards.

EXHIBIT A – FIXTURE STYLES ON CORRESPONDING POLES

Claremont



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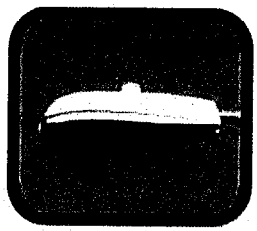

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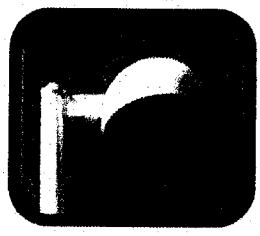
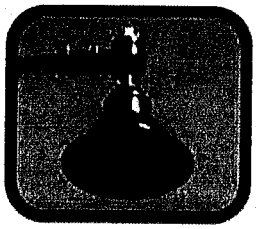
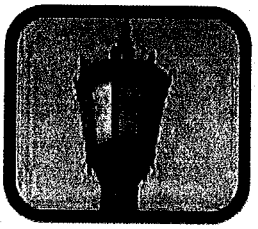


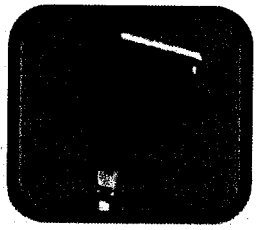
Contemporary



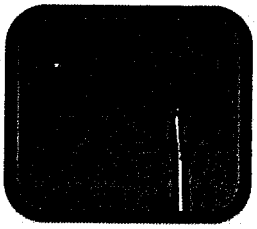
Domus



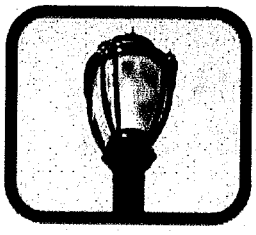
Forrest Park



Gull Wing

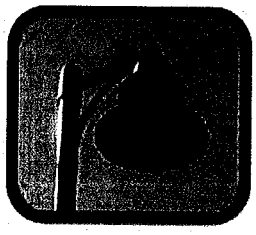


Icon Slide



Merriweather

Tear Drop



Universe

Washington

ATTACHMENT B

Zoning Code Bulletin 2005 Telecom Exclusions revised April 8, 2015

Planning and Building Department

ZONING CODE BULLETIN

DATE EFFECTIVE: April 8, 2015 (original issue date: April 23, 2013)

ZONING TOPICS: Exclusions from the Telecommunications Regulations (Chapter 17.128) for minor modifications to existing telecommunications facilities and Applications for Joint Utility Pole Mounted Telecommunications Facilities

PERTINENT CODE SECTION: 17.128.020 Telecommunications Regulations/Exclusions, 17.128.025 Restrictions on telecommunications facilities; 17.136 Design Review Procedure

QUESTIONS:

(1) How does the Planning and Zoning Division interpret and process applications for proposed modifications subject to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1455) ("Section 6409(a)") as implemented by 47 C.F.R. 1.40001 ("FCC Regulations"); this relates to what constitutes a "minor modification" to an existing telecommunications facility for purposes of exclusion from zoning approvals under Section 17.128.020 of the Planning Code; and

(2) How does the Planning and Zoning Division interpret Section 17.128.025 of the Planning Code and process applications for proposed joint (utility) pole mounted telecommunications facilities subject to California Public Utilities Code section 7901?

QUESTION 1) Section 6409(a)

Section 6409(a) and recently adopted FCC Regulations that implement Section 6409(a) mandate approval of requests for specified modifications to existing telecommunications facilities that do not "substantially change" the physical dimensions of the telecommunication facilities. Requests for such modifications are quite routine, and typically involve replacements of antennas, equipment cabinets, and other related equipment. Section 17.128.020 of the Planning Code exempts "minor modifications of existing wireless communications facilities" from the City's Telecommunications Regulations. The purpose of this Zoning Code Bulletin is to clarify that "minor modifications" to existing telecommunications facilities shall be those modifications that fall within the scope of Section 6409(a) and the FCC Regulations, to describe the City's interpretation of Section 6409(a) and the FCC Regulations, and to update applicable timelines for processing of such applications. ***Projects subject to Section 6409 have been subject to a Small Project Design Review ("DS-1"), generally decided by staff at the Zoning Counter; under updated regulations mandated by the FCC, a wider range of projects will now be subject to a DS-1 Zoning Permit procedure (See Sections C1-3 & D1-4, below).***

A. Overview. To the extent expressly required by Section 6409(a) and the FCC Regulations, previously approved telecommunications facilities may be modified in a manner that does not substantially change the physical dimensions of the telecommunications facility's Tower or Base Station as set forth in sections (C) and (D) below.

B. Definitions. Terms used in this Zoning Code Bulletin have the following meanings:

1. "Base Station" means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network, including (a) equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul and (b) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks). Base Station does not include Tower.

2. "Collocation" means the mounting or installation of transmission equipment on the Base Station or Tower of an existing telecommunication facility for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

3. "Site" means (a) for Towers other than Towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the Site, and, (b) for all other Towers or Base Stations, further restricted to that area in proximity to the Tower or Base Station and to other Transmission Equipment already deployed on the ground.

4. "Transmission Equipment" means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

5. "Tower" means any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

C. Towers Outside of the ROW. Any request to modify a Tower located outside of the public right of way for the Collocation, removal or replacement of Transmission Equipment shall be approved pursuant to section (E) unless it meets any of the following criteria:

1. It increases the height of the Tower by more than ten percent (10%) or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;

2. It involves adding an appurtenance to the body of the Tower that would protrude from the edge of the Tower more than twenty (20) feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater;

3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets;

4. It entails any excavation or deployment outside the Site;

5. It would defeat the concealment elements of the Tower;

6. It does not comply with existing conditions of approval for the Tower provided that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in this subsection; or

7. It does not comply with applicable building codes or other applicable health and safety standards.

D. Other Telecommunications Facilities. Any request to modify a Base Station or a Tower located within the public right of way for the Collocation, removal or replacement of Transmission Equipment shall be approved pursuant to section (E) unless it meets any of the following criteria:

1. It increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater;

2. It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;

3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets;

4. It involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure;

5. It entails any excavation or deployment outside the Site;

6. It would defeat the concealment elements of the Tower or Base Station;

7. It does not comply with existing conditions of approval for the Tower or Base Station provided that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in this subsection; or

8. It does not comply with applicable building codes or other applicable health and safety standards.

E. Zoning Manager Review and Approval.

1. Any applicant requesting review pursuant to Section 6409(a) and/or the FCC Regulations shall do so at the time the initial application is filed with the City and shall submit a photo-simulation of the proposed modification and a RF (Radio Frequency) emissions report, prepared by a licensed professional engineer or other expert, indicating that the proposed site will operate within the current acceptable thresholds as established by the Federal government or any such agency who may be subsequently authorized to establish such standards. However, projects involving accessory equipment only and not antennas and/or equipment cabinets need not submit photo-simulations and RF Reports, unless specifically requested for due cause on a case-by-case basis. Moreover, the Zoning Manager shall accept such application upon payment of the applicable fee. Except as otherwise provided, the application shall be considered a "minor modification" under Section 17.128.020 of the Planning Code and shall be processed as a Small Project Design Review under Section 17.136.030 of the Planning Code.

2. Upon application submittal, the Zoning Manager shall review the application to determine if it meets the requirements of section (C) or (D). The Zoning Manager may require additional information from the applicant as necessary to make this determination. Subject to section (F), the Zoning Manager shall approve a request that meets the criteria of section (C) or (D). However, the Zoning Manager may condition the approval on compliance with applicable building codes or reasonable health and safety standards.

3. The timeline ("shot clock") for the Zoning Manager to review applications for compliance with Section 6409(a) is 60 days from the date the application is filed and accepted by the City, and the shot clock is tolled or paused if an application is deemed incomplete. The City must send written notice of incompleteness specifically identifying all missing documents and information within 30 days of receipt, and must send written notice of incompleteness no later than 10 days following a supplemental submission to notify the applicant if the supplemental submission did not provide information identified in the prior notice. Alternatively, the applicant and the Zoning Manager may agree to extend or toll the shot clock.

F. Effect of Changes to Federal Law. This section does not and shall not be construed to grant any rights beyond those granted by Section 6409(a) as implemented by the FCC Regulations. In the event Section 6409(a) or the FCC Regulations are stayed, amended, revised or otherwise not in effect, no modifications to a telecommunications facility shall be approved under section (E).

QUESTION 2) California Public Utilities Code section 7901

Section 17.128.025 of the Planning Code, which provides, "[a]ny Telecommunications Facility shall not be permitted in, or within one hundred (100) feet of the boundary of, any residential zone, HBX Zone, or D-CE-3 or D-CE-4 Zone, except upon the granting of a major conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134", does not apply to telecommunications facilities located on joint utility poles located in the public right of way.

The California Public Utilities Code provides certain telecommunications companies with a right to construct telecommunications facilities "in such manner and at such points as not to incommode the public use of the road or highway", and states that "municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed." (Cal. Pub. Util. Code, §§ 7901, 7901.1.) In 2009, the Ninth Circuit Court of Appeal held that the City may consider aesthetics with respect to the siting of telecommunications facilities within its rights-of-way (see Sprint PCS Assets, LLC v. City of Palos Verdes Estates (9th Cir. 2009) 583 F.3d 716, 725). Based on this decision, the City began requiring Design Review for the co-location of telecommunications facilities on existing utility infrastructure located within the rights-of-way, whereas previously these co-location projects had undergone only a ministerial review process (see Planning Commission director's report dated November 17, 2010).

Thus, applications for the co-location of telecommunications facilities on joint utility poles located in the public right of way are subject only to Regular Design Review with additional Design Review findings for Macro Telecommunications Facilities (and any other additional Design Review findings required by the Zoning District), and are decided by the Planning Commission as a Major Permit. In addition to regular and additional design review criteria, these facilities are also subject to the Site Design and Location Preference requirements contained in Chapter 17.128.

REVIEWED AND APPROVED BY:

Scott Miller
ZONING MANAGER

Date Issued: July 15, 2015

REFERENCES

- Planning Code Chapters 17.128, 136

ATTACHMENT C

Telecommunications Background

TELECOMMUNICATIONS BACKGROUND

For several years in the City of Oakland, telecommunications carriers have proposed facility installation within the public right-of-way, instead of private property. These facilities typically consist of antennas and associated equipment attached to utility poles or street light poles. Poles are often replaced with replicas for technical purposes. The main purpose is to enhance existing service, given increasing technological demands for bandwidth, through new technology and locational advantages. The City exercises zoning jurisdiction over such projects in response to a 2009 State Supreme Court case decision (Sprint v. Palos Verdes Estates). Pursuant to the Planning Code, utility or joint pole authority (JPA) sites are classified by staff as "Macro Facilities," and street light pole sites (lamps, not traffic signals) as "Monopole Facilities." For JPA poles, only Design Review approval may be required, as opposed to Design Review and a Conditional Use Permit, for example. For non-JPA pole sites, such as City light poles, projects also require review by the City's Public Works Agency (PWA) and Real Estate Division, and involve other considerations such as impacts to historical poles. The PWA may also review projects involving street lights. In either case, the practice has been to refer all such projects to the Planning Commission for decision when located in or near a residential zone.

Several projects for new DAS (distributed antenna services) facilities have come before the Planning Commission for a decision and have been installed throughout the Oakland Hills. Some applications have been denied due to view obstructions or propinquity to residences. Improved practices for the processing of all types of sites incorporating Planning Commission direction have been developed as a result. Conditions of approval typically attach requirements such as painting and texturing of approved components to more closely match utility poles in appearance. Approvals do not apply to any replacement project should the poles be removed for any reason. As with sites located on private property, the Federal Government precludes cities from denying an application on the basis of emissions concerns if a satisfactory emissions report is submitted. More recent Federal changes have streamlined the process to service existing facilities.

Currently, telecommunications carriers are in the process of attempting to deploy "small cell sites." These projects also involve attachment of antennas and equipment at public right-of-way facilities such as poles or lights for further enhancement of services. However, components are now somewhat smaller in size than in the past. Also, sites tend to be located in flatland neighborhoods and Downtown where view obstructions are less likely to be an issue. Good design and placement is given full consideration nonetheless, especially with the greater presence of historic structures in Downtown. Additionally, given the sheer multitude of applications, and, out of consideration for Federal requirements for permit processing timelines, staff may develop alternatives to traditional staffing and agendizing.

Limitations on Local Government Zoning Authority under the Telecommunications Act of 1996

Section 704 of the Telecommunications Act of 1996 (TCA) provides federal standards for the siting of "Personal Wireless Services Facilities." "Personal Wireless Services" include all commercial mobile services (including personal communications services (PCS), cellular radio mobile services, and paging); unlicensed wireless services; and common carrier wireless exchange access services. Under Section 704, local zoning authority over personal wireless services is preserved such that the FCC is prevented from preempting local land use decisions; however, local government zoning decisions are still restricted by several provisions of federal law. Specifically:

- Under Section 253 of the TCA, no state or local regulation or other legal requirement can prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

- Further, Section 704 of the TCA imposes limitations on what local and state governments can do. Section 704 prohibits any state and local government action which unreasonably discriminates among personal wireless providers. Local governments must ensure that its wireless ordinance does not contain requirements in the form of regulatory terms or fees which may have the "effect" of prohibiting the placement, construction, or modification of personal wireless services.

- Section 704 also preempts any local zoning regulation purporting to regulate the placement, construction and modification of personal wireless service facilities on the basis, either directly or indirectly, on the environmental effects of radio frequency emissions (RF) of such facilities, which otherwise comply with Federal Communication Commission (FCC) standards in this regard. (See 47 U.S.C. Section 332(c)(7)(B)(iv) (1996)). This means that local authorities may not regulate the siting or construction of personal wireless facilities based on RF standards that are more stringent than those promulgated by the FCC.

- Section 704 mandates that local governments act upon personal wireless service facility siting applications to place, construct, or modify a facility within a reasonable time (See 47 U.S.C.332(c)(7)(B)(ii) and FCC Shot Clock ruling setting forth "reasonable time" standards for applications deemed complete).

- Section 704 also mandates that the FCC provide technical support to local governments in order to encourage them to make property, rights-of-way, and easements under their jurisdiction available for the placement of new spectrum-based telecommunications services. This proceeding is currently at the comment stage.

For more information on the FCC's jurisdiction in this area, consult the following:

Competition & Infrastructure Policy Division (CIPD) of the Wireless Telecommunications Bureau, main division number: (202) 418-1310.

Main division website:
https://www.fcc.gov/general/competition-infrastructure-policy-division-wireless-telecommunications-bureau

Tower siting:
https://www.fcc.gov/general/tower-and-antenna-siting

ATTACHMENT D

FCC Order https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf

FCC NEWS from the Federal Communications Commission

Media Contact:
Evan Swarztrauber, (202) 418-2261
Evan.Swarztrauber@fcc.gov

For Immediate Release

FCC Approves Carr's 5G Order

Positions U.S. to Win the Race to 5G, Accelerates Small Cell Build Out

WASHINGTON, September 26, 2018—The FCC reformed the permitting process for small cells, the physical building blocks of 5G, when it approved a major order led by Commissioner Brendan Carr, earlier today. The Commission's order limits the fees regulators can charge for reviewing small cells , sets shot clocks on those reviews, and affirms that they can apply reasonable aesthetic considerations.

"**In the global race to 5G, the stakes are high—it is about economic leadership for the next decade**," Carr said. "The smart infrastructure policies we adopt today strengthen America's role as a tech and economic leader, while ensuring that every community benefits from 5G. Wireless providers are projected to spend $275 billion in the U.S. to build 5G, which represents a massive private sector investment in American infrastructure and jobs—without a penny of new taxes. Today's order streamlines the approval process for 5G small cells and helps ensure that our country will continue to be the innovation hub of the world."

Economists estimate that Carr's order cuts $2 billion in red tape and stimulates $2.4 billion of additional small cell construction. The new wireless infrastructure enabled by the order will provide coverage for nearly two million more homes and businesses—97% of which are concentrated in rural and suburban communities.

"**Streamlining small cell rules will help close the digital divide by making it cost-effective for the private sector to provide coverage in more rural places**," said Carr. "We win the race to 5G not when New York or San Francisco get 5G coverage, but when all Americans—regardless of where they live—have a fair shot at next-gen access."

###

Office of Commissioner Brendan Carr: (202) 418-2200

ASL Videophone: (844) 432-2275
TTY: (888) 835-5322
Twitter: @BrendanCarrFCC
www.fcc.gov/about/leadership/brendan-carr

ATTACHMENT E

Design Review Exemption checklist (existing)

CITY OF OAKLAND
CRITERIA FOR DESIGN REVIEW EXEMPTION

250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031
Phone: 510-238-3911 Fax: 510-238-4730

DESIGN REVIEW EXEMPTION- CHECKLIST PROCEDURE

PURPOSE AND INTENT

The Design Review Exemption standards listed below generally promote the use of matching or compatible building elements, massing and proportions, and exterior materials and treatments. Emphasis is placed on the visual integration of the project with the existing structure(s) on site.

EXTERIOR TREATMENT CONFORMANCE STANDARDS

Using the form below, a Design Review Exemption (DRX) may be issued only if the Planning Department can check "YES" or "N/A" (Not Applicable) to each of the following standards:

WINDOWS:

Windows are important elements in the composition of architectural elevations. In most cases, it is desirable to maintain consistency in window design. A façade of varied window types, proportions or materials, if not carefully designed, can easily end up looking unbalanced or poorly composed. Often windows incorporate details found in other façade elements or proportions similar to those of the building as a whole. Through this practice, an overall balance and integration of forms and proportions can be achieved.

YES ☐ NO ☐ N/A ☐ **If there is a consistent use of one (or more) window types(s), (such as casement, fixed, hung, or other), then additional or replacement windows are of the same or similar type(s).** *If the new windows conform in appearance to those traditionally associated with the building's architectural style, this criterion will be determined to have been met.*

YES ☐ NO ☐ N/A ☐ **If windows are to be added or replaced on the front façade, then the new windows conform in appearance to those on the existing and/or original front façade wherever feasible and appropriate.**

YES ☐ NO ☐ N/A ☐ **If there is a consistent use of windows of substantially similar proportions (such as square, rectangular, arched, vertical, horizontal, or other), then additional or replacement windows are of similar proportions.**

YES ☐ NO ☐ N/A ☐ **If there is a consistency in window material(s), then additional or replacement windows are of the same or similar material(s).** *If the detailing and treatment of the new windows conform in appearance to those of the existing building, this criterion will be determined to have been met.*

YES ☐ NO ☐ N/A ☐ **If there is a consistent use of a particular trim design, (such as painted wood trim with projecting sills), then additional or replacement windows incorporate a similar trim design.** *Proportional reproductions may be allowed if they will be consistent in appearance with that of the existing building.*

YES ☐ NO ☐ N/A ☐ **If there is a consistency in window groupings or composition, then additional or replacement windows are grouped or composed similarly.**

SIDING:

Siding can be used to unify a building composition, to help reduce scale or bulk, and/or to differentiate different building parts or dwelling units. Sometimes different siding is used to strengthen a building's base, to lighten the upper parts of a building, to articulate floor levels or window bands, or to emphasize an entrance. Care should be taken, however, that treatments are employed consistently and that they harmonize with adjacent treatments. When a variety of treatments are to be used, their selection and placement should be governed by a strong design rationale in order to avoid the appearance of a piecemeal application.

YES ☐ NO ☐ N/A ☐ **New siding matches the existing in terms of material (such as dimensional lumber, board and batten, wood shingles, stucco, brick, stone, pressed hardboard resembling wood siding, glass or other), and conforms as closely as possible to the appearance of the existing building.** *Different siding materials may be allowed if the new material(s) will be compatible in appearance with the building's architectural style and character, and its selection and placement is governed by a strong design rationale.*

YES ☐ NO ☐ N/A ☐ **New siding conforms as closely as possible to the siding texture(s) of the existing building (such as smooth, rough, glossy, matte, course, or other).**

YES ☐ NO ☐ N/A ☐ **The siding orientation, pattern or type (if applicable) conforms as closely as possible to the siding orientation, pattern or type of the existing building.**

YES ☐ NO ☐ N/A ☐ **The size, width, or spacing of siding units (if applicable) conforms as closely as possible to the size, width, or spacing of existing siding units.**

YES ☐ NO ☐ N/A ☐ **If there is a consistent use of a particular siding treatment on a particular building part, then new siding on a similar part shares that treatment.**

ROOF:

The design of a building's roof determines a building's basic form and its profile against the sky. The various massing elements of a building can be successfully integrated through the use of similar roof designs. Often the main roof design is repeated in the design of minor roof elements over wings, entryways and dormers. Additions with roofs that vary substantially from the existing roof design run the risk of appearing tacked-on.

YES ☐ NO ☐ N/A ☐ **New roofing matches the existing in terms of shape (such as gable, hip, shed, flat, or other), and conforms as closely as possible to the appearance of the existing roof.**

YES ☐ NO ☐ N/A ☐ **New roofing matches the existing in terms of form (such as steep or moderately sloped, flat, or other), and conforms as closely as possible to the appearance of the existing roof.**

YES ☐ NO ☐ N/A ☐ **New roofing conforms as closely as possible to the materials on the existing roof (such as wood or asphalt shingles, tile, metal, or other).** *If the proposed roofing material conforms in appearance to that of the existing building, this criterion will be determined to have been met.*

EAVES AND OVERHANGS:

One of the most important considerations in the design of a house involves the edge condition where the exterior wall and roof planes meet. Scale, style and sense of protection and enclosure all are affected by the roof's configuration relative to the walls below. The design of eaves and overhangs can also be used to provide desirable shadows that relieve the visual bulk of blank, unbroken wall planes.

YES ☐ NO ☐ N/A ☐ **Additions and alterations match the existing in the design of eaves and overhangs (such as the distance of overhang, and the design and composition of rafters, brackets, soffits, cornices, and/or fascia).**

STYLE AND CHARACTER:

Architectural style refers to a building's look or character and results from the consistent use of a rationally-selected combination of architectural treatments, forms and details. Successful building design often owes itself to a strong consistency in character. If the character of a building is not consistently maintained, or if ornament is not rationally applied, a building which lacks architectural integrity and unity may result.

YES ☐ NO ☐ N/A ☐ **Additions and alterations match the existing in terms of style and character (such as Mediterranean or Colonial Revival, Victorian, Italianate, Craftsman or Shingle, Queen Anne, Bungalow, Prairie, International, or other).**

YES ☐ NO ☐ N/A ☐ **Where applicable, additions and alterations continue the use of architectural elements which lend the existing building its character (such as building form, material, treatment, detailing, ornament, and composition).** *Different materials or proportional reproductions may be allowed if they will be consistent in appearance with that of the existing building.*

SCALE AND PROPORTION:

Architectural balance and integration can also be achieved through the incorporation of similarly sized and shaped elements.

YES ☐ NO ☐ N/A ☐ **Additions and alterations match the existing in terms of scale and proportions (such as height of building, arrangement of masses, shape and form of roof, location of setbacks, width of bays, size and placement of major façade elements (e.g. porches, bays, dormers, balconies and other recesses and projections), and continuity of vertical and horizontal lines).**

DECORATIVE ELEMENTS:

Well composed and unified architectural designs are often marked by a consistency in placement; pattern (or rhythm), and design of decorative elements. Even the most ornate designs usually rely on a limited number of decorative elements used repeatedly in original or slightly adapted form. Piecemeal embellishments applied with no rationale on the one hand and flat unadorned additions which fail to reproduce the richness of the original design on the other should be avoided.

YES ☐ NO ☐ N/A ☐ **If there is a consistent use of decorative elements on the existing building, then new additions and alterations on a similar part share that treatment (such as in the design and composition of columns, capitals, brackets, balustrades, and the like).** *Different materials or proportional reproductions may be allowed if they will be consistent in appearance with that of the existing building.*

I have reviewed the above "Design Review Exemption Standards", and certify that the project conforms to all applicable criteria.

_____ _____

Applicant's Signature Date

_____ _____

Reviewer's Signature Date

ATTACHMENT F

Public comment on
draft Design Standards for Telecommunications Facilities

Rose, Aubrey

From: Johanna Finney <johannafinney@gmail.com>
Sent: Saturday, June 8, 2019 8:08 AM
To: Rose, Aubrey
Cc: Alexis or Ned Schroeder
Subject: Draft Design Standards for Small Wireless Facilities in the PROW
Attachments: ONAG 6-8-19 Feedback on Draft Design Standards for Small Wireless Facilities in the PROW.docx

Date: 6/8/19

To: Aubrey Rose, Planner

Re: Draft Design Standards for Small Wireless Facilities in the PROW

Hello Aubrey,

This is a follow-up to the voice mail I left on Friday. In an effort to maximize staff's time, the Oakmore Neighborhood Advocacy Group has tried to consolidate our questions and concerns into two emails to you. This is the first one from our group. I have attached what you see below in a Word document as well.

We would appreciate your answers to our questions as well as any feedback to our comments by Wednesday, June 12th end of day. We will be meeting as a group with other members of the public that evening to discuss the guidelines and your replies in further detail. You or any other member of the Planning Department staff involved in the guidelines are welcome to attend to hear our concerns and address any further questions. Please let us know if you need meeting location details.

Upmost and most important are the questions, concerns and suggestions in the first section (#1-6). Being first on the list does not diminish the importance or critical nature of the other points (#7-49) and we request please that you incorporate our suggestions into the final draft that goes before the Planning Commission.

Thank you in advance for your assistance.

Best regards,
Johanna Finney
510-282-8561

Questions, Concerns and Suggestions:

1. We understand that shot clocks are tightened, the planning department is overrun with applications, and the telecom companies have partnered with the City on this draft. However, we stand opposed to this draft because it removes all public comment and oversight from the process. Therefore, we insist that the Planning Department and Commissioners create an inclusionary component in this addition to the City's Telecommunications Facilities ordinance that allows for a Citizens Oversight Committee to ensure that all approved requirements are met.
2. What is your process for communicating the public's feedback into the writing/revisions of the draft? Who wrote this draft? Who will be making revisions to it? What is the process for joining a conversation with staff around this so that all concerns are legitimately and thoroughly addressed? We would like to know all the names and positions of staff who have written this draft and approved it, including legal staff.

3. We need a reporting structure included in the draft, as to the timely process for citizen complaints regarding any issues that arise with the installation, maintenance, radio frequency evaluations and remediation of each antenna.
4. Will applications for these installations be accessible on the City's Accela site?
5. Will the paperwork from the applicant as well as the building permit sign-off documentation be accessible on the City's Accela site?
6. Will no small cells be allowed outside of the PROW? Will they not be allowed on private property? If they are allowed outside of the PROW and on private property, what is the process for approving them?
7. Is there a time limit on the leases given by the Real Estate Department? Who follows up on making sure the leases are current?

Title, Purpose, and Applicability:

8. Revise the following statement to include the highlighted words: The purpose and intent of these design standards are to provide a uniform set of standards for the development, location, siting, installation, maintenance and evaluation of Small Wireless Facilities located in the public right-of-way.
9. In reference to the last sentence: "These design standards shall only apply to Small Wireless Facilities located in the public right-of-way and shall be in addition to any other design criteria or regulations specified in the Oakland Municipal Code and any other design or safety standards of other regulatory agencies or entities with jurisdiction over telecommunications facilities in the public right of way." The gigahertz transmitter designed to operate "line of sight" should be sited so that no gigahertz transmissions will pass through/interact with a human being. Site the transmitter so that transmissions will pass over private property as opposed to operating "in the public right of way." Thus, there are no impacts on the private right of way.

Definitions:

10. Add to the Antenna definition: Should be sited to avoid human interaction with the main lobe of the antenna transmitting.
11. Questions re: Ornamental Pole Definition: What makes the non-ornamental pole styles acceptable vs the ornamental pole? Does the City have a standard or master plan in place for pole ornamentation choices throughout the PROW, but no master plan for antennas placement throughout the PROW? While the aesthetics are important, the proliferation of radio frequency antennas has a bigger and longer -term impact.
12. Add to the Small Wireless Facilities Definition (4) the words highlighted in yellow: "The facilities do not result in human exposure to radio frequency radiation **equal to and** in excess of the applicable Federal safety standards."
13. Add to the Definitions the following words that are mentioned in the following sections:
    a. General Development Standards: A.3. - Support Structures
    b. General Development Standards: A.5. – Contactors
    c. General Development Standards: C.1. – Pull Boxes
    d. General Development Standards: C.1.a –Smart Pole
    e. General Development Standards: G. Radio Emissions – Modifications – for example it should include words like collocation, expansion, alteration, enlargement, intensification, reduction or augmentation

General Development Standards

A. Installation and Development:

14. Do the telecom companies have a current CPCN (Certificate of Public Convenience and Necessity) on file? This should be the name that is listed as operator in order to make the link between who the actual parties are in the whole process.
15. Add the following: Permits and leases cannot be transferred even upon merger between companies.

16. A.1. Wooden utility pole should be included in the list of the nearest identifiable location
17. A. 2. Should be **500 feet** from other SWF's **in any direction** which would include same, adjacent and **parallel** streets. This is to avoid placing poles within 500 feet on the opposite side of the block.

B. Permits:

18. Add: Applicants in good standing with the Planning Department can apply for a permit. If an applicant has been found to misrepresent information on a previous application or submit false RF Emission reports, this applicant will be prohibited from applying for any permits with the City for the period of one year. After the one-year, future applications and reports will be subject to audits by the Planning Department to determine continued eligibility.
19. Add: Any telecom company which has five or more approved permits for small wireless facilities (whether or not they are installed yet or are in process at the building department) must provide an updated map with their existing approved permit locations and their proposed locations with every application which will be part of the public record.
20. Add: Permits and leases cannot be transferred even upon merger between companies.
21. B. 1. What is the order of approval by approving departments? What is the time line?
22. B. 1. All are light poles City poles? Are any of the wooden poles City poles? Would a Smart Pole be City owned?

C. Facility, Equipment, Wiring and Cabling

23. C.1.c. Existing High-Pressure Sodium (HPS) or other non-LED street light fixtures shall be upgraded to LED fixtures as approved by the City. Note: the American Disabilities Act comes into play in regard to the PROW not only for physical impediments and access to those covered under the ADA. It also is a matter of access to home and place of business adjacent to the PROW for those who are diagnosed with Electromagnetic Hyper Sensitivity. The EMF and RF load from the facility may be within FCC guidelines, but it may be impeding quality of life for people with this diagnosis. To put LED lights on top of the increased EMF/RF load will cause further impact: **http://theconversation.com/american-medical-association-warns-of-health-and-safety-problems-from-white-led-streetlights-61191**
24. C.1.d. All accessory equipment should be undergrounded except the electric meter with certain exceptions to be determined.
25. C.1.f: a 40A fuse indicates that a lot of energy exists at their SWF. Can the City create power density limits at each facility so as not to overwhelm the PROW's energy load?
26. C. 2. Replacement pole = At whose cost?
27. C. 5. Why does the applicant not required to apply for a new permit for an upgrade to technology? This point should read: Poles with previously permitted Telecommunications Facilities require a new permit application for additional antennas, and antennas that differ in technology from the one that was approved. This is because the newer antennas will be operating on a different frequency of the radio spectrum, potentially in the 24GHz, 28GHz and 36GHz spectrum, which would require new power loads, and require a new RF emissions report due to the increase millimeter microwave radiation emitted.
28. C.6: Why must the cabinets be square?
29. C.6.: Add a requirement that this limit of size (which is a vertical junk yard at 28 cubic feet in volume) be reduced over future years. Maybe 5 cubic feet for 2025. Such equipment already exists from other manufacturers.
30. C.8. Will wireless radiation signs be required on the City light poles? What will they look like once adhered to the pole and what height will they be placed?

D. Construction Period Requirements

31. D.1. The applicant gets to wait until the Construction Period to provide their fully-dimensioned site plans, elevation drawings and structural calculations? This MUST be provided at the time of application – NOT at the Construction Period.
32. D.1. Who will be determining where are the existing poles are so that the applicant doesn't site within 500 ft. of another installation? Will the City have an updated and current Master Map available for the public to view easily as well?
33. D. 1. Telecom companies should also provide their telecom maps for all their current antennas and proposed/planned.
34. D. 1. The permit name should be under the name of the operating telecom company, not the subcontractor.
35. D.1: What kind of Professional Engineer? State-certified? Which area of engineering qualified in? This usually becomes a pro-forma exercise, maybe providing some shielding from legal liability. Pick the PE carefully, convincing him/her to take his/her "stamp" seriously.
36. D. 3. Schedule should be delivered to who?
37. D. 3. Notification of work should also be sent to surrounding property owners and residents within at least 300 feet.
38. D. Addition of performance bond for swapped out equipment when "modified" or "abandoned."

E. Appearance

39. E.3: No longer allow the design of massive "street furniture" on wooden poles. Make the applicant present other designs.

F. Site Location Preference

40. There is no mention of residential neighborhoods in site location preferences. Why? These installations need to be sited at least 500 ft. away from residences.
41. F. 3. Confusing: Order of preferences are listed as 1 -3 but the ranking labels are discussed as A - C.
42. Regarding this statement: "Written evidence indicating why each such identified alternative cannot be used. Such evidence shall be in sufficient detail that independent verification, at the applicant's expense, could be obtained if required by the City of Oakland Zoning Manager." What suffices as sufficient detail in addition to that already mentioned – is there more than what is mentioned here: incorrect height, interference from existing Radio Frequency (RF) sources, inability to cover required area, refusal to lease, inability to provide utilities? What are all the criteria? What would cause the City of Oakland Zoning manager to require independent verification? Which staff will be reviewing and determining whether the "sufficient detail" is verifiably true and accurate?
43. Regarding this statement: "If the City determines based on the required site alternatives analysis that the preferred-location alternatives are not feasible, the Small Wireless Facility may be installed in a non-preferred location." NO!! THEN IT SHOULD NOT BE ACCEPTED. The applicant must look elsewhere. This statement needs to be completely removed from this draft. It weakens the entire process and is 100% unacceptable.

G. Radio Frequency Emissions Standards

44. Where will the RF emission documentation be stored? Who will have access? Public record?
45. G. 1. Licensed professional engineers - will City provide a list?
46. G. 1. Will the initial RF emissions report be shown in comparison to the second RF emissions report?
47. G.1. Include prolonged RF readings for the smart meters that are running the power to the facility in both the baseline and subsequent RF evaluation.
48. G.1 and 2: Independent Expert - the City should hire one to be paid by the applicant to review every application for compliance, coverage gap, least intrusive site, accuracy and completeness of the application, validity of the conclusions and review of alternative sites viability. Currently, the City does not verify the validity or accuracy of the RF reports of the third party hired by the applicant, and the Planning Commission does not

request an independent verification. Therefore, the City is going on blind faith that the applicant is presenting a truthful and accurate document.

49. G.1 and 2: Include main lobe and side lobe patterns. There is already data from the radar days of WWII that show the impacts of electrical and mechanical equipment on humans.

50. G. 2. Can there be periodic RF emission reports to insure compliance long term by the telecom companies?

51. G. 2. Might the second RF emissions report be performed by a separate party from the first RF emissions report?

Date: 6/8/19

To: Aubrey Rose, Planner

Re: Draft Design Standards for Small Wireless Facilities in the PROW

Hello Aubrey,

This is a follow-up to the voice mail I left on Friday. In an effort to maximize staff's time, the Oakmore Neighborhood Advocacy Group has tried to consolidate our questions and concerns into two emails to you. This is the first one from our group.

We would appreciate your answers to our questions as well as any feedback to our comments by Wednesday, June 12th end of day. We will be meeting as a group with other members of the public that evening to discuss the guidelines and your replies in further detail. You or any other member of the Planning Department staff involved in the guidelines are welcome to attend to hear our concerns and address any further questions. Please let us know if you need meeting location details.

Upmost and most important are the questions, concerns and suggestions in the first section (#1-6). Being first on the list does not diminish the importance or critical nature of the other points (#7-49) and we request please that you incorporate our suggestions into the final draft that goes before the Planning Commission.

Thank you in advance for your assistance.
Best regards,
Johanna Finney
510-282-8561

Questions, Concerns and Suggestions:

1. We understand that shot clocks are tightened, the planning department is overrun with applications, and the telecom companies have partnered with the City on this draft. However, we stand opposed to this draft because it removes all public comment and oversight from the process. Therefore, we insist that the Planning Department and Commissioners create an inclusionary component in this addition to the City's Telecommunications Facilities ordinance that allows for a Citizens Oversight Committee to ensure that all approved requirements are met.
2. What is your process for communicating the public's feedback into the writing/revisions of the draft? Who wrote this draft? Who will be making revisions to it? What is the process for joining a conversation with staff around this so that all concerns are legitimately and thoroughly addressed? We would like to know all the names and positions of staff who have written this draft and approved it, including legal staff.
3. We need a reporting structure included in the draft, as to the timely process for citizen complaints regarding any issues that arise with the installation, maintenance, radio frequency evaluations and remediation of each antenna.
4. Will applications for these installations be accessible on the City's Accela site?
5. Will the paperwork from the applicant as well as the building permit sign-off documentation be accessible on the City's Accela site?
6. Will no small cells be allowed outside of the PROW? Will they not be allowed on private property? If they are allowed outside of the PROW and on private property, what is the process for approving them?
7. Is there a time limit on the leases given by the Real Estate Department? Who follows up on making sure the leases are current?

Title, Purpose, and Applicability:

8. Revise the following statement to include the highlighted words: The purpose and intent of these design standards are to provide a uniform set of standards for the development, location, siting, installation, maintenance and evaluation of Small Wireless Facilities located in the public right-of-way.
9. In reference to the last sentence: "These design standards shall only apply to Small Wireless Facilities located in the public right-of-way and shall be in addition to any other design criteria or regulations specified in the Oakland Municipal Code and any other design or safety standards of other regulatory agencies or entities with jurisdiction over telecommunications facilities in the public right of way." The gigahertz transmitter designed to operate "line of sight" should be sited so that no gigahertz transmissions will pass through/interact with a human being. Site the transmitter so that transmissions will pass over private property as opposed to operating "in the public right of way." Thus, there are no impacts on the private right of way.

Definitions:

10. Add to the Antenna definition: Should be sited to avoid human interaction with the main lobe of the antenna transmitting.
11. Questions re: Ornamental Pole Definition: What makes the non-ornamental pole styles acceptable vs the ornamental pole? Does the City have a standard or master plan in place for pole ornamentation choices throughout the PROW, but no master plan for antennas placement throughout the PROW? While the aesthetics are important, the proliferation of radio frequency antennas has a bigger and longer -term impact.
12. Add to the Small Wireless Facilities Definition (4) the words highlighted in yellow: "The facilities do not result in human exposure to radio frequency radiation **equal to and** in excess of the applicable Federal safety standards."
13. Add to the Definitions the following words that are mentioned in the following sections:
    a. General Development Standards: A.3. - Support Structures
    b. General Development Standards: A.5. – Contactors
    c. General Development Standards: C.1. – Pull Boxes
    d. General Development Standards: C.1.a –Smart Pole
    e. General Development Standards: G. Radio Emissions – Modifications – for example it should include words like collocation, expansion, alteration, enlargement, intensification, reduction or augmentation

General Development Standards

A. Installation and Development:

14. Do the telecom companies have a current CPCN (Certificate of Public Convenience and Necessity) on file? This should be the name that is listed as operator in order to make the link between who the actual parties are in the whole process.
15. Add the following: Permits and leases cannot be transferred even upon merger between companies.
16. A.1. Wooden utility pole should be included in the list of the nearest identifiable location
17. A. 2. Should be **500 feet** from other SWF's **in any direction** which would include same, adjacent and **parallel** streets. This is to avoid placing poles within 500 feet on the opposite side of the block.

B. Permits:

18. Add: Applicants in good standing with the Planning Department can apply for a permit. If an applicant has been found to misrepresent information on a previous application or submit false RF Emission reports, this applicant will be prohibited from applying for any permits with the City for the period of one year. After the one-year, future applications and reports will be subject to audits by the Planning Department to determine continued eligibility.

19. Add: Any telecom company which has five or more approved permits for small wireless facilities (whether or not they are installed yet or are in process at the building department) must provide an updated map with their existing approved permit locations and their proposed locations with every application which will be part of the public record.
20. Add: Permits and leases cannot be transferred even upon merger between companies.
21. B. 1. What is the order of approval by approving departments? What is the time line?
22. B. 1. All are light poles City poles? Are any of the wooden poles City poles? Would a Smart Pole be City owned?

C. Facility, Equipment, Wiring and Cabling

23. C.1.c. Existing High-Pressure Sodium (HPS) or other non-LED street light fixtures shall be upgraded to LED fixtures as approved by the City. Note: the American Disabilities Act comes into play in regard to the PROW not only for physical impediments and access to those covered under the ADA. It also is a matter of access to home and place of business adjacent to the PROW for those who are diagnosed with Electromagnetic Hyper Sensitivity. The EMF and RF load from the facility may be within FCC guidelines, but it may be impeding quality of life for people with this diagnosis. To put LED lights on top of the increased EMF/RF load will cause further impact: **http://theconversation.com/american-medical-association-warns-of-health-and-safety-problems-from-white-led-streetlights-61191**
24. C.1.d. All accessory equipment should be undergrounded except the electric meter with certain exceptions to be determined.
25. C.1.f: a 40A fuse indicates that a lot of energy exists at their SWF. Can the City create power density limits at each facility so as not to overwhelm the PROW's energy load?
26. C. 2. Replacement pole = At whose cost?
27. C. 5. Why does the applicant not required to apply for a new permit for an upgrade to technology? This point should read: Poles with previously permitted Telecommunications Facilities require a new permit application for additional antennas, and antennas that differ in technology from the one that was approved. This is because the newer antennas will be operating on a different frequency of the radio spectrum, potentially in the 24GHz, 28GHz and 36GHz spectrum, which would require new power loads, and require a new RF emissions report due to the increase millimeter microwave radiation emitted.
28. C.6: Why must the cabinets be square?
29. C.6.: Add a requirement that this limit of size (which is a vertical junk yard at 28 cubic feet in volume) be reduced over future years. Maybe 5 cubic feet for 2025. Such equipment already exists from other manufacturers.
30. C.8. Will wireless radiation signs be required on the City light poles? What will they look like once adhered to the pole and what height will they be placed?

D. Construction Period Requirements

31. D.1. The applicant gets to wait until the Construction Period to provide their fully-dimensioned site plans, elevation drawings and structural calculations? This MUST be provided at the time of application – NOT at the Construction Period.
32. D.1. Who will be determining where are the existing poles are so that the applicant doesn't site within 500 ft. of another installation? Will the City have an updated and current Master Map available for the public to view easily as well?
33. D. 1. Telecom companies should also provide their telecom maps for all their current antennas and proposed/planned.
34. D. 1. The permit name should be under the name of the operating telecom company, not the subcontractor.
35. D.1: What kind of Professional Engineer? State-certified? Which area of engineering qualified in? This usually becomes a pro-forma exercise, maybe providing some shielding from legal liability. Pick the PE carefully, convincing him/her to take his/her "stamp" seriously.

36. D. 3. Schedule should be delivered to who?
37. D. 3. Notification of work should also be sent to surrounding property owners and residents within at least 300 feet.
38. D. Addition of performance bond for swapped out equipment when "modified" or "abandoned."

E. Appearance

39. E.3: No longer allow the design of massive "street furniture" on wooden poles. Make the applicant present other designs.

F. Site Location Preference

40. There is no mention of residential neighborhoods in site location preferences. Why? These installations need to be sited at least 500 ft. away from residences.
41. F. 3. Confusing: Order of preferences are listed as 1 -3 but the ranking labels are discussed as A - C.
42. Regarding this statement: "Written evidence indicating why each such identified alternative cannot be used. Such evidence shall be in sufficient detail that independent verification, at the applicant's expense, could be obtained if required by the City of Oakland Zoning Manager." What suffices as sufficient detail in addition to that already mentioned – is there more than what is mentioned here: incorrect height, interference from existing Radio Frequency (RF) sources, inability to cover required area, refusal to lease, inability to provide utilities? What are all the criteria? What would cause the City of Oakland Zoning manager to require independent verification? Which staff will be reviewing and determining whether the "sufficient detail" is verifiably true and accurate?
43. Regarding this statement: "If the City determines based on the required site alternatives analysis that the preferred-location alternatives are not feasible, the Small Wireless Facility may be installed in a non-preferred location." NO!! THEN IT SHOULD NOT BE ACCEPTED. The applicant must look elsewhere. This statement needs to be completely removed from this draft. It weakens the entire process and is 100% unacceptable.

G. Radio Frequency Emissions Standards

44. Where will the RF emission documentation be stored? Who will have access? Public record?
45. G. 1. Licensed professional engineers - will City provide a list?
46. G. 1. Will the initial RF emissions report be shown in comparison to the second RF emissions report?
47. G.1. Include prolonged RF readings for the smart meters that are running the power to the facility in both the baseline and subsequent RF evaluation.
48. G.1 and 2: Independent Expert - the City should hire one to be paid by the applicant to review every application for compliance, coverage gap, least intrusive site, accuracy and completeness of the application, validity of the conclusions and review of alternative sites viability. Currently, the City does not verify the validity or accuracy of the RF reports of the third party hired by the applicant, and the Planning Commission does not request an independent verification. Therefore, the City is going on blind faith that the applicant is presenting a truthful and accurate document.
49. G.1 and 2: Include main lobe and side lobe patterns. There is already data from the radar days of WWII that show the impacts of electrical and mechanical equipment on humans.
50. G. 2. Can there be periodic RF emission reports to insure compliance long term by the telecom companies?
51. G. 2. Might the second RF emissions report be performed by a separate party from the first RF emissions report?

Rose, Aubrey

From: Robin Hart <may1young2@yahoo.com>
Sent: Thursday, May 30, 2019 5:29 PM
To: Rose, Aubrey
Subject: Re: City of Oakland, DRAFT Telecom guidelines

OMG Aubrey. This makes me want to cry. Haven't read them yet but will and share and discuss with my neighbors. At least the FAA is considering the issue that I kept raising.

What effect did this declaration have on the cells already approved, like the one on Eastlawn?

Thanks, Robin Hart

On May 29, 2019, at 4:54 PM, Rose, Aubrey <ARose@oaklandca.gov> wrote:

> Hello,
>
> You are receiving this email because you have previously expressed interest in the City of Oakland's Telecommunications Regulations.
>
> Effective January 2019, the FCC issued a Declaratory Ruling around telecommunication Small Wireless Facilities. In the Declaratory Ruling, the FCC allowed local entities to review and apply design and siting standards that are objective and encompassing of community aesthetics. Staff has therefore drafted guidelines for telecommunications facilities located in the public right-of-way, in accordance with FCC regulations, with a 30 day comment period ending close of business Friday June 28, 2019; please view following link for draft guidelines:
> https://cao-94612.s3.amazonaws.com/documents/2019-05-29-Small-Wireless-Facility-Design-Standards-DRAFT.pdf
>
> Additional information can be found here:
> https://www.oaklandca.gov/news/2019/new-fcc-telecommunication-regulations-the-oakland-community
>
> Please note, the guidelines will be preliminarily discussed in a Director's Report at the Planning Commission hearing of Wednesday June 19, 2019 at 6 P.M. in City Hall; you may submit comments to be considered by the Planning Commission and staff to:
> arose@oaklandca.gov
>
> Please feel free to forward this email to any other potential interested parties – thank you.
>
> Respectfully submitted,
>
> **Aubrey Rose, AICP** Planner III / Zoning Counter Supervisor | arose@oaklandca.gov | (510) 238-2071 || City of Oakland | Planning & Building Department | 250 Frank H Ogawa Plaza, Suite 2114 | Oakland CA 94612

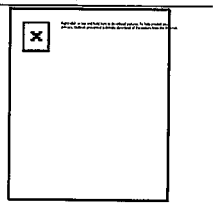
Rose, Aubrey

From: Donald F. Switlick <donaldfswitlick42@gmail.com>
Sent: Thursday, May 30, 2019 10:15 AM
To: Johanna Finney; Rose, Aubrey; To: Alexis or Ned Schroeder; Allan C. Moore; Sharon Collier; applegate_dance@yahoo.com; Oakmore Cindy Cathey; Nikki Doyle; Dennis Cathey; Steve Davenport; Joanna Davenport; Felix Quintero; Lisa Carlson; Oakmore Jerry Horn; Oakmore Cindy Horn; Lynda Penwell; may1young2@yahoo.com
Subject: Re: Fw: City of Oakland, DRAFT Telecom guidelines

I would add to that list of possible areas of compromise.

5. That all appeals will be in writing listing the reasons for a decision.
6. The the principle of *stare decisis* be followed. (the legal principle of determining points in litigation according to precedent.)
7. That a searchable database of decisions be freely available.

DON.



Money-in-Politics is The Cause
everything else is a Symptom.

On Thu, May 30, 2019 at 9:54 AM Rose, Aubrey <ARose@oaklandca.gov> wrote:

Received, thank you.

From: Donald F. Switlick [mailto:donaldfswitlick42@gmail.com]
Sent: Thursday, May 30, 2019 9:52 AM
To: Johanna Finney <johannafinney@gmail.com>; Rose, Aubrey <ARose@oaklandca.gov>; To: Alexis or Ned Schroeder <alexisned@sbcglobal.net>; Allan C. Moore <amoore@wendel.com>; Sharon Collier <sharon@collierphotography.com>; applegate_dance@yahoo.com; Oakmore Cindy Cathey <ccathey10@gmail.com>; Nikki Doyle <nikkidoyle7@gmail.com>; Dennis Cathey <dennis.w.cathey@gmail.com>; Steve Davenport <stevedav@comcast.net>; Joanna Davenport <jodport@comcast.net>; Felix Quintero <fntone@gmail.com>; Lisa Carlson <mzword@hotmail.com>; Oakmore Jerry Horn <jerry-horn@comcast.net>; Oakmore Cindy Horn <cindy1800@comcast.net>; Lynda Penwell <lyndapenwell@sbcglobal.net>; may1young2@yahoo.com
Subject: Re: Fw: City of Oakland, DRAFT Telecom guidelines

To All,

Perhaps we could agree for the code to be written to allow for ministerial approval if we (the public) and the City could agree that:

1. All the documents were posted on the internet and viewed for free.

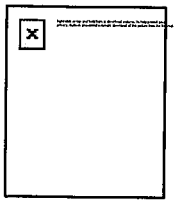
2. The public had the right to post comments to the record.

3. The person approving had to respond to public inquiries, and

4. With cause, an appeal to the Planning Commission could be had without cost. (A free appeal.) By "with cause," I mean that appeals based upon an issue not related to health or environmental.

While, of course, I know and agree that health and environmental are issues, I think the City will not agree to these terms if it anticipates, what they consider, a lot of "frivolous" appeals that they can not and will not be able to consider.

DON.



Money-in-Politics is The Cause
everything else is a Symptom.

On Thu, May 30, 2019 at 9:11 AM Johanna Finney <johannafinney@gmail.com> wrote:

This is what I was talking about at the last public hearing - ministerial review. They want to have it approved only by the following departments, with no public oversight (see my attached statement):

B. Permits

1. **Permit applications are accepted once the City Planning and/or Building Department and Real Estate Department approve the application. When the installation involves a City pole, the Department of Transportation Streetlighting Administration must also approve the application.**
2. **The City of Oakland Utility Company Excavation Permit Application is available on the internet. The permit process, timeline and documentation required for review and approve of the work are listed in the application package. First-time applicants are encouraged to contact the senior engineering technician at DOTpermits@oaklandca.gov for a preapplication meeting.**

Let's start a running issue list:

1. Beverly - Public Committee Oversight

2. Terry - LED lighting

3. Johanna -

- Who wrote this, who reviewed it, who will approve it?
- Why was Chairman Myers telling us to speak with City Council members to seek ordinance change when the Planning Dept. was writing draft? We should have been told to communicate with them. And why were we not directed to the website that posted that notice on 4/15?
- Which sections of the current ordinance will be changed, and where will this be inserted?
- I will be offering additions to the VERY weak telecom ordinance, drawing from the other ordinances that are safer and still in compliance with FCC.
- Alexis and I will be meeting with Loren Taylor's staff Mona today and finding out what influence they have on the planning dept.

If someone wants to start a running Google Doc for this, please do.

Thank you,

Johanna

On Wed, May 29, 2019 at 8:26 PM Alexis or Ned Schroeder <alexisned@sbcglobal.net> wrote:

Dear ONAG team,

Please see the email below from Aubrey Rose. I along with many of the others listed below were shocked by its arrival in our email inbox at 4:54pm today. I will delve into scrutinizing these draft guidelines tomorrow.

Also, just to let you know that Johanna and I will be meeting with District 6 Council member Loren Taylor's office tomorrow in our pursuit to reach all the City Council offices to inform them of our efforts. We had

already met with our District 4 Council member Sheng Thao and had her on board to work on an emergency/urgency ordinance. This new development poses quite a new twist in our plans forward.

We'd like to have an ONAG meeting on Wednesday, June 12th at 7:00pm at 2401 Leimert Blvd to discuss these telecom guidelines in order to present a cohesive and unified position on the guidelines suggested.

Mark your calendar for the evening of Wednesday, June 19th to participate in the discussion at the Planning Commission meeting about these draft guidelines.

If you can not attend, please feel free to write back to me and I will incorporate your thoughts and suggestions into our ONAG meeting discussion.

See you soon....There is a Planning Commission meeting at 6:00pm on June 5th regarding the 5375 Manila EIGHT cell antenna roof project in Rockridge.

-Alexis

----- Forwarded Message -----

From: Rose, Aubrey <ARose@oaklandca.gov>

To: Alexis or Ned Schroeder <alexisned@sbcglobal.net>; Allan C. Moore <amoore@Wendel.com>; sharon@collierphotography.com <sharon@collierphotography.com>; applegate_dance@yahoo.com <applegate_dance@yahoo.com>; Oakmore Cindy Cathey <ccathey10@gmail.com>; Nikki Doyle <nikkidoyle7@gmail.com>; Dennis Cathey <dennis.w.cathey@gmail.com>; stevedav@comcast.net <stevedav@comcast.net>; Joanna Davenport <jodport@comcast.net>; Felix Quintero <fntone@gmail.com>; Johanna Finney <johannafinney@gmail.com>; Lisa Carlson <mzword@hotmail.com>; Oakmore Jerry Horn <jerry-horn@comcast.net>; Oakmore Cindy Horn <cindy1800@comcast.net>; Lynda Penwell <lyndapenwell@sbcglobal.net>; may1young2@yahoo.com <may1young2@yahoo.com>

Sent: Wednesday, May 29, 2019, 4:54:21 PM PDT

Subject: City of Oakland, DRAFT Telecom guidelines

Hello,

You are receiving this email because you have previously expressed interest in the City of Oakland's Telecommunications Regulations.

Effective January 2019, the FCC issued a Declaratory Ruling around telecommunication Small Wireless Facilities. In the Declaratory Ruling, the FCC allowed local entities to review and apply design and siting standards that are objective and encompassing of community aesthetics. Staff has therefore drafted guidelines for telecommunications facilities located in the public right-of-way, in accordance with FCC regulations, with a 30 day comment period ending close of business Friday June 28, 2019; please view following link for draft guidelines:

https://cao-94612.s3.amazonaws.com/documents/2019-05-29-Small-Wireless-Facility-Design-Standards-DRAFT.pdf

Additional information can be found here:

https://www.oaklandca.gov/news/2019/new-fcc-telecommunication-regulations-the-oakland-community

Please note, the guidelines will be preliminarily discussed in a Director's Report at the Planning Commission hearing of Wednesday June 19, 2019 at 6 P.M. in City Hall; you may submit comments to be considered by the Planning Commission and staff to:

arose@oaklandca.gov

Please feel free to forward this email to any other potential interested parties – thank you.

Respectfully submitted,

Aubrey Rose, AICP Planner III / Zoning Counter Supervisor | arose@oaklandca.gov I (510) 238-2071 || City of Oakland | Planning & Building Department | 250 Frank H Ogawa Plaza, Suite 2114 | Oakland CA 94612

PC 6-19-19, Director's Report, Late Mail #2

Rose, Aubrey

From:	Shank, Aaron M. <AShank@porterwright.com>
Sent:	Tuesday, June 18, 2019 3:06 PM
To:	'jmyres.oakplanningcommission@gmail.com'; 'amandamonchamp@gmail.com'; 'tlimon.opc@gmail.com'; 'jfearnopc@gmail.com'; 'cmanusopc@gmail.com'; 'SShiraziOPC@gmail.com'; 'NHegdeOPC@gmail.com'
Cc:	Rose, Aubrey; Merkamp, Robert; 'BECK, ANN A (Legal)'
Subject:	AT&T's Initial Comments on Draft Design Standards for Small Wireless Facilities in the PROW
Attachments:	AT&T Comments June 18 2019.pdf

Dear Planning Commissioners and Messrs. Rose and Merkamp. Please accept this letter from Ann Beck on behalf of AT&T to provide initial comments on the City's draft Design Standards for Small Wireless Facilities in the Public Rights-of-Way. Please feel free to contact us if you have questions.

Aaron M. Shank
Outside Legal Counsel for AT&T

AARON M. SHANK

Porter Wright Morris & Arthur LLP
Bio / ashank@porterwright.com
D: 614.227.2110 / M: 614.578.5036 / F: 614.227.2100
41 South High Street, Suite 2900 / Columbus, OH 43215

/ SEE WHAT INSPIRES US: porterwright.com

ANN AHRENS BECK
Assistant Vice President -
Senior Legal Counsel

AT&T Services, Inc.
208 S. Akard Street
Room 3026
Dallas, TX 75202

Phone: 214.757.5748
E-Mail: ann.beck@att.com

June 18, 2019

VIA E-MAIL

Oakland Planning Commission
250 Frank H. Ogawa Plaza
City of Oakland , CA 94612

Re. AT&T's Initial Comments on City's Draft Design Standards for Small Wireless Facilities Located in the Public Right-of-Way

Dear Planning Commission:

I write on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T), to provide comments on the City's draft Design Standards for Small Wireless Facilities Located in the Public Right-of-Way ("Draft Standards"). AT&T is pleased to see the City of Oakland is making progress on its small cell siting requirements, which is long overdue and which is surely needed to facilitate deployments of critical wireless facilities and services consistent with applicable laws, including the Federal Communications Commission's *Infrastructure Order.*[1] With more than 70% of Americans relying exclusively or primarily on wireless telecommunications, it is especially important to encourage responsible deployments with lawful policies. And with AT&T's selection by FirstNet as the wireless service provider to build and manage the nationwide first responder wireless network, each new facility will help strengthen first responder communications.

In addition to comments on the Draft Standards, AT&T also offers comments on the City's Application for Utility Company Excavation Permit. AT&T understands that the City

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[1] *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) ("*Infrastructure Order*").

intends to apply the processes and terms of this permit application for requests to place small cells in the public rights-of-way.

Unfortunately, the Draft Standards would establish some new rules that are at odds with federal law. And the excavation permit process is also inconsistent with federal law. In particular, the City is currently experiencing significant difficulties with processing applications in a timely manner. The City must take this opportunity to fix those problems. AT&T offers the following summary of applicable laws along with specific comments on the Draft Standards as well as on the permit process.

In addition, AT&T encourages the City to update and revise its wireless siting regulations in the Oakland Planning Code to take advantage of advances in wireless telecommunications technologies and to come into compliance with applicable laws. Small cells are critical to meet ever-increasing demand for wireless services. They need to be deployed where people rely on wireless services, including in their homes, at work, and in transit. In particular, the City's blanket prohibitions on "monopoles" in certain zoning districts, such as Lake Merritt Station districts and Transit Oriented Development districts, hampers AT&T's ability to service city residents and visitors. Thus, as the City begins this task of modernizing its wireless regulations, AT&T implores the City to take additional steps to avoid unnecessary disputes as wireless service providers endeavor to provide vital wireless services.

Key Legal Concepts

The Federal Telecommunications Act of 1996 ("Act") establishes key limitations on local regulations. The Act defines the scope and parameters of the City's review of AT&T's applications. Under the Act, the City must take action on AT&T's applications "within a reasonable period of time."[2] The FCC has established and codified application "shot clocks"

[2] 47 U.S.C. § 332(c)(7)(B)(ii).

to implement this timing requirement.[3] And the FCC has made clear that the City must grant all necessary approvals and authorizations within the applicable shot clock.[4]

The Act also requires that the City's review of AT&T's applications must be based on substantial evidence.[5] Under the Act, state and local governments may not unreasonably discriminate among providers of functionally equivalent services.[6]

The Act prohibits a local government from denying an application for a wireless telecommunications facility where doing so would "prohibit or have the effect of prohibiting" AT&T from providing wireless telecommunications services.[7] The FCC has ruled that an effective prohibition occurs when the decision of a local government materially inhibits wireless services.[8] The FCC explained that a local government "could materially inhibit service in numerous ways – not only by rendering a service provider unable to provide existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services."[9]

Under the *Infrastructure Order*, the FCC established a standard for lawful fees, which requires that: "(1) the fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations."[10] And the FCC provides a safe harbor for presumptively reasonable fees: (a) $500 for non-recurring fees for an application including up to five small cells, plus $100 for each small cell beyond

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[3] *See* 47 C.F.R. §§ 1.6001, *et seq.*

[4] *See Infrastructure Order* at ¶¶ 132-137 (FCC concluded that shot clocks "apply to all authorizations a locality may require, and to all aspects and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment").

[5] 47 U.S.C. § 332(c)(7)(B)(iii).

[6] 47 U.S.C. § 332(c)(7)(B)(i)(I).

[7] 47 U.S.C. § 332(c)(7)(B)(i)(II).

[8] *See Infrastructure Order* at ¶¶ 35-42; *see also*, In the Matter of California Payphone Assoc. Petition for Preemption, Etc., Opinion and Order, FCC 97-251, 12 FCC Rcd 14191 (July 17, 1997).

[9] *Infrastructure Order* at ¶ 37.

[10] *Id.* at ¶ 50.

five, or $1,000 for non-recurring fees for a new pole to support small cells; and (b) $270 per small cell per year for all recurring fees.[11] Higher fees are presumed to violate the Act.[12]

The FCC also established a standard for local aesthetic regulations that they must be (1) reasonable (i.e., has to be technically feasible), (2) no more burdensome than those applied to other infrastructure deployments, and (3) objective and published in advance.[13] Regulations that do not meet these criteria are preempted as they are presumed to effectively prohibit wireless service in violation if the Act.[14]

Specific Comments on the Draft Standards

1. The City's proposed definition for "collocation" requires more than one provider to attach to the same support structure. This is inconsistent with the FCC's definition for collocation. The FCC has clarified that "collocation" means attaching to an existing structure whether or not it already houses wireless facilities.[15] The City needs to revise this definition to avoid missing the 60-day shot clock based on a mistaken belief that a 90-day clock applies to an application to attach to an existing structure that does not already house wireless facilities.

2. The City defines "concealed from view" but then never uses the term. Requiring concealment is likely discriminatory (with the possible exception of attachments to ornamental poles), so the City should eliminate this definition.

3. Section A.2 of the Draft Standards provides a 200-foot separation requirement between small cells. This could prohibit services, especially given the likelihood that multiple carriers will want to place small cells to cover the same areas like busy intersections or transportation hubs. This is also very likely more burdensome than restrictions imposed on other infrastructure providers, which violates the FCC's aesthetic standard for small cells.

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[11] *Id.* at ¶ 79.

[12] *Id.*

[13] *See Id.* at ¶ 86.

[14] *See Id.*

[15] *See Infrastructure Order* at ¶ 140.

4. Section B.1 indicates that a permit application is "accepted" once two departments approve it. But the City cannot refuse or reject applications, nor can the City delay "acceptance" of applications. Under the FCC shot clock, the review timeframe begins when an application is submitted.

5. Section C.1.a refers to "Smart Poles," which are not defined. If this indicates the City's preference for a PG&E smart meter, the provision should be clarified. If it is intended to mean something else, the City should define what it means by "Smart Poles."

6. Section C.8 requires facilities to "be designed in accordance with the requirements for streetlight facilities and appurtenances." This provision should be limited to attachments to streetlights and this section should include a cross-reference for those requirements.

7. Section F refers to location preferences 1, 2 and 3. Later in Section F.3, the City refers to ranked preferences A, B and C. The City needs to clarify whether this should refer to 1, 2 and 3. Or, if the City is referring to preferences stated elsewhere in its regulations, a cross-reference is needed.

Section F also requires an alternative sites analysis for proposals other than "A-ranked" sites, which requires identifying all A-ranked preference sites within 500 feet and explaining why each cannot be used. To the extent this analysis is not required in connection with other infrastructure deployments, it violates the FCC's aesthetic standard for small cells. In addition, there should be no need to investigate alternatives in such a wide area.

8. Section G.1 requires a radio frequency emissions report for each small cell. The City should revise this requirement to require evidence to demonstrate compliance with the FCC's standards to the extent a proposed site is not categorically excluded from the requirement of providing such a report under the FCC rules.

Specific Comments on Application for Utility Company Excavation Permit

1. The Flow Chart for Utility Excavation Permit, on pages 6-7 of the excavation permit application package, summarizes a review process that is likely to run afoul of the FCC shot clock for many – if not all – small cell siting applications. It is especially important that the

City comply with the shot clock, because the FCC has ruled that violations of the shot clock can result in effective prohibition of services in further violation of the Telecommunications Act.

The workflow indicates that the average time to complete the process is 45-90 days, so this process may not be suited to comply with the 60-day shot clock. In particular, it is unclear how the City will be able to process reviews for all necessary approvals and authorizations through seven departments within the allotted shot clock.

Importantly, the City can only toll the shot clock and require resubmittal if it "notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents of information and the specific rule or regulation creating the obligation to submit such documents or information."[16] The City's flow chart indicates that review by the seven departments will take 25-65 days. But if that review takes more than 10 days, the City will be unable to reset the shot clock. While AT&T will certainly work with the City to provide necessary information in a timely manner, the City must revise its process to put itself in position to comply with federal law.

Finally, the flow chart indicates that following resubmission of information, the process recycles to allow further reviews by the same seven departments. Here again, it is hard to see how the City can comply with the shot clock. The City must streamline this process to meet Congress's mandate to review applications "within a reasonable period of time."

2. Page 8 of the excavation application package provides a fee schedule that is not consistent with the FCC's rule on fees for small cell siting applications. Under the City's fees schedule, fees for each application will amount to at least $2,920.88 even before hourly inspection fees are added. This is nearly six times the total for presumptive reasonable non-recurring fees under the FCC standard for an application for up to five small cells. In addition, it is unclear whether the components of the fees are cost-based, let alone

[16] *See* 47 C.F.R. §§ 1.6003(d)(1).

reasonable. AT&T is happy to work with the City to confer as to appropriate fees for small cell applications.

Conclusion

AT&T appreciates the City's initial efforts to adapt its wireless facility siting regulations to accommodate new and emerging technologies and changes in law. By addressing the items we raise here, the City will help encourage deployments consistent with state and federal policies and to the great benefit of the City's residents and businesses. AT&T also hopes that the City soon will take up issues with its siting regulations, including eliminating district-wide prohibitions and other significant obstacles to responsible deployments. AT&T stands ready and willing to assist the City in that regard as well.

Sincerely,

Ann Ahrens Beck

Ann Ahrens Beck

cc: Aubrey Rose, Planner III
Robert Merkamp, Zoning Manager

PC 6-19-19, Director's Report, Late Mail #1

Rose, Aubrey

From:	Paul Albritton <pa@mallp.com>
Sent:	Monday, June 17, 2019 4:40 PM
To:	Jahmese Myres; Amanda Monchamp; Jonathan Fearn; Tom Limon; Clark Manus; Nischit Hegde; Sahar Shirazi
Cc:	Mulry, Brian; Merkamp, Robert; Rose, Aubrey
Subject:	Verizon Wireless Comments on Draft Small Wireless Facility Design Standards - Commission Agenda, June 19, 2019 [Oakland]
Attachments:	Verizon Wireless Letter 06.17.19.pdf

Dear Commissioners, attached please find our letter prepared on behalf of Verizon Wireless regarding the draft *Design Standards for Small Wireless Facilities in the Right-of-Way* to be reviewed at your meeting Wednesday during the Director's Report.

We urge the Commission to direct staff to make needed revisions.

Thank you.

Paul

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San Francisco, California 94104
(415) 288-4000
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FACSIMILE 415/288-4010

June 17, 2019

VIA EMAIL

Chair Jahmese Myres
Vice-Chair Amanda Monchamp
Commissioners Jonathan Fearn,
Tom Limon, Clark Manus,
Nischit Hegde and Sahar Shirazi
Planning Commission
City of Oakland
250 Frank H. Ogawa Plaza
Oakland, California 94612

Re: Draft Design Standards for Small Wireless Facilities in the Right-of-Way
Planning Commission Agenda, June 19, 2019

Dear Chair Myres, Vice-Chair Monchamp and Commissioners:

We write on behalf of Verizon Wireless to provide comment on the draft *Design Standards for Small Wireless Facilities Located in the Public Right-of-Way* (the "Draft Standards"). Verizon Wireless appreciates the City's initiative to streamline its regulation of small cells. There are a few provisions of the Draft Standards that contradict the recent Federal Communications Commission ("FCC") order addressing appropriate small cell approval criteria. A subjective "compatibility" design standard contradicts the FCC's requirement for objective review, and antenna covering requirements may be technically infeasible and therefore unreasonable for new 5G antennas. We urge the Commission to direct staff to make needed revisions prior to adoption of the Draft Standards.

To expedite deployment of small cells and new wireless technology, the FCC adopted its September order to provide guidance on appropriate 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 dimension thresholds. 47 C.F.R. § 1.6002(l). Among other topics, the FCC addressed aesthetic criteria for approval of 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." Small Cells Order, ¶ 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 principled manner." *Id.*, ¶ 88.

We note that the Draft Standards are not clear as to the permit to be required for small cells, but reference the existing Oakland Municipal Code which has led numerous small cell applications to appear on Planning Commission agendas. As the FCC requires objective review of small cells, expedited within shortened "Shot Clock" timeframes, administrative approval is appropriate. We urge the City to clarify the permit process, and to allow compliant small cells to be approved administratively with no notice or hearing.

Our comments on the Draft Standards are as follows.

Definitions. The FCC's definition of small cell should be recited verbatim. 47 C.F.R. § 1.6002(l). Instead of using the overlapping definitions "antenna equipment" and "related equipment," all non-antenna equipment should be defined as "associated equipment."

A(3). Existing poles only. This provision appears to require use of existing poles only, though other provisions contemplate replacement of existing poles. The City must also allow wireless carriers to install their own new poles if required. California Public Utilities Code Section 7901 grants telephone corporations a statewide right to place poles in the right-of-way, and the Small Cells Order contemplates new poles as well. Verizon Wireless has placed new integrated poles in Bay Area cities such as Cupertino, with associated equipment concealed within a pole base 30 inches square. *We suggest that new poles be allowed if there is no existing infrastructure within 200 feet along the subject right-of-way that is available and technically feasible to support a small cell. The City should consult with wireless carriers regarding new pole designs to be the basis of objective standards.*

C(1). Street light pole standards. Items (a) through (g) in this section pertain to street light poles only. The reference to "utility poles" should be removed to avoid confusion. The Draft Standards cannot require replacement of poles not owned by the City if the City feels there are signs of damage or corrosion. Pacific Gas & Electric and other utilities ensure that a proposed joint utility pole will meet structural requirements to support a small cell (otherwise the utility pole is replaced). *The reference to "utility poles or other support structures" in Section C(1) should be stricken. Items C(1), C(2), C(3) and C(8) apply to only street light poles and should be grouped in a distinct section.*

C(6). Ground cabinets. This provision allows ground cabinets only if pole-mounted equipment is infeasible, in which case ground cabinets must be shaped like a square, with maximum dimensions of 4 feet high, 30 inches wide and 30 inches deep. Verizon Wireless occasionally deploys ground cabinets to enclose emergency backup batteries, and ground cabinets should be an option in this case, not a disfavored second choice. The proposed shape and dimension limits may not accommodate the ground cabinets

available from manufacturers, rendering them technically infeasible. *Ground cabinets should be an option when batteries are proposed, and instead of restricting their footprint, this provision should limit ground cabinets to 28 cubic feet, which is the volume for associated equipment described in the FCC's definition of small cell.*

E(1). Antenna covering. In many circumstances, new 5G integrated antennas cannot be covered or enclosed because that impedes signal propagation of higher frequencies Verizon Wireless recently licensed from the FCC for 5G service. *Section E(1) should include an exception if antenna coverings are technically infeasible for signal propagation.*

E(2). Compatible with architecture of surrounding structures. As "compatibility" is a matter of opinion, this standard is subjective, whereas the FCC requires objective criteria for small cells. *Section E(2) contradicts the Small Cells Order, and it should be stricken.*

G. Radio frequency standards. Wireless carriers confirm compliance with FCC radio frequency exposure standards by taking measurements nearby after a facility is operational. The City should allow permittees adequate time to initiate site operation and to secure a registered engineer to take measurements and prepare a report. *Instead of tying it to final building permit, we suggest changing the deadline to submit a second radio frequency report to "within six weeks following commencement of facility operation."*

The Draft Standards require several revisions to comply with the FCC's Small Cells Order, and the City should adopt an administrative process for approval of small cells. Verizon Wireless looks forward to working with the City to refine the Draft Standards.

Very truly yours,

Paul B. Albritton

cc: Brian Mulry, Esq.
Robert Merkamp
Aubrey Rose

Attachment C

Rose, Aubrey

From: Merkamp, Robert
Sent: Tuesday, July 16, 2019 2:58 PM
To: Rose, Aubrey; Flanders, Jordan
Subject: FW: Meeting Minutes from Neighborhood Gathering on July 11th to discuss SWF in the PROW draft guidelines
Attachments: Meeting Minutes for ONAG meeting to discuss SWFs in the PROW draft guidelines 071119.docx

Results of the subcommittee meeting with ONAG ...

Robert D. Merkamp, Zoning Manager | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2214 | Oakland, CA 94612 | Phone: (510) 238-6283 | Fax: (510) 238-4730 | Email: rmerkamp@oaklandca.gov| Website: www.oaklandca.gov/departments/planning-and-building

From: Tom Limon [mailto:tlimon.opc@gmail.com]
Sent: Tuesday, July 16, 2019 2:34 PM
To: Merkamp, Robert <RMerkamp@oaklandca.gov>; Arnold, Jonathan <JArnold@oaklandca.gov>; Nischit Hegde <nhegdeopc@gmail.com>; Jahmese Myres <jkmyres@gmail.com>
Subject: Fwd: Meeting Minutes from Neighborhood Gathering on July 11th to discuss SWF in the PROW draft guidelines

Robert,

Per our conversation, attached are the meeting minutes from the community meeting Commissioner Hegde and participated in last week. I am sorry, when I scanned the email I confused Monchamp with Merkamp and thought you were included.

Tom Limon
---------- Forwarded message ---------
From: **Alexis or Ned Schroeder** <alexisned@sbcglobal.net>
Date: Fri, Jul 12, 2019 at 6:23 PM
Subject: Meeting Minutes from Neighborhood Gathering on July 11th to discuss SWF in the PROW draft guidelines
To: Jahmese Myres <jmyres.oakplanningcommission@gmail.com>, Tom Limon <tlimon.opc@gmail.com>, Nischit Hegde <nhegdeopc@gmail.com>, sshiraziopc@gmail.com <sshiraziopc@gmail.com>, Amanda Monchamp <amandamonchamp@gmail.com>, jfearnopc@gmail.com <jfearnopc@gmail.com>, cmanusopc@gmail.com <cmanusopc@gmail.com>
Cc: Oakmore Neighborhood Advocacy Group <oakmoreneighborhoodag@gmail.com>

Dear Planning Commissioners,
Attached are the minutes from the July 11th neighborhood gathering to discuss SWF in the PROW draft guidelines. This meeting was held in response to the Director's Report.

The meeting lasted 2.5 hours and there were many thoughtful comments and suggestions from neighbors that represented many districts around Oakland.

Please let me know if you have any questions about the minutes or the content. We will be at the Planning Commission meeting on July 17th to inquire about the timeline for implementation and the publication of the final guidelines during the open forum portion of the meeting. Thank you.

Regards,
Alexis Schroeder
Oakmore Neighborhood Advocacy Group (ONAG)
510-303-2099

Meeting Minutes from the ONAG meeting to discuss SWFs in the PROW draft guidelines on July 11, 2019

Our Summarized and Very Important Concerns as stated by meeting participants:

1. Health Concerns – RF Emissions in Compliance which means an independent RF Engineer reviews the regular testing of pole emissions and this data and its analyzed results are publically available. Process in place to insure continued compliance.
2. Greater distances between SWF and residences/schools/public buildings as well as between other SWFs. We want the maximum amount! We want to see 3,000 aerial feet as spacing requirements.
3. Transparency in Applications (including maps of proposed and existing locations and identification of telecom company who is profiting off this pole) and RF Emission reports by Independent qualified engineers who are not and have not been employed by telecom.
4. Notification at time of application and time of construction to residents and owners paid for by the applicant
5. Oversight, Accountability and Complaint Process
6. Documented steps of the application, approval and installation process for SWF in PROW
7. The urgent need for an ordinance to cover these type of cell antenna installations as well as other types that are not SWF or not in the PROW

Agenda Outline with Meeting Comments inserted:

Introductions

- Planning Commissioners (Hegde and Limon)
- Neighbors and their District (10 – District 4; 4- District 6; 2 – District 1; 1- District 2; 1 – District 3 and 1 – Berkeley)

Questions for Planning Commissioners

- Q: What is their level of involvement in this process? How and what are they planning on communicating with the Planning Department, Real Estate, Department of Transportation or any other "administration" departments involved in the approval and installation process of SWF in PROW based on this collective neighborhood meeting? A: The Commissioners will be reporting directly back to Zoning Manager, Mr. Merkamp as well as the City Attorney with our collective thoughts, recommendations and concerns. They will get a copy of our meeting minutes.
- Commissioner Limon brought copies of the answers from Zoning Manager, Mr. Merkamp in reply to our 51 questions posed at a prior Planning Commission meeting.

Definition of a Small Wireless Facility (SWF) per the draft guidelines

- Facilities height parameters – depending on location of the pole. Some want no taller than current requirements – up to 30 feet maximum due to view obstructions, especially where terrain is hilly. Others think taller would mean less line of sight type of cell antennas per a coverage area.
- Antenna measurements – should be to scale depending on neighborhood

- All other related equipment, including antenna equipment measurements – should be to scale depending on neighborhood as well as integrated into the neighborhood environment. National League of City – can we have our own set of measurements? Use BDAC as a model from their December 2018 guidelines. Non-binding and flexible guidelines – need to explore this in more detail. What is appropriate for residential/mixed-use and commercial should be looked into. The phrase "general non-interference language" was used.
- Facilities to not result in human exposure to RF radiation in excess of the applicable Federal safety standards – we need to address this at the federal level and many of us plan to do so but not today

A: Installation and Development

- A1: Identification of proposed site in application request – would expect to have "reasonable detail" to be more "specific detail" and have the photo simulations be realistic from three specific points of view. Check list of application contents should be very specific and verifiable. Nearby residents want noticing when the application is filed. Cost of notification to be the covered by the applicant. Look into electronic notification systems as well as paper for disabled residents.
- A2: Spacing Requirements – 3,000 aerial feet between SWF-SWF; SWF-residence, and SWF-school, library, fire/police bldgs; and hospitals. Add requirement to have the distance to include a parallel streets, not just intersecting or same streets. We want a bigger distance between poles. We don't want new poles added. What cities currently limit the number of poles that can be allocated to telecom equipment? Distances from residences? Distance from view impacted residences? (this was their question; we are working on answer; Robin will follow up by providing documents she has gathered)
- A3: Pole requirements
- A4: Vegetation – some neighborhoods don't have a lot of trees on their PROW so this aesthetic concern should be a consideration. Also where there is vegetation, it should not be disturbed; any damage must be replaced with same size or better as agreed upon with residents and City representatives.
- A5: Restriction on pole usage

B: Permits

- B1: Application process – insure a process in place so that an application is not automatically approved because of City departmental timing issues. Need to determine number of batched applications per telecom. Need to determine who has priority over a pole if more than one telecom wants the pole and colocation is an option? Impact to RF emission reports after installation with colocation. We need to contact the Real Estate department to make our concerns known since they are the point of setting up the agreements with the telecom. The Real Estate department should be made aware of impacts to primary living area views.
- B2: Excavation Permit – need to look at this permit as it applies to the shot clock. Are these CUPs? If so, more time for review?

C: Facility, Equipment, Wiring and Cabling

- C1 a-g: Poles – existing or new

- C2: Replacement pole – no new poles just to minimize telecom's coverage/capacity gap
- C3: Luminaires - huge concern about impact of LEDs on human health – replacement of these fixtures should not be addressed as part of the guidelines due to health consequences – ADA rules about them?
- C4: Pole labeling
- C5: New permit for additional antennas
- C6: Location of SWF on pole – need to get more information about ground level power boxes.
- C7: Interference with City operations
- C8: Street light requirements

D: Construction

- D1: Site plans submittals – Notification to residents, tenants, owners should happen at time of application and again at time of construction. Public noticing should be on poles and in writing. Cost to be picked up by the applicant.
- D2: Qualified contractors
- D3: Schedule
- D4: Interference with other existing utilities
- D5: Excavation requirements

E: Appearance

O E1: Antenna covering

- E1: Antenna covering – covering poses a problem for ADA folks who might not know it is there and then suffer – their reality is obscured by shrouding
- E2: Equipment cabinet
- E3: Placement on pole
- E4: Exposed wires
- E5: Size and height limitations

F: Site Location

- F1 through F3: Location – Order of Preferences – see A2 – distances from schools, fire/police, hospitals, libraries etc. Need to remember historical properties are landmarks and should not be tainted with this equipment

G: RF Emission Reports

- G1: Initial RF emissions report – with application
- G2: Second RF emissions report – prior to final building permit signoff – add another RF emission report after in operation for a period of time. We suggest six months. All reports should be made available publically and easily. Periodic emission testing by independent party separate from engineer who performed the proposed emission reports, and is not or has not been employed by telecom within five years.

Other Concerns

Who will we report our concerns/complaints to once the application is accepted, approved and installed?

How will the Sinking Fund requirement be handled for these types of applications?

Recap and Discussion of the Next Steps by Planning Commissioners and Neighbors

We will have to wait to see when the next Director's Report is at the Planning Commission meeting in order to hear more about these draft guidelines. In the meantime, continue to send your comments and concerns to Aubrey Rose at Arose@oaklandca.gov. The Commissioners also welcome your comments.

Attachment D


SUTTER
14th St
R&B

Rose, Aubrey

From: Patrick Wildi <patrick@wildi.com>
Sent: Sunday, July 14, 2019 12:08 PM
To: Rose, Aubrey; Merkamp, Robert; Jmyres.oakplanningcommission@gmail.com; NHegdeOPC@gmail.com; tlimon.opc@gmail.com; jfearnopc@gmail.com; cmanusopc@gmail.com; amandamonchamp@gmail.com; SShiraziOPC@gmail.com
Cc: Office of the Mayor; Kalb, Dan; At Large; District 2; District 4; District 6; McElhaney, Lynette; Gallo, Noel; Reid, Larry; Mulry, Brian; Allan C. Moore
Subject: Letter on proposed Wireless Facilities Policy Changes
Attachments: CollierWildi_PublicComments_July_13_2019.pdf; Feinstein_Blumenthal_FCC_013019.pdf; USCM_Statement_SanJose_vs_FCC.pdf

Dear Planning Department, Planning Commissioners et al:

Please see attached letter and related documents regarding the Director's Report dated June 19, 2019 and proposed wireless telecommunications policies of the City of Oakland.

Please also place these documents in the public record.

Sharon Collier & Patrick Wildi

Attachment E

Rose, Aubrey

From: Merkamp, Robert
Sent: Tuesday, July 16, 2019 2:58 PM
To: Rose, Aubrey; Flanders, Jordan
Subject: FW: Meeting Minutes from Neighborhood Gathering on July 11th to discuss SWF in the PROW draft guidelines
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Results of the subcommittee meeting with ONAG ...

Robert D. Merkamp, Zoning Manager | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2214 | Oakland, CA 94612 | Phone: (510) 238-6283 | Fax: (510) 238-4730 | Email: rmerkamp@oaklandca.gov| Website: www.oaklandca.gov/departments/planning-and-building

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Cc: Oakmore Neighborhood Advocacy Group <oakmoreneighborhoodag@gmail.com>

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Regards,
Alexis Schroeder
Oakmore Neighborhood Advocacy Group (ONAG)
510-303-2099

SHARON COLLIER & PATRICK WILDI

1 Drury Lane, Oakland CA 94705 | 510-874-4708 | rentals@collierwildi.com

7/13/2019

City of Oakland, Planning Department
City of Oakland, Planning Commission

Dear Planning Department, Planning Commissioners, et al:

Thank you for the opportunity to address the City of Oakland's proposed DRAFT "Design Standards for Small Wireless Facilities Located in the Public Right-of-Way" ("DRAFT Design Standards").

The City's DRAFT Design Standards have been proposed in direct response to the recent Federal Communications Commission (FCC) Order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Improvement," dated September 26, 2018 ("FCC Order"). (See Director's Report dated June 19, 2019 ("Director's Report"), at p. 1.)

Set forth below is our "General Comment" regarding the City's Draft Design Guideline, and several "Specific Comments."

I. General Comment

The recent FCC Order, on which the City's Draft Design Guidelines are based, has been heavily criticized, and challenged by numerous towns and cities, and nationwide organizations. In a recent letter to the FCC by United States Senators Dianne Feinstein and Richard Blumenthal, Senators [1] state as follows:

> *"To date, our offices have heard from more than 60 towns and cities throughout California and Connecticut strongly opposing the [FCC Order]. Once this rule goes into effect, local governments will lose the ability to make decisions regarding where and how 5G transmission devices are affixed to light poles, traffic poles, and utility poles. The rule will also take away the ability of cities and counties to receive fair and competitive compensation from wireless carriers for use of their public property. Consumer advocacy groups have also expressed their opposition to the FCC's ruling, citing the unbalanced benefits it gives to carriers and decrying the lack of commitment from carriers to reinvest cost savings in rural and underserved areas."* (Feinstein letter dated January 30, 2019 to FCC).

Many California cities have recognized that the FCC Order is in an unprecedented federal intrusion into local government property rights – and will have a significant impact on cities and their taxpayers. The U.S. Conference of Mayors has strongly opposed the FCC Order [2], as follows:

> *"The U.S. Conference of Mayors again wants to register its strongest opposition to recent actions by the Federal Communications Commission. This independent federal regulatory agency has deliberately and systematically reinterpreted federal law as part of its efforts to "nationalize" city and other local public property in its quest to grant special and unlawful rights to private enterprises that seek to occupy local rights-of-way and public property for small cell deployment."*

Please note that the City of San Jose and dozens of other California western cities have filed legal challenges regarding the constitutionality and legality of the FCC Order, on the basis that it preempts local government authority over the deployment of small cells.

California cities are not "rushing" to adopt new regulations or policies in response to the FCC Order. Instead, California cities are (i) challenging the FCC Order (whether legally or by support of opposing cities/counties) and/or (ii) by working with local citizens and service providers to provide a fair and balanced approach to new regulation. In this regard, the U.S. Conference of Mayors [2] has stated:

> *"Instead of working with local governments to win the global race to 5G, the FCC is forcing cities to race to the courthouse to defend the most basic of local government rights – the authority to manage and seek fair compensation from private users that seek to employ public assets, owned and paid for by local taxpayers, for their personal profit without any obligation to serve all of the community whose assets are occupied.*
>
> ...
>
> *We support and join with these petitioners and other cities in calling on the federal courts to review and rectify such unlawful actions by the FCC."*

Given all of the above, and before the City rushes to adopt new regulations in conformance with the FCC Order, we strongly recommend the City – from a "policy" standpoint confirm its support for the cities/counties and nationwide groups that are challenging the FCC Order.

Please note that the FCC Order does not legally require that cities/counties adopt new regulations, or that such new regulations be adopted by a certain date. The City of Oakland need not rush to adopt new regulations that will (i) bind the City and (ii) be outdated if/when the lawsuits challenging the FCC Order are decided. Please reference this regarding opposition efforts in other jurisdictions. The City of Oakland should be a leader in protecting its citizens, as it has been in other community health and safety issues.

We note that service provider AT&T has written a legal letter to the Planning Commission dated June 18, 2019 ("AT&T Legal Letter"). The AT&T Legal Letter states that the City of Oakland is legally required to follow the FCC Order and other federal laws preempting the City's rights to protect its own citizens. The AT&T Legal Letter states that even requesting "concealment" of new facilities is "likely discriminatory" so the City should eliminate such definition. In this regard, please note that AT&T has written almost identical letter(s) to other jurisdictions, including the Town of Woodside, "warning" such cities of AT&T's legal rights. We urge the City of Oakland to disregard these legal warnings from individual provider(s).

We strongly recommend that the City, from a policy standpoint, delay adopting new regulations in response to the FCC Order unless/until the City reviews the local and nationwide opposition to the FCC Order, and unless/until the City decides where it stands in defense of its citizens.

II. Specific Comments

A. Major Conditional Use Permit

We have researched the City of Oakland Municipal Code requirements and feel strongly that the proposal to handle Small Wireless Facilities (SWF) in the Public Right of Way (PROW) are inconsistent with the Oakland Municipal Code. It seems the City of Oakland is trying to adopt procedures that are contradictory to the city code. Applications for SWFs in PROW cannot be processed ministerially and should clearly require a Major Conditional Use Permit; requiring notices to affected residents and a hearing in the Planning Commission for the following reasons:

a. Section 17.128.020 list exclusions to telecommunications facilities regulated in Oakland Planning Code. Our reading is that none of the activities listed qualify for an exclusion for SWF in PROW. In particular subsection C ("minor modifications") does not apply as it covers "Minor modifications of existing wireless communications facilities". *Electric utility poles and streetlights are not wireless telecommunications, so any addition of such is **NOT** a modification but is a **NEW** telecommunication facility.* Subsection D ("equipment completely concealed") also does not apply as these wireless facilities are not fully concealed. The antennas are visible as well as additional equipment (up to 28 cubic feet!!) on the sides of the poles.

b. Section 17.128.025 ("Restrictions on Telecommunications Facilities") lists several conditions when a major conditional use permit is required. In our opinion all three subsections apply for SWF in PROW. Therefore, **a major conditional use permit is required.**

B. Permit Fees

The latest FCC guidelines (declaratory ruling, FCC 18-133) Chapter III B lays out arguments for low fees and in section 79 suggests "reasonable amounts". These are "suggestions" not "orders". Section 80 specifically mentions that higher fees are possible if they are "(1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory."

Therefore, the process laid out in the Oakland Planning Code is non-discriminatory and as long as the fees do reflect the cost they should be able to exceed the suggested $500. We believe that this could and should include noticing fees! In updated ordinances, many cities require telecom companies to directly cover noticing fees.

C. Comments on Design Guidelines and other related Issues

While The City of Oakland is reviewing design guidelines in the midst of this heavily litigated issue, and based on extensive neighborhood (from multiple neighborhoods) feedback, we feel that it is important to include:

1) Preferred locations: Industrial Zoning Districts and Commercial Zoning Districts such as the airport and port should always be prioritized. We are asking for stricter guidelines in our residential and mixed use neighborhoods.

2) In residential neighborhoods, unique guidelines must be adhered to (i.e. no replacement of ornamental poles).

3) In areas where utilities are undergrounded, all equipment except antenna must also be underground - telecom companies are demanding the same benefits as utilities, and must adhere to the same requirements.

4) The City of Oakland local view ordinance must apply. SWFs cannot impact views under any circumstances. As defined in the Director Report of June 19, 2019 on the FCC ruling; "Concealed from view" means that no part of the antenna may be visible from the public right-of-way within two hundred (200) feet of the antenna. In elevated terrain areas, this should include views from above as well as below.

5) Maps of proposed and actual SWF installations should be available for public review. These are already produced through the IT department and should be accessible to residents of Oakland and the general public. We also want access to a public data base which contains application records and RF Emission reports. IT should be able to create a signup list where the public can be notified of updates to the RF guidelines and requirements.

6) Local governments can establish minimum distances between SWFs for aesthetic purposes. Petaluma, Fairfax, Mill Valley, San Ramon and others require 1,500 feet between SWFs while Danville requires 500 feet. In many areas all applicants for new telecom facilities have to show "evidence of need" including coverage and capacity issues. Regarding distances and measurements; we feel that Oakland should require:
   a) Minimum distance between SWFs - 1,000 feet
   b) Minimum distance between any SWF and public building, fire station or school – 1,500 feet
   c) Minimum distance between SWF and private residence – 500 feet

7) Clarification is needed to confirm use of existing light poles and utility poles unless replaced for safety reasons only. SWFs should not dictate the addition of more poles on our streets. The verbiage regarding this issue in the suggested guidelines of May 2019 are confusing. The term "Smart Pole" is not defined and leaves too much opportunity to interpret loosely.

8) Existing poles cannot be replaced with any poles higher than the existing; including antenna, the final height of any approved replacement poles must be no more than 5' above the existing pole height. The FCC defines SWF as being no more than fifty (50) feet or 10% taller than height of adjacent structures. *This is twice the height of many light poles in Oakland!* There must be a requirement to minimize the final height to existing, or no greater than 30' with antenna.

9) Transparency is necessary. We have expressed many reasons that Public Notice and Oversight should not be eliminated. The telecom companies and their lobbyists have an open access to the ear of the Planning Department in this matter. A shorter shot clock should not abdicate all public notice or hearings, eliminating the voice of Oakland residents in our own neighborhoods. Residents want and need transparency and oversight, plus a right to appeal any application that goes against the agreed upon guidelines, and/or is inaccurate or disingenuous. Residents and the general public need to know how and where to report complaints, compliance and safety concerns of the operation of any SWF.

10) All residents and business owners should receive notifications of applications filed within 300 feet of the proposed site per Oakland City MUNI code. We believe that this could and should be required within 7 days of application filing. This can be done at expense of the applicant. Email notifications should also be considered; there could be an email signup section on the Planning Department web page.

11) We believe (as discussed in the June 19, 2019 Planning Commission meeting) that any application that was filed prior to January 14, 2019 is not subject to the new, litigated FCC order; therefore if an application was rejected or returned for any reason, it is still subject to the City of Oakland ordinance that was in effect when originally filed and can not be re-filed under the new order.

12) In 1996, the FCC published a final rule for maximum permissible exposure standards for FCC-regulated transmitters. The RF exposure limits for wireless facilities have not been updated in over 20 years! Does your old television fit in your pocket? Technology has changed in the last 23 years! The 4G and 5G facilities that are being rolled out have not had any official health studies, and independent studies are showing serious risks including higher rates of cancer, nervous system disorders, dizziness, sleep deprivation. The City of Oakland can and should require RF emissions reports semi-annually, confirming compliance to updated standards are met. These should be done by Independent qualified engineers not connected with the telecom companies and should be paid for by the telecom companies.

13) The possibility of a wireless evaluation committee is viable and should be seriously considered. This can help offload the extra pressure on the Planning Department while maintaining transparency and oversight. Other cities are doing this.

We really hope that Oakland will join the many jurisdictions including San Jose et al that are pushing back on this effort to preempt local control. A change in the Shot Clock ruling does not require all new procedures. Please help Oakland stay on the right side of history by not giving up local control. Considering all the current litigation, Bill S.2012 Restoring Local Control, Abolishing FCC Regulations recently authored by Senator Feinstein along with several other US Senators, this could all change again very soon. Thank you for your consideration and support in these matters that will affect so many residents of Oakland, including so many of you.

Best regards,

Sharon Collier, Patrick Wildi (and representing residents of the Claremont Hills in Oakland)

cc Libby Schaaf, Oakland Mayor
cc Dan Kalb, Oakland Councilmember District 1
cc Rebecca Kaplan, Oakland Councilmember At-Large
cc Bryan Mulry, Oakland City Attorney
cc Allan Moore, Wendel Rosen

Attachments:
1) Feinstein/Blumenthal letter to FCC 013019
2) Statement by U.S. Conference of Mayors Challenging FCC ruling

United States Senate

WASHINGTON, DC 20510

January 30, 2019

The Honorable Ajit Pai
Chairman
Federal Communications Commission
Washington, DC 20554

Dear Chairman Pai,

As you know, reports have surfaced that Federal Communications Commission (FCC) staff may have encouraged wireless carriers to file suit against the September 2018 FCC rule on 5G small cell deployment. It has been alleged this was done with the goal of moving litigation out of the Ninth Circuit. What's worse, there are also allegations that FCC staff may have implicitly threatened licensees that were not helpful. If true, this represents an unprecedented level of coordination between an oversight agency and the entities it regulates for the express purpose of preventing a federal circuit court's review. We therefore ask you provide additional information about these cases and the FCC's role in them.

To date, our offices have heard from more than 60 towns and cities throughout California and Connecticut strongly opposing the FCC's *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* Declaratory Ruling and Third Report and Order (Order).[1] Once this rule goes into effect, local governments will lose the ability to make decisions regarding where and how 5G transmission devices are affixed to light poles, traffic poles, and utility poles. The rule will also take away the ability of cities and counties to receive fair and competitive compensation from wireless carriers for use of public property. Consumer advocacy groups have also expressed their opposition to the FCC's ruling, citing the unbalanced benefit it gives to carriers and decrying the lack of commitment from carriers to reinvest cost savings in rural and underserved areas.

As you know, in October 2018, two dozen cities across the country filed suit against the FCC challenging the legality of the Order. Even though additional cases filed by wireless carriers in separate jurisdictions were eventually transferred back to the Ninth Circuit, the reason for their filing in the first place remains a concern. Pressuring entities that are regulated by the FCC to file frivolous litigation in order to

[1] Federal Communications Commission, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WT Docket 17-79 and WC Docket 17-84, Declaratory Ruling and Third Report and Order (Sept. 27, 2018).

game the system, and potentially threatening companies if they fail to comply, would be an unacceptable abuse of power and raise serious ethical concerns. Given these concerns, please answer the following questions:

1. Did any individual employed by or otherwise affiliated with the FCC discuss challenging the Order with an FCC licensee? If so, who and what was discussed?

2. Did any individual employed by or otherwise affiliated with the FCC communicate with an FCC licensee regarding that licensee's potential or actual legal challenge of the Order? If so, who and what was discussed?

3. Did any individual employed by or otherwise affiliated with the FCC threaten or take adverse action against any FCC licensee that refused to challenge the Order in court? If so, who and what was discussed?

Please provide answers no later than **Friday, February 8th**. We appreciate your responsiveness to these questions.

Sincerely,

Dianne Feinstein
United States Senator

Richard Blumenthal
United States Senator

THE UNITED STATES
CONFERENCE OF MAYORS

Statement by U.S. Conference of Mayors CEO & Executive Director Tom Cochran on City of San Jose et. al. vs. FCC Petition for Review

Washington, DC—Below is a statement by U.S. Conference of Mayors CEO and Executive Director Tom Cochran on two Petitions for Review filed by the City of San Jose, California and twenty other western U.S. cities and Los Angeles County in the Ninth Circuit Court of Appeals challenging the constitutionality and legality of a recent FCC Order that preempts local government authority over the deployment of small cells in communities' rights-of-way and sets a cost based cap for rent.

"The U.S. Conference of Mayors again wants to register its strongest opposition to recent actions by the Federal Communications Commission. This independent federal regulatory agency has deliberately and systematically reinterpreted federal law as part of its efforts to "nationalize" city and other local public property in its quest to grant special and unlawful rights to private enterprises that seek to occupy local rights-of-ways and public property for small cell deployment.

"Instead of working with local governments to win the global race to 5G, the FCC is forcing cities to race to the courthouse to defend the most basic of local government rights – the authority to manage and seek fair compensation from private users that seek to employ public assets, owned and paid for by local taxpayers, for their personal profit without any obligation to serve all of the community whose assets are occupied.

"Cities throughout the U.S. have been leading the way in developing new and innovative partnership agreements with private providers to accelerate the deployment of fifth generation (5G) wireless networks. Local governments and mayors ensured that the US was the leader in 1, 2, 3 and 4G through cooperative and creative relationships. Relationships the FCC's actions have undermined.

"We support and join with these petitioners and other cities in calling on the federal courts to review and rectify such unlawful actions by the FCC."

Rose, Aubrey

From:	zebragalt@aol.com
Sent:	Friday, July 19, 2019 8:17 AM
To:	Rose, Aubrey
Cc:	jmyres.oakplanningcommission@gmail.com; NHegdeOPC@gmail.com; tlimon.opc@gmail.com; cmanusopc@gmail.com; jfearnopc@gmail.com; SShiraziOPC@gmail.com; amandamonchamp@gmail.com
Subject:	Comments: SWF's in the PROW Draft Guidelines
Attachments:	ADA Compliance with EMS.pdf

July 19, 2019

Aubrey Rose
Planner III
Planning & Building
City of Oakland

Re: Draft Guidelines for SWF's in the PROW

Dear Mr Rose,

I am writing to voice my comments on the draft guidelines for SWF's in the PROW. As a member of the Oakmore Neighbors Advocacy Group (ONAG) I share the group's concerns but also want to weigh in with what is most important to me personally.

1) I want a minimum of 3,000 ft between all SWF's and all residences, schools, churches, public buildings, and other SWF's. Please see important videos by Verizon (here) and (here) where they admit how far these frequencies can travel. These SWF's, installed as 4G, are designed so they can easily be switched to 5G and that needs to be taken into account.

2) The serious health dangers everyone is concerned about are REAL. (See my ADA Compliance with EMS document, attached.) There are vast numbers of studies using 4G (or even lower) frequencies which prove damage to the human body in various forms. Not only humans, but our pets, wild animals, trees and vegetation, birds, bees, butterflies and other insects. We are all being harmed from the 4G (and lower) frequencies, which are just a fraction of the high levels that 5G will use. Therefore, if these SWF's are installed, I want an independant RF engineer (approved by ONAG, paid for by the applicant) to provide regular and ongoing testing of the pole emissions to assure the residents of continual compliance with the FCC guidelines. I also want the testing results to be easily accessible for the public online.

3) I want all residents and property owners to be notified of all new applications submitted within 1,000 ft of their homes or properties. I want additional notification given prior to construction, (by the same method). I want the City to do the notification, and the applicants to pay for it.

4) There must be a Complaint Process in place. The public MUST have the ability to report wrongdoing, to assure oversight and accountability.

5) There MUST be a urgent ordinance to cover these types of cell antenna installations, as well as other types that are not SWF's or not in the PROW.

6) C3-Luminaires: The detrimental impact of LED's on human health is well known. During a drive around recently, I found these LED fixtures are already installed all over town. There are two mounted right outside (above) my home. One is blocked somewhat by trees, but the other is glaring down into my house all night long, blinding me in my eyes when I walk out my front door (causing disrupted vision), and is preventing me from falling asleep, causing undue stress. Although there is a shield over the top of the light, my home is under the light and getting hit with full intensity in my field of vision. This installation needs to be be removed ASAP.

It is well known that unshielded LED lighting causes significant discomfort from glare. A French government report published in 2013 stated that due to the point source nature of LED lighting, the luminance level of unshielded LED lighting is sufficiently high to cause visual discomfort regardless of the position, as long as it is in the field of vision. As the emission surfaces of LEDs are highly concentrated point sources, the luminance of each individual source easily exceeds the level of visual discomfort, in some cases by a factor of 1000. It goes on to say: It is well known that unshielded light sources cause pupillary constriction, leading to worse nighttime vision between lighting fixtures and causing a "veil of illuminance" beyond the lighting fixture. This leads to worse vision than if the light never existed at all, defeating the purpose of the lighting fixture (here).

The use of these blindingly bright, white LED lights interferes with human circadian rhythms. The International Dark-Sky Association (IDA) states: Our bodies produce the hormone melatonin in response to circadian rhythm. Melatonin helps keep us healthy. It has antioxidant properties, induces sleep, boosts the immune system, lowers cholesterol, and helps the functioning of the thyroid, pancreas, ovaries, testes and adrenal glands. Nighttime exposure to artificial light suppresses melatonin production (here). They go on to say: Numerous studies have shown that artificial light at night has numerous negative and deadly effects on many types of wildlife including birds, amphibians, insects and mammals (here).

While the AMA 2016 Health Effects of LED Street Lighting Report recognizes many of the dangers associated with these lights (here), one statement causes me significant concern: "LEDs have the ability to be controlled electronically and dimmed from a central location." I am worried that in order to do this there will have to be a control unit mounted with each LED fixture (likely a Smart Meter) which will add even more electromagnetic saturation and increased exposure to EMS individuals (which the ADA aims to protect). After seeing the proliferation of these lights in such close proximity, the increase in RF emissions from all these new meters would be astronomical. The ADA compliance issues will need to be addressed for each of these LED light installations. The Illuminating Engineering Society (IES) also weights in with their concerns with the AMA report (here).

According to The Joint IDA-IES Model Lighting Ordinance (MLO), The problems of light pollution first became an issue in the 1970s when astronomers identified the degradation of the night sky due to the increase in lighting associated with development and growth. As more impacts to the environment by lighting have been identified, an inter-national "dark sky" movement is advocating for the precautionary approach to outdoor lighting design. Many communities have passed anti-light-pollution laws and ordinances which allow communities to drastically reduce light pollution and glare and lower excessive light levels (here.) Oakland needs a well-written ordinance to implement safe outdoor lighting, to control light pollution, including glare, light trespass and skyglow.

7) ADA compliance issues need to be addressed. There is much more to ADA compliance than just navigating around boxes on sidewalks or poles. These Small Cell facilities must comply with the Americans with Disabilities Act, and equivalent state rules, and the Act requires that people who suffer from a disability be protected and accommodated. Putting wireless "small cell" facilities that emit radio frequency-microwave

radiation in front of the homes of people who are already suffering from Electromagnetic Sensitivity (EMS) violates their rights under the ADA. Each Small Cell installation must be compliant with the ADA, allowing full and equal access of disabled members of the public to the use of the Public Right of Way (PROW). These Small Cell facilities constitute an illegal access barrier to their right to freely travel, and to the use, and enjoyment, of their own homes. This information must be included as part of the draft guidelines for SWF's in the PROW. (See ADA Compliance with EMS, attached.) There needs to be a time period (after new application notices go out) when EMS affected individuals can reply back and ask that the proposed installations be moved away from their homes or abandoned altogether. EMS affected individuals must be accommodated, it's the law!

Sincerely,

Terry Tobey

Message sent without any form of wireless device

ADA Compliance for Individuals with Electromagnetic Hypersensitivity

It is estimated that up to 10% of the population now suffer from a medical condition called Electromagnetic Hypersensitivity, or Wireless Radiation Syndrome. This condition is considered to be a neurological syndrome. Electromagnetic Sensitivity (EMS) is a disabling characteristic, recognized by the Federal Access Board since 2002: https://www.access-board.gov/research/completed-research/indoor-environmental-quality/introduction.

The main treatment for this condition is avoidance of exposure to wireless radiation from cell phones, laptops, smart meters, Wi-Fi routers, cell towers etc. which has become nearly impossible. These symptoms have substantially changed the lives of many people by severely limiting their ability to do the things they used to do. Most have taken steps to remove the source of frequencies from their homes in order to make their living space bearable. They tend to limit their time and activities away from their homes in order to limit their exposure to these frequencies, and many become mostly isolated because of this. It is important to note that these people are suffering these symptoms with the current 2, 3 and 4G level frequencies, with no Small Cell towers in their immediate vicinities. Those who suffer from this condition are like the canaries in the coal mine, providing evidence of what will happen to everyone as these frequencies continue to increase.

Awareness of these problems is rapidly increasing around the country. In Southern California, Firefighters were stricken with profound neurological symptoms after cell towers were installed in close proximity to their Fire Stations in 1999: http://scientists4wiredtech.com/2018/07/firefighters-living-next-to-cell-towers-suffer-neurological-damage/. In 2004 Susan Foster, MSW organized a pilot study on the firefighters. The neurological testing and SPECT scans (Single-photon emission computed tomography) conducted by Gunnar Heuser MD, PhD. showed all (6) firefighters had brain abnormalities: https://www.degruyter.com/view/j/reveh.2017.32.issue-4/reveh-2017-0027/reveh-2017-0027.xml. Important to note is that the towers they were exposed to were only 2G towers and readings were only 1 to 2/1000th of the allowable FCC limit of non-ionizing radiation. That means the towers could be almost 1,000 times more powerful and still be within the FCC guidelines. (A very informative bar graph is found at the 20:32 mark here: https://www.youtube.com/watch?v=ol3tAxnNccY). Yet even at those low levels they found brain abnormalities and measurable neurological deficits. In 2013 Ms. Foster filed the results of her study in a comment to the FCC: https://ecfsapi.fcc.gov/file/7022117660.pdf.

In 2012 the American Academy of Environmental Medicine (AAEM) released a paper citing Recommendations Regarding Electromagnetic and Radiofrequency Exposure: https://www.aaemonline.org/pdf/AAEMEMFmedicalconditions.pdf .

Recently, the EMF Safety Network completed a study and many people are now on the record that radio frequency radiation associated with the operation of wireless telecommunications equipment "substantially limits one or more of their major life activities." http://emfsafetynetwork.org/wp-content/uploads/2019/03/EMF_Wireless-Study-2019_Final-1.pdf.

Under the 1990 Americans with Disabilities Act, which predates the 1996 Telecommunications Act by six years, people who suffer from exposure to Electromagnetic Fields are part of a protected disabled class under Title 42 U.S. Code § 12101 et seq.: https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap126-sec12102.pdf

City, County and State facilities should use wired connections in order to maximize accessibility, reduce the risk of serious disease, and avoid ADA violations. The California Constitution requires that local government officials protect the health and safety of residents within their jurisdictions.

These Small Cell facilities must comply with the Americans with Disabilities Act, and equivalent state rules, and the Act requires that people who suffer from a disability be protected and accommodated. Putting wireless "small cell" facilities that emit radio frequency-microwave radiation in front of the homes of people who are already suffering from Electromagnetic Sensitivity violates their rights under the ADA. Each Small Cell installation must be compliant with the ADA, allowing full and equal access of disabled members of the public to the use of the Public Right of Way (PROW). These Small Cell facilities constitute an illegal access barrier to their right to freely travel, and to the use, and enjoyment, of their own homes.

Here's just a small amount of important evidence:

Kevin Mottus, CA Brain Tumor Association
https://www.youtube.com/watch?v=ljLynbr5iPc&feature=youtu.be

Dr Sharon Goldberg Testifies at Michigan's 5G Small Cell Tower Legislation Hearing October 4, 2018
https://www.youtube.com/watch?v=tgHbCfBlj0E

BioInitiative 2012
https://www.bioinitiative.org

The Dangers of the 5G Wireless network.
https://www.youtube.com/watch?v=6TVNxB-yy88

Rose, Aubrey

From: Sarah Rios <sarahannrios@gmail.com>
Sent: Wednesday, July 17, 2019 1:38 PM
To: Rose, Aubrey
Subject: Guidelines for Small Wireless Facilities in the Public Right of Way

Hi Aubrey,

As a concerned Oakland resident I have some serious concerns regarding the new 5G SWFs to be erected throughout our city. I realize that that Oakland is creating FWS aesthetic guidelines for the public right of way. I have some ideas I would like to be considered being that myself and many other residents have homes with one or more telephone poles within several feet of our homes. This is not only a major health concern, but also visually a downer and will reduce the value of our properties along with the views out our windows. Please see my comments below for consideration when compsoing the guidelines for SWF in the PROW.

1. Prohibit 5G installations, small wireless facilities within 500 feet of residences/apartment buildings and sensitive populations such as schools, convalescent homes, churches, gathering spaces. (Petaluma did this.)
2. Require 5G small wireless facilities to be located within no less than 1500-2000 feet of one another
4. Require that only the existing utility poles may be used for SWFs, no new pole locations are to be erected.
5. Require that everything but the antenna be underground at the expense of the telecom industry applicants. (Some California cities require this.)
6. Prohibit small cell installation contracts between private landowners and industry (which puts neighbor against neighbor.)
7. Oakland hires an independent RF engineer, who has not previously worked for a telecom corporation, to monitor each 3G, 4G, 5G etc. facility. Telecom corporations that install the equipment must be required to pay for this 100% and to promptly remove any facilities if FCC radiation standards are exceeded.
8. Require industry, through applications and annual certifications, to pay all associated costs including city staff costs.

Thank you,

Sarah Rios
Oakland Resident

Meeting Minutes from the ONAG meeting to discuss SWFs in the PROW draft guidelines on July 11, 2019

Our Summarized and Very Important Concerns as stated by meeting participants:

1. Health Concerns – RF Emissions in Compliance which means an independent RF Engineer reviews the regular testing of pole emissions and this data and its analyzed results are publically available. Process in place to insure continued compliance.
2. Greater distances between SWF and residences/schools/public buildings as well as between other SWFs. We want the maximum amount! We want to see 3,000 aerial feet as spacing requirements.
3. Transparency in Applications (including maps of proposed and existing locations and identification of telecom company who is profiting off this pole) and RF Emission reports by Independent qualified engineers who are not and have not been employed by telecom.
4. Notification at time of application and time of construction to residents and owners paid for by the applicant
5. Oversight, Accountability and Complaint Process
6. Documented steps of the application, approval and installation process for SWF in PROW
7. The urgent need for an ordinance to cover these type of cell antenna installations as well as other types that are not SWF or not in the PROW

Agenda Outline with Meeting Comments inserted:

Introductions

- Planning Commissioners (Hegde and Limon)
- Neighbors and their District (10 – District 4; 4- District 6; 2 – District 1; 1- District 2; 1 – District 3 and 1 – Berkeley)

Questions for Planning Commissioners

- Q: What is their level of involvement in this process? How and what are they planning on communicating with the Planning Department, Real Estate, Department of Transportation or any other "administration" departments involved in the approval and installation process of SWF in PROW based on this collective neighborhood meeting? A: The Commissioners will be reporting directly back to Zoning Manager, Mr. Merkamp as well as the City Attorney with our collective thoughts, recommendations and concerns. They will get a copy of our meeting minutes.
- Commissioner Limon brought copies of the answers from Zoning Manager, Mr. Merkamp in reply to our 51 questions posed at a prior Planning Commission meeting.

Definition of a Small Wireless Facility (SWF) per the draft guidelines

- Facilities height parameters – depending on location of the pole. Some want no taller than current requirements – up to 30 feet maximum due to view obstructions, especially where terrain is hilly. Others think taller would mean less line of sight type of cell antennas per a coverage area.
- Antenna measurements – should be to scale depending on neighborhood

- All other related equipment, including antenna equipment measurements – should be to scale depending on neighborhood as well as integrated into the neighborhood environment. National League of City – can we have our own set of measurements? Use BDAC as a model from their December 2018 guidelines. Non-binding and flexible guidelines – need to explore this in more detail. What is appropriate for residential/mixed-use and commercial should be looked into. The phrase "general non-interference language" was used.
- Facilities to not result in human exposure to RF radiation in excess of the applicable Federal safety standards – we need to address this at the federal level and many of us plan to do so but not today

A: Installation and Development

- A1: Identification of proposed site in application request – would expect to have "reasonable detail" to be more "specific detail" and have the photo simulations be realistic from three specific points of view. Check list of application contents should be very specific and verifiable. Nearby residents want noticing when the application is filed. Cost of notification to be the covered by the applicant. Look into electronic notification systems as well as paper for disabled residents.
- A2: Spacing Requirements – 3,000 aerial feet between SWF-SWF; SWF-residence, and SWF-school, library, fire/police bldgs; and hospitals. Add requirement to have the distance to include a parallel streets, not just intersecting or same streets. We want a bigger distance between poles. We don't want new poles added. What cities currently limit the number of poles that can be allocated to telecom equipment? Distances from residences? Distance from view impacted residences? (this was their question; we are working on answer; Robin will follow up by providing documents she has gathered)
- A3: Pole requirements
- A4: Vegetation – some neighborhoods don't have a lot of trees on their PROW so this aesthetic concern should be a consideration. Also where there is vegetation, it should not be disturbed; any damage must be replaced with same size or better as agreed upon with residents and City representatives.
- A5: Restriction on pole usage

B: Permits

- B1: Application process – insure a process in place so that an application is not automatically approved because of City departmental timing issues. Need to determine number of batched applications per telecom. Need to determine who has priority over a pole if more than one telecom wants the pole and colocation is an option? Impact to RF emission reports after installation with colocation. We need to contact the Real Estate department to make our concerns known since they are the point of setting up the agreements with the telecom. The Real Estate department should be made aware of impacts to primary living area views.
- B2: Excavation Permit – need to look at this permit as it applies to the shot clock. Are these CUPs? If so, more time for review?

C: Facility, Equipment, Wiring and Cabling

- C1 a-g: Poles – existing or new

- C2: Replacement pole – no new poles just to minimize telecom's coverage/capacity gap
- C3: Luminaires - huge concern about impact of LEDs on human health – replacement of these fixtures should not be addressed as part of the guidelines due to health consequences – ADA rules about them?
- C4: Pole labeling
- C5: New permit for additional antennas
- C6: Location of SWF on pole – need to get more information about ground level power boxes.
- C7: Interference with City operations
- C8: Street light requirements

D: Construction

- D1: Site plans submittals – Notification to residents, tenants, owners should happen at time of application and again at time of construction. Public noticing should be on poles and in writing. Cost to be picked up by the applicant.
- D2: Qualified contractors
- D3: Schedule
- D4: Interference with other existing utilities
- D5: Excavation requirements

E: Appearance

O E1: Antenna covering

- E1: Antenna covering – covering poses a problem for ADA folks who might not know it is there and then suffer – their reality is obscured by shrouding
- E2: Equipment cabinet
- E3: Placement on pole
- E4: Exposed wires
- E5: Size and height limitations

F: Site Location

- F1 through F3: Location – Order of Preferences – see A2 – distances from schools, fire/police, hospitals, libraries etc. Need to remember historical properties are landmarks and should not be tainted with this equipment

G: RF Emission Reports

- G1: Initial RF emissions report – with application
- G2: Second RF emissions report – prior to final building permit signoff – add another RF emission report after in operation for a period of time. We suggest six months. All reports should be made available publically and easily. Periodic emission testing by independent party separate from engineer who performed the proposed emission reports, and is not or has not been employed by telecom within five years.

Other Concerns

Who will we report our concerns/complaints to once the application is accepted, approved and installed?

How will the Sinking Fund requirement be handled for these types of applications?

Recap and Discussion of the Next Steps by Planning Commissioners and Neighbors

We will have to wait to see when the next Director's Report is at the Planning Commission meeting in order to hear more about these draft guidelines. In the meantime, continue to send your comments and concerns to Aubrey Rose at Arose@oaklandca.gov. The Commissioners also welcome your comments.

Rose, Aubrey

From: Johanna Finney <johannafinney@gmail.com>

Sent: Thursday, July 18, 2019 10:31 AM
To: Rose, Aubrey; Merkamp, Robert; jmyres.oakplanningcommission@gmail.com; tlimon.opc@gmail.com; NHegdeOPC@gmail.com; jfearnopc@gmail.com; SShiraziOPC@gmail.com; cmanusopc@gmail.com; amandamonchamp@gmail.com; Mulry, Brian; Arnold, Jonathan
Cc: Alexis or Ned Schroeder
Subject: Open Forum Public Comment 7/17/19

Please place this in the public record - it is the statement I gave last night, but ran out of time.

Thank you,

Johanna Finney

Good evening Commissioners, Mr. Merkamp and Mr. Mulry, I'm Johanna Finney.

I want to thank Mr. Merkamp for providing us with 36 answers to the 51 questions I submitted regarding the Draft Design Standards for Small Wireless Facilities in the PROW. Many of the answers helped clarify the City's position.

There are two issues however I'd like to highlight tonight that deserve further review and consideration by your office, the City Attorney and the Commissioners before finalizing this draft.

The first pertains to the public's request for some form of inclusionary public Citizens Oversight Committee to ensure that all approved requirements of application and permitting are met. In your response you stated:

"The Planning Commission would not have the authority to create such a committee. Such a committee would also likely not conform to the FCC ruling which directs Cities to impose standards no more burdensome than other types of ROW infrastructure or similar permits."

We are talking with Commissioners, Council Members and will go to the Mayor's office as you suggested to further this conversation. I'd like to clarify however that from our perspective, this request for volunteer public oversight was not intended to impose standards that are an extra burden on the applicants. Instead, it would be to help the City meet their objectives, shot clocks, and review of the application check lists, and would not impose a burden on applicants at all. The public oversight volunteers would not interface with the applicants. So we disagree that this would have anything to do with FCC violations.

The second issue has to do with our request for a distance of 500 feet between installations in any direction, rather than the City's 200 lineal ft. Having it be a 200 foot radius made less sense to the City, stating that *"the average person, being slightly less than 6 feet tall is going to not see many/all of the poles on adjoining streets as the views of them will be blocked by houses, trees, other infrastructure in the ROW."* You also state *"the distance from antenna to antenna is problematic in these aesthetic standards only in regards to how many antennas are likely to be visible to the typical observer at any one time."*

This perspective is extremely limited, impractical, and not relevant to real-life. I'm 6'1 right now in these shoes. I can walk down one of these streets with equipment on the wooden poles, raise my arm, and where this bracelet falls is where I can touch the equipment at 7 ft. So many streets where these installations are going have ZERO trees. And why is the City talking about just one point in time? Do we not walk, bike, drive, and ride down the streets every day? The average length of a car is 14 ft. If you put 14 cars end to end, that's the distance of 200 ft. It's just 80 walking steps which I can walk in the amount of time I'm taking to talk tonight and I'd be able to see 3 installations. To say that aesthetics only relates to an "average" stationary person at one point in time is unacceptable and I think the City can do better in its thinking and do better for its residents in protecting the aesthetics of their neighborhoods.

Thank you.

Rose, Aubrey

From: Sharon Collier <sharon@collierphotography.com>
Sent: Friday, July 19, 2019 1:37 PM
To: Rose, Aubrey; Merkamp, Robert; Jmyres.oakplanningcommission@gmail.com; NHegdeOPC@gmail.com; tlimon.opc@gmail.com; jfearnopc@gmail.com; cmanusopc@gmail.com; amandamonchamp@gmail.com; SShiraziOPC@gmail.com
Cc: Patrick Wildi; Office of the Mayor; Kalb, Dan; At Large; District 2; District 4; District 6; McElhaney, Lynette; Gallo, Noel; Reid, Larry; Mulry, Brian; Allan C. Moore
Subject: Proposed Wireless Facility Policy Updated Guidelines - follow up to Planning Commission Meeting Comments from July 17

Dear Planning Department, Planning Commissioners et al:

Enclosed within this email, as promised during our statement at the recent Planning Commission meeting, is our list of questions along with our written statement for those who could not hear us talk.

Patrick Wildi and Sharon Collier

Statement to Planning Commission with Questions - July 17, 2019

We would like to follow up on the Directors report concerning policy changes on wireless applications. The FCC ruling is heavily contested – recently Senator Feinstein and others have introduced a bill to abolish these regulatory actions and declare them as having "no force or effect". The bill is supported by the U.S. Conference of Mayors, National Association of Telecommunications Officers, American Public Power Association, Communications Workers of America, League of California Cities and American Public Works Association among others. There is also a similar bill in the House.

If Oakland over reacts to the FCC regulation they could end up locking the City into giving up too much while the situation is far from settled.

We encourage Oakland to join efforts with the U.S. Conference of Mayors and the City of San Jose (along with dozens of others) to fight the FCC regulations and stand up for local rights. Just last night, Berkeley's Mayor confirmed that they are supporting Senate Bill S.2012 and also the US Conference of Mayors opposition.

Our reading is that provisions in the FCC ruling are not as strict as the industry lobbyists are trying to make them -- there are no provisions that would rule out public hearings or notifications to affected residents. **Both of those are currently required by the Oakland Planning Code!**

Also the famous new $500 application fee, is more of a suggestion than an upper limit. The paragraph right after that "suggestion" explicitly mentions that higher amounts can be justified as long as they are non-discriminatory, reasonable and justified by the cost. We don't see anything in the FCC ruling that prevents noticing. This is also an issue of homeowner and resident's right to know.

The nearby town of Fairfax has just confirmed an Updated Ordinance, in which they state "The Town finds that a personal residence is for most homeowners their single greatest financial asset, and that proximity of wireless facilities has been shown to adversely affect property values of personal residences. The Town further finds that aesthetic considerations in residential zones are especially important in close proximity to personal residences."

While this is so heavily contested at the Federal, State and local levels we do hope that the City of Oakland will follow it's own mission statement, which begins:

"THE CITY OF OAKLAND IS COMMITTED TO THE DELIVERY OF EFFECTIVE, COURTEOUS, AND RESPONSIVE SERVICES. CITIZENS AND EMPLOYEES ARE TREATED WITH FAIRNESS, DIGNITY, AND RESPECT..."

So, keeping that in mind, where in the updated Guidelines are:

-- Transparency ?

-- Noticing (which can be charged to applicant!) ?

-- Oversight ?

-- Appeal... Where is the Complaint Department??

Please also answer the following questions:

1) How involved is Mayor Schaaf and staff in this process?

2) Have you had any communication/coordination with Oakland City Council about this?

3) Who gives the final stamp of approval for the updated guidelines?

4) Will applications still be placed on poles etc. per planning code?? How will this be enforced? Will there be a timeframe, for example. they must be placed within three days of application filing?

5) Can you confirm please that notices will still be provided:

- as per Municipal code,
- at applicant expense as necessary,
- in written and/or electronic format (with heavily publicized email signup option),
- effective immediately and continuously,

6) Please confirm that you will enforce under grounding requirements The telecom companies are insisting on the same benefits as utility companies, and they should have the same requirements. Only the antenna at most should be allowed above ground.

7) Will the Department of Transportation be responsible for maintenance in the PROWs once there is a cell tower there?

8) What do we do if we note that an application is disingenuous?

For example, we have seen previous applications that have misstated:

- "Existing pole will be used"; while construction drawings confirm replacement pole
- "No view obstruction"; while diagrams/photos show misleading, deceptive angles
- "No vegetation will be disturbed", while reality shows that large mature protected trees will be destroyed
- Height represented is inconsistent with permit drawings.
- "Industrial area" listed instead of Residential area
- Location details misstated

9) Please confirm that applications filed previous to January 14, 2019 will not be considered under the recent FCC ruling, and that applications that were originally rejected and/or returned for any reason cannot be resubmitted.

10) When will the updated Director's report be available?

Thank you.

Sharon Collier and Patrick Wildi

and neighbors of District 1 Oakland

Rose, Aubrey

From: Sharon Collier <sharon@collierphotography.com>
Sent: Friday, July 19, 2019 1:42 PM
To: Rose, Aubrey; Merkamp, Robert; Jmyres.oakplanningcommission@gmail.com; NHegdeOPC@gmail.com; tlimon.opc@gmail.com; jfearnopc@gmail.com; cmanusopc@gmail.com; amandamonchamp@gmail.com; SShiraziOPC@gmail.com
Cc: Patrick Wildi; Office of the Mayor; Kalb, Dan; At Large; District 2; District 4; District 6; McElhaney, Lynette; Gallo, Noel; Reid, Larry; Mulry, Brian; Allan C. Moore
Subject: Proposed Wireless Facility Policy Additional Guidelines - Public Comment

Dear Planning Department, Planning Commissioners et al:

Please see our additional comments regarding the proposed wireless telecommunications guidelines of The City of Oakland. We are also including our original comments that were sent on July 14, 2019 for those who had issues reading the attachment.

Further guideline comments/recommendations based on neighborhood input and comparison with other local cities:

(July 18, 2019)

A. Include qualifying language in any approved permits for SCFs that trigger certain actions if/when the FCC rules are overturned or invalidated or if other substantial legal changes occur. Such actions could include termination of the permit, increasing fees for use of the rights-of-way or other public property rates beyond the maximum established by the FCC rules, or other actions that are protective of Oakland. E.g. Bellevue WA included contingencies allowing the City to increase the annual rent per pole if/when the FCC Order is invalidated.

B. Instruct Public Works (applications for utility poles), the Planning Dept (applications for private property), and R/E (applications for public land), that--until Oakland's law has been appropriately updated--applications for telecom equipment, and especially for small cells, must be very carefully considered and denied if at all incomplete or have misrepresentations. Like Fairfax, only *conditional permits* may be issued, and only just before the shot clock deadline. Applications on private property are likely to set neighbor against neighbor. BB&K law firm advises that if you "...feel compelled to grant an application because of the FCC rules, you may wish to make the permit conditional, so that it terminates if/when the FCC rule is overturned."

C. Require that everything but the antenna be undergrounded at the expense of the telecom industry applicants. (Some CA cities require this.) This is an ADA and esthetics issue.

D. Specify that telecom applicants pay for the city hiring an independent RF engineer(s), who has not previously worked in the telecom industry, to monitor each 3G, 4G, 5G and future Generation facility. Telecom corporations that install wireless equipment must promptly remove it if FCC radiation standards are exceeded or if ADA access is impeded.

E. Require telecom corporations to pay application fees, inspection fees, annual recertification fees, and all associated costs including increasing city staff and replacing damaged trees or vegetation with identical or more esthetic flora as determined by the neighborhood council.

F. As in Calabasas CA and Warren CT, Oakland needs to require that applicants for new telecom facilities show "evidence of need," including demonstration that existing facilities have a significant gap in coverage and/or inadequate capacity in each area of planned installation.

G. Cities may establish minimum distances between SCFs for aesthetic purposes. Some localities have banned SCFs in residential zoned areas. The setback for Calabasas, CA is 1,000 feet. If Oakland requires 1,000 feet, the industry is unlikely to challenge us since they have not done so in other communities. Please require at minimum of 500 feet setback (like Petaluma) from residences and sensitive populations such as childcare and eldercare centers.

H. Calabasas, Petaluma, Fairfax, Mill Valley, and San Ramon require 1,500 feet between SCFs! We believe that Oakland should also require a minimum of 1,000 to 1,500 feet.

I. Calabasas, Mill Valley, Sonoma, San Anselmo, Bellevue WA and Hempstead NY require that applicants consider a land use hierarchy for installing wireless facilities, with nonresidential land use districts being the most preferred. Oakland could require applicants to install wireless in the least intrusive location, or justify in detail requests to install in less-preferred districts.

J. Like Mill Valley, please require annual (at least) EMF radiation readings, that are not announced in advance, to ensure that wireless facilities comply with federal laws. Specify that telecom applicants pay for the City hiring an independent RF engineer(s), who has not previously worked in the telecom industry, to monitor each 3G, 4G, 5G and future Generation facility. Telecom corporations that install wireless equipment must promptly remove it if FCC radiation standards are exceeded or if ADA access is impeded. (EMF sensitivity, or microwave illness, can be a severe disability.) Other cities that require independent experts re RF radiation exposures include Calabasas, Fairfax, and San Anselmo. Sonoma requires a compliance report.

K. As recommended by attorney Grant Wilson for Boulder, please also implement rules to prevent other legitimate hazards, such as requiring that an independent engineer review installation plans. (Monterey Mayor Clyde Roberson said, "Each of these antennas also has an electric power supply to it, which can potentially be a fire hazard.")

L. Most important for aesthetics and safety, require undergrounding of all equipment that does not need to be above ground. Calabasas, Mill Valley, and Petaluma require undergrounding. It is an ADA as well as aesthetics issue. Industrial clutter in the public right of way is a hazard to visually impaired people. This should be non-negotiable in areas where other utilities are undergrounded.

M. A massive influx of SCF applications would be a massive financial burden on Oakland if costs are not recouped during the process. It is fair and reasonable to require that the telecom applicants who profit, not local taxpayers, cover all associated costs including increased staff time. Burlington MA required annual recertification of small cells with a fee (after which Verizon withdrew its application.)

N. San Anselmo requires that the telecom applicants notice those within 300' PRIOR to submitting an application (thus before the shot clock begins.) Like San Anselmo, please also require prompt public hearings on SCF applications. Sonoma requires notice within 500'.As recommended by the attorney for Boulder, please require that all SCF applications be posted online as soon as they are submitted. The City website needs an easily located page for this purpose. City IT that sets it up shall be paid by the first company to apply after the rule is adopted.

O. All proposed and existing wireless facilities should be placed on an online map in a timely fashion with easily located public access.

P. Include qualifying language in any approved permits for SCFs that trigger certain actions if/when the FCC rules are overturned or invalidated or if other substantial legal changes occur. Such actions could include termination of the permit, increasing fees for use of the rights-of-way or other public property rates beyond the maximum established by the FCC rules, or other actions that are protective of Oakland. E.g. Bellevue WA included contingencies allowing the City to increase the annual rent per pole if the FCC Order is invalidated.

Q. Prohibit small cell installation contracts between private landowners and industry (pitting neighbor against neighbor.)

R. Require an additional review process when SCFs transition to 5G. Telecom companies are installing SCFs that could later be retrofitted to add 5G technology to 4G. When this occurs, require them to file an additional application, in part because the RF radiation will be different and must be verified to be in accordance with FCC standards.

Oakland taxpayers should not cover these costs. Requiring the corporations that profit from the installations to cover all associated costs is fair and reasonable. 5G would interfere with weather prediction, lower property values, and cost individuals and our City too much! "Small" cells towers also pose fire safety, privacy, and security problems. They harm pollinators, and 5G would be an energy glutton. Verizon admits that 5G works from 3,000 feet away, which would be safer.

Please do not let the industry hype and lobbyist take away Oakland's right to have local control while this is being sorted out. Please remember that there are two alternatives to 5G that are far superior in every way (except Big Telecom profit): copper wirelines and fiber optics. They are more reliable and will bring the internet to more people for less cost than 5G wireless.

Thank you,

Sharon Collier, Patrick Wildi, and neighbors in District 1, Oakland

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Original Public Comments as Submitted on July 14 2019 as an attachment:

Dear Planning Department, Planning Commissioners, et al:

Thank you for the opportunity to address the City of Oakland's proposed DRAFT "Design Standards for Small Wireless Facilities Located in the Public Right-of-Way" ("DRAFT Design Standards").

The City's DRAFT Design Standards have been proposed in direct response to the recent Federal Communications Commission (FCC) Order entitled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Improvement," dated September 26, 2018 ("FCC Order"). (See Director's Report dated June 19, 2019 ("Director's Report"), at p. 1.)

Set forth below is our "General Comment" regarding the City's Draft Design Guideline, and several "Specific Comments."

I. General Comment

The recent FCC Order, on which the City's Draft Design Guidelines are based, has been heavily criticized, and challenged by numerous towns and cities, and nationwide organizations. In a recent letter to the FCC by United States Senators Dianne Feinstein and Richard Blumenthal, Senators [1] state as follows:

> *"To date, our offices have heard from more than 60 towns and cities throughout California and Connecticut strongly opposing the [FCC Order]. Once this rule goes into effect, local governments will lose the ability to make decisions regarding where and how 5G transmission devices are affixed to light poles, traffic poles, and utility poles. The rule will also take away the ability of cities and counties to receive fair and competitive compensation from wireless carriers for use of their public property. Consumer advocacy groups have also expressed their opposition to the FCC's ruling, citing the unbalanced benefits it gives to carriers and decrying the lack of commitment from carriers to reinvest cost savings in rural and underserved areas."* (Feinstein letter dated January 30, 2019 to FCC).

Many California cities have recognized that the FCC Order is in an unprecedented federal intrusion into local government property rights – and will have a significant impact on cities and their taxpayers. The U.S. Conference of Mayors has strongly opposed the FCC Order [2], as follows:

> *"The U.S. Conference of Mayors again wants to register its strongest opposition to recent actions by the Federal Communications Commission. This independent federal regulatory agency has deliberately and systematically reinterpreted federal law as part of its efforts to "nationalize" city and other local public property in its quest to grant special and unlawful rights to private enterprises that seek to occupy local rights-of-way and public property for small cell deployment."*

Please note that the City of San Jose and dozens of other California western cities have filed legal challenges regarding the constitutionality and legality of the FCC Order, on the basis that it preempts local government authority over the deployment of small cells.

California cities are not "rushing" to adopt new regulations or policies in response to the FCC Order. Instead, California cities are (i) challenging the FCC Order (whether legally or by support of opposing cities/counties) and/or (ii) by working with local citizens and service providers to provide a fair and balanced approach to new regulation. In this regard, the U.S. Conference of Mayors [2] has stated:

> *"Instead of working with local governments to win the global race to 5G, the FCC is forcing cities to race to the courthouse to defend the most basic of local government rights – the authority to manage and seek fair compensation from private users that seek to employ public assets, owned and paid for by local taxpayers, for their personal profit without any obligation to serve all of the community whose assets are occupied.*
>
> ...
>
> *We support and join with these petitioners and other cities in calling on the federal courts to review and rectify such unlawful actions by the FCC."*

Given all of the above, and before the City rushes to adopt new regulations in conformance with the FCC Order, we strongly recommend the City – from a "policy" standpoint confirm its support for the cities/counties and nationwide groups that are challenging the FCC Order.

Please note that the FCC Order does not legally require that cities/counties adopt new regulations, or that such new regulations be adopted by a certain date. The City of Oakland need not rush to adopt new regulations that will (i) bind the City and (ii) be outdated if/when the lawsuits challenging the FCC Order are decided. Please reference this regarding opposition efforts in other jurisdictions. The City of Oakland should be a leader in protecting its citizens, as it has been in other community health and safety issues.

We note that service provider AT&T has written a legal letter to the Planning Commission dated June 18, 2019 ("AT&T Legal Letter"). The AT&T Legal Letter states that the City of Oakland is legally required to follow the FCC Order and other federal laws preempting the City's rights to protect its own citizens. The AT&T Legal Letter states that even requesting "concealment" of new facilities is "likely discriminatory" so the City should eliminate such definition. In this regard, please note that AT&T has written almost identical letter(s) to other jurisdictions, including the Town of Woodside, "warning" such cities of AT&T's legal rights. We urge the City of Oakland to disregard these legal warnings from individual provider(s).

We strongly recommend that the City, from a policy standpoint, delay adopting new regulations in response to the FCC Order unless/until the City reviews the local and nationwide opposition to the FCC Order, and unless/until the City decides where it stands in defense of its citizens.

II. Specific Comments

A. Major Conditional Use Permit

We have researched the City of Oakland Municipal Code requirements and feel strongly that the proposal to handle Small Wireless Facilities (SWF) in the Public Right of Way (PROW) are inconsistent with the Oakland Municipal Code. It seems the City of Oakland is trying to adopt procedures that are contradictory to the city code. Applications for SWFs in PROW cannot be processed ministerially and should clearly require a Major Conditional Use Permit; requiring notices to affected residents and a hearing in the Planning Commission for the following reasons:

a. Section 17.128.020 list exclusions to telecommunications facilities regulated in Oakland Planning Code. Our reading is that none of the activities listed qualify for an exclusion for SWF in PROW. In particular subsection C ("minor modifications") does not apply as it covers "Minor modifications of existing wireless communications facilities". *Electric utility poles and streetlights are not wireless telecommunications, so any addition of such is **NOT** a modification but is a **NEW** telecommunication facility.* Subsection D ("equipment completely concealed") also does not apply as these wireless facilities are not fully concealed. The antennas are visible as well as additional equipment (up to 28 cubic feet!!) on the sides of the poles.

b. Section 17.128.025 ("Restrictions on Telecommunications Facilities") lists several conditions when a major conditional use permit is required. In our opinion all three subsections apply for SWF in PROW. Therefore, **a major conditional use permit is required**.

B. Permit Fees

The latest FCC guidelines (declaratory ruling, FCC 18-133) Chapter III B lays out arguments for low fees and in section 79 suggests "reasonable amounts". These are "suggestions" not "orders". Section 80 specifically mentions that higher fees are possible if they are "(1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory."

Therefore, the process laid out in the Oakland Planning Code is non-discriminatory and as long as the fees do reflect the cost they should be able to exceed the suggested $500. We believe that this could and should include noticing fees! In updated ordinances, many cities require telecom companies to directly cover noticing fees.

C. Design Guidelines

While The City of Oakland is reviewing design guidelines in the midst of this heavily litigated issue, and based on extensive neighborhood (from multiple neighborhoods), we feel that it is important to include:

1) Preferred locations: Industrial Zoning Districts and Commercial Zoning Districts such as the airport and port should always be prioritized. We are asking for stricter guidelines in our residential and mixed use neighborhoods.

2) In residential neighborhoods, unique guidelines must be adhered to (i.e. no replacement of ornamental poles).

3) In areas where utilities are undergrounded, all equipment except antenna must also be underground - telecom companies are demanding the same benefits as utilities, and must adhere to the same requirements.

4) The City of Oakland local view ordinance must apply. SWFs cannot impact views under any circumstances. As defined in the Director Report of June 19, 2019 on the FCC ruling; "Concealed from view" means that no part of the antenna may be visible from the public right-of-way within two hundred (200) feet of the antenna. In elevated terrain areas, this should include views from above as well as below.

5) Maps of proposed and actual SWF installations should be available for public review. These are already produced through the IT department and should be accessible to residents of Oakland and the general public. We also want access to a public data base which contains application records and RF Emission reports. IT should be able to create a signup list where the public can be notified of updates to the RF guidelines and requirements.

6) Local governments can establish minimum distances between SWFs for aesthetic purposes. Petaluma, Fairfax, Mill Valley, San Ramon and others require 1,500 feet between SWFs while Danville requires 500 feet. In many areas all applicants for new telecom facilities have to show "evidence of need" including coverage and capacity issues. Regarding distances and measurements; we feel that Oakland should require:

a) Minimum distance between SWFs - 1,000 feet

b) Minimum distance between any SWF and public building, fire station or school – 1,500 feet

c) Minimum distance between SWF and private residence – 500 feet

7) Clarification is needed to confirm use of existing light poles and utility poles unless replaced for safety reasons only. SWFs should not dictate the addition of more poles on our streets. The verbiage regarding this issue in the suggested guidelines of May 2019 are confusing. The term "Smart Pole" is not defined and leaves too much opportunity to interpret loosely.

8) Existing poles cannot be replaced with any poles higher than the existing; including antenna, the final height of any approved replacement poles must be no more than 5' above the existing pole height. The FCC defines SWF as being no more than fifty (50) feet or 10% taller than height of adjacent structures. *This is twice the height of many light poles in Oakland!* There must be a requirement to minimize the final height to existing, or no greater than 30' with antenna.

9) Transparency is necessary. We have expressed many reasons that Public Notice and Oversight should not be eliminated. The telecom companies and their lobbyists have an open access to the ear of the Planning Department in this matter. A shorter shot clock should not abdicate all public notice or hearings, eliminating the voice of Oakland residents in our own neighborhoods. Residents want and need transparency and oversight, plus a right to appeal any application that goes against the agreed upon guidelines, and/or is inaccurate or disingenuous. Residents and the general public need to know how and where to report complaints, compliance and safety concerns of the operation of any SWF.

10) All residents and business owners should receive notifications of applications filed within 300 feet of the proposed site per Oakland City MUNI code. We believe that this could and should be required within 7 days of application filing. This can be done

at expense of the applicant. Email notifications should also be considered; there could be an email signup section on the Planning Department web page.

11) We believe (as discussed in the June 19, 2019 Planning Commission meeting) that any application that was filed prior to January 14, 2019 is not subject to the new, litigated FCC order; therefore if an application was rejected or returned for any reason, it is still subject to the City of Oakland ordinance that was in effect when originally filed and can not be re-filed under the new order.

12) In 1996, the FCC published a final rule for maximum permissible exposure standards for FCC-regulated transmitters. The RF exposure limits for wireless facilities have not been updated in over 20 years! Does your old television fit in your pocket? Technology has changed in the last 23 years! The 4G and 5G facilities that are being rolled out have not had any official health studies, and independent studies are showing serious risks including higher rates of cancer, nervous system disorders, dizziness, sleep deprivation. The City of Oakland can and should require RF emissions reports semi-annually, confirming compliance to updated standards are met. These should be done by Independent qualified engineers not connected with the telecom companies and should be paid for by the telecom companies.

13) The possibility of a wireless evaluation committee is viable and should be seriously considered. This can help offload the extra pressure on the Planning Department while maintaining transparency and oversight. Other cities are doing this.

We really hope that Oakland will join the many jurisdictions including San Jose et al that are pushing back on this effort to preempt local control. A change in the Shot Clock ruling does not require all new design guidelines. Please help Oakland stay on the right side of history by not giving up local control. Considering all the current litigation, Bill S.2012 Restoring Local Control, Abolishing FCC Regulations recently authored by Senator Feinstein along with several other US Senators, this could all change again very soon. Thank you for your consideration and support in these matters that will affect so many residents of Oakland, including so many of you.

Best regards,

Sharon Collier, Patrick Wildi (and representing residents of the Claremont Hills in Oakland)

Rose, Aubrey

From: Lekress <lekress2@gmail.com>
Sent: Friday, July 19, 2019 2:39 PM
To: Rose, Aubrey; Office of the Mayor
Subject: Comments on Wireless Facilities Policy

Dear Planning Department,

We are writing to comment on the proposed wireless communications policies of the City of Oakland that are currently under review. We are new residents of Oakland, having recently purchased a home at 10 Drury Ln. We are just learning about the intended wireless communications policy changes that are being driven by AT&T and their potential impact to our quality of life and property value. Allowing cellular towers to be built in densely populated, residential neighborhoods that tower over other structures and block existing views should not, under any circumstances, be permitted. Cellular towers should be required to follow local view ordinances and other established design guidelines to minimize any impact on the character of established neighborhoods. Neighborhoods need to be involved and informed of proposed sites and allowed input on intended locations and designs.

We therefore request that the City delay adopting any new policies or regulations in response to the FCC order without additional review of the national opposition to the FCC order and without ensuring the protection of its residents.

Best Regards,

Anita Kressner
Tiep Le
10 Drury Ln
Berkeley, CA 94705

Rose, Aubrey

From: Alexis or Ned Schroeder <alexisned@sbcglobal.net>

Sent: Friday, July 19, 2019 3:49 PM
To: Rose, Aubrey; Merkamp, Robert; Jmyres.oakplanningcommission@gmail.com; NHegdeOPC@gmail.com; tlimon.opc@gmail.com; jfearnopc@gmail.com; cmanusopc@gmail.com; amandamonchamp@gmail.com; SShiraziOPC@gmail.com
Cc: Office of the Mayor; Kalb, Dan; At Large; District 2; District 4; District 6; McElhaney, Lynette; Gallo, Noel; Reid, Larry; Mulry, Brian
Subject: Open Forum on July 17, 2019: SWF in PROW guidelines - Public Comment

Printed Format of Open Forum speech at Planning Commission Meeting on July 17, 2019 for the public record

I am Alexis Schroeder. I hope no cell antennas are located in front of any of the Mills Act properties.

I would like to thank Commissioners Hegde and Limon for attending our community meeting last week to discuss the guidelines for Small Wireless Facilities in the Public Right of Way. The top four of the seven concerns raised that night were:

1. Health & Safety: We want to have all RF Emission reports reviewed for compliance by an independent engineer that is not beholden to the applicant and then made publically available. Also, we want continued compliance which means regular interval RF Emission reports.

2. Distances: Greater distance between Small Wireless Facilities themselves and between certain types of buildings

3. Public Access: We want to be able to easily access application documents.

4. Notification: We want notification to the surrounding residents at time of application and construction

Per the City's website, the Planning and Building Department is in charge of the City's growth and development to insure that City's projects support the health and welfare of all Oaklanders.

Therefore, Oaklanders would like to know how the City can guarantee that its growth and development are safe and in compliance when we are told when asking for a totally independent engineer to review RF Emission reports for cell antenna installations, that

"we're generally not in a position to question the expertise of licensed professionals like engineers and the City has to essentially accept what they're telling us unless we can clearly see something anomalous in their reports. This is true in most matters that come before the City and have technical studies submitted by professionals, not just telecommunications applications."

This quote was taken from the answer to Question #48 from a list of 51 questions presented to the Planning Department about these guidelines by a concerned resident.

I am shocked to learn that there has been no oversight by my City into the reports which are provided by the applicants.

Consider hiring an RF Engineer who would monitor and insure compliance by telecommunication's companies who

will be dumping substantial amounts of 4G and 5G infrastructure projects in the City of Oakland. Thank you.

Rose, Aubrey

From: isis feral <isisferal@yahoo.com>
Sent: Friday, July 19, 2019 4:03 PM
To: Rose, Aubrey
Cc: jmyres.oakplanningcommission@gmail.com; NHegdeOPC@gmail.com; tlimon.opc@gmail.com; cmanusopc@gmail.com; jfearnopc@gmail.com; SShiraziOPC@gmail.com; amandamonchamp@gmail.com; Office of the Mayor; At Large; Nikki Fortunato Bas; McElhaney, Lynette; Loren Taylor; Kalb, Dan; Reid, Larry; Gallo, Noel; Thao, Sheng; Landreth, Sabrina; Katz, Alex; Simmons, LaTonda
Subject: Public Comment on Oakland Small Wireless Facilities Draft Design Standards
Attachments: Oakland SWF Design Standards - Isis Feral Comments 071919.pdf

Below, and also attached for possibly easier reading, please find my comments on Oakland's draft Design Standards for Small Wireless Facilities. Acknowledgement of receipt requested. Thank you.

Comments on the City of Oakland's Draft Design Standards for Small Wireless Facilities Located in the Public Right-of-Way

Isis Feral (District 3)

July 19, 2019

Contradictory Goals

The draft of the City of Oakland "Design Standards for Small Wireless Facilities Located in the Public Right-of-Way" states that

> "The design standards are designed to promote and protect the public health, safety, welfare, and the visual quality of the City of Oakland while encouraging the appropriate development of Small Wireless Facilities"

This list of goals is incomplete. In addition to public health, safety, welfare and Oakland's visual quality, it is also important to protect the city's ecology and enviroment.

Protecting public and environmental health and safety are not merely a commendable goal, but a primary duty and obligation of city officials, whose job it is to serve the public.

These design standards as a whole do not accomplish these obligations. Protecting Oakland and developing small wireless facilities are contradictory goals that cannot be simultaneously met.

Health and ecological harm from wireless technology have by now been well established scientifically:

So much so that in 2011 the International Agency for Research on Cancer, a division of the World Health Organization, classified Radiofrequency (RF) radiation as a class 2B carcinogen: http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf

The BioInitiate Report compiles massive numbers of studies of the many dangers of RF radiation, ranging from cancer and other DNA damage, to immue and nervous system impairments, and many other disabling or life-threatening ailments: http://www.bioinitiative.org/

Studies have also demonstrated that RF injures wildlife, including bees and other pollinators who we depend on for our food supply: https://ehtrust.org/science/bees-butterflies-wildlife-research-electromagnetic-fields-environment/

RF has also been shown to harm trees and other vegetation, and in this time of climate crisis we need to keep every tree we can get: https://ehtrust.org/electromagnetic-fields-impact-tree-plant-growth/

Already the number of existing antennas in Oakland are causing health problems for many of us, and some members of my community have been driven out of the area, severing all social connections, because their health could no longer cope with the exposures. They have been in effect toxically evicted. Some have been living in their cars, perpetually on the run as antenna installations follow wherever they go.

According to AntennaSearch.com there are over 500 antennas in a 2 mile radius of my home (and that doesn't include the thousands of 'Smart' meters installed throughout the neighborhood). There are venues I can no longer attend because of their proximity to antennas. I can no longer ride public transportation, because I've become so sensitized by the constant exposure, that riding in a car with a cellphone switched on severely impairs me neurologically. I'm effectively trapped in my neighborhood, and forced to spend most of my time in a partial Faraday cage.

Do you use wireless gadgets in the car yourself? Then take a look at this short video of a study conducted by scientists at the University of Mainz in Germany, showing the impacts of radiation on a driver's brain, and the disturbing implications on his reaction time and ability to concentrate: https://vimeo.com/244746945

Legal Considerations

If you implement 5G technology, the number of antennas and resulting electrosmog in my neighborhood will drastically increase, with antennas at the same level as my second floor bedroom, beaming radiation right through my windows, further injuring me, reducing my movement in the world, and limiting my access to the things I need to survive. Electromagnetic injuries cause disabilities that are protected under the Americans with Disabilities Act (ADA), and the rampant, indiscriminate installations of wireless technology all over town violate my rights under the ADA, and put the entire community at risk of injury and disability.

There is no such thing as "appropriate development of Small Wireless Facilities". Instead of complying with unreasonable mandates, Oakland officials owe it to their constituents and community to take a stand against the FCC's dangerous overreach of power as other municipalities are doing. We need an urgency ordinance banning small wireless facilities.

Please read this legal opinion about a California Supreme Court decision that affirms local control over small cell sitings: http://smartmeterharm.org/2019/04/06/breaking-california-supreme-court-affirms-municipal-authority/

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And there is currently Senate Bill 2012, "Restoring Local Control Over Public Infrastructure Act of 2019", that appears to also challenge the FCC order: https://www.govinfo.gov/app/details/BILLS-116s2012is

What is really needed is a bill to overturn Section 704 of the Telecommunication Act of 1996, which bullies municipalities into not considering health and environmental concerns in the siting of antennas, and I urge the City of Oakland to unite with other lawmakers to launch such an effort.

Meanwhile any contracts made with telecoms for antenna placements of any kind must not be permanent, but conditional so that they can be easily revoked as legislation and lawsuits change the laws that govern antenna sitings.

Other Implications

Berkeley is among the towns that are considering its options, and during the last city council meeting on July 16, some other concerns about 5G came to light, including during an unrelated presentation by PG&E about planned power outages. The PG&E representative explained that many things can compromise a power pole's structural integrity, including installation of 5G antennas and equipment (time mark 48:07-50:09): http://berkeley.granicus.com/MediaPlayer.php?publish_id=70986fb1-a8be-11e9-b703-0050569183fa

There was not a single public comment in favor of 5G. The people of Berkeley who spoke out were uniformly opposed to these antennas.

One council member was rightly troubled that the telecoms would be allowed to put up equipment larger than the size the city allows for a homeless person's belongings (time mark 1:00:30-1:01:00).

Several people pointed out that 5G is not about better coverage, but is slower and shared and part of the planned obsolesence scheme of the telecom industry. They pointed out that 5G is really about automation.

In fact the International Longshore and Warehouse Union has been fighting 5G automation at the Port of Los Angeles for months: https://www.dailybreeze.com/2019/06/28/la-city-council-to-weigh-in-on-port-of-los-angeles-automation-controversy-at-its-meeting-10-a-m-friday-june-28/

It's important to realize that we are entering the era of the Internet of Things, which is being designed to be largely wireless. It didn't start with 5G. One of the first technologies that paved the way for the IoT were "Smart" meters, and the Home Area Network (HAN) attached to it, that has already resulted in increasingly more appliances to be outfitted with chips that can transmit data to the meters.

While "Smart" homes may seem convenient and fun, and like a "personal" choice that's no one else's business, wireless devices emit strong enough levels of radiation to impact neighbors, and in fact the infrastructure that allows transmissions to extend beyond the home impact entire neighborhoods with the ever increasing, huge number of antennas. Aside from the health effects, the IoT is an automation wet dream for

corporate interests. Already transportation fleets are planning to roll out driverless vehicles, threatening not just health and safety, but the livelihood of workers, including those with some of the last union jobs around.

As someone who lives in poverty, and who ironically is forced to do a lot of my activism online nowadays because of access barriers, I strongly agree that it's important to have WIRED access to the internet for all. But removing barriers for internet access shouldn't be done by imposing access barriers on people with disabilities by using toxic technology. And access for all doesn't mean access everywhere. I don't believe it's necessary - or okay - to expect that every square inch of the planet must provide access to technology. Increasingly antennas are being installed in our forests, where they do ecological harm. Ask yourselves, where do you draw the line?

While I oppose the draft design standards outright, because I oppose the installation of ANY small cell antennas, and urge for an immediate moratorium on ALL antennas, there are some specifics in the draft that are particularly disturbing to me:

The placement of LED lights, which are a health hazard, including the possibility of seizures, should not be lumped into a document about antennas. Already there are so many flickering and deliberately blinking LED lights in my neighborhood that impair me neurologically, that what little time I can spend out and about requires navigating a maze of exposures that always leave me ill for days after. With the FCC bullying muncipalities into not considering the public health and safety of their communities when siting antennas, we certainly should not be limited in discussing the dangers of LED lights.

While people are focused on aesthetics I am particularly concerned about any efforts that hide antennas from view, or obscure what they are. It's important that we are able to see antennas from enough of a distance to avoid them and protect ourselves. I oppose any efforts to disguise antennas by hiding them behind panels, or making them look like vegetation, because it puts us in more danger if we don't recognize when we're near a source of exposure.

As long as antennas are being sited in Oakland, the process must be transparent, and remain open to public input and appeal. RF emissions from existing antennas must be monitored by an independent engineer who has never been employed by the telecom industry.

Courage and Responsibility

City officials have a responsibility to respond to the public health crisis that's already been created by the existing antennas, and to not compound the problem with still more antennas. With the FCC putting legal obstacles in the way of protecting our communities, it's time officials consider some civil disobedience of your own, and remember that unjust laws must be challenged, and broken.

There is plenty of precedent for local municipalities taking a stand:

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And while many officials are afraid to talk about the health effects of RF, Berkeley has pushed through an ordinance that requires that health concerns are acknowledged at the point of sale of cellphones, with signs that clearly state that they pose a cancer risk.

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Those are just recent examples of courageous acts by local Bay Area lawmakers, who did not comply with unjust laws. You are supposed to serve the community, and if corporate interests demand compliance with policies that harm the community, as is the case with antennas, then it is your duty not to comply with such policies, but to prioritize and protect the community from harm.

Unjust laws are not stricken from the books by obedience, but by resistance to the injustice inherent in them. I call on City of Oakland officials to take courage and responsibility to stop the telecom industry from doing any further harm to our community.

Sent from my hardwired computer with all wireless functions turned OFF

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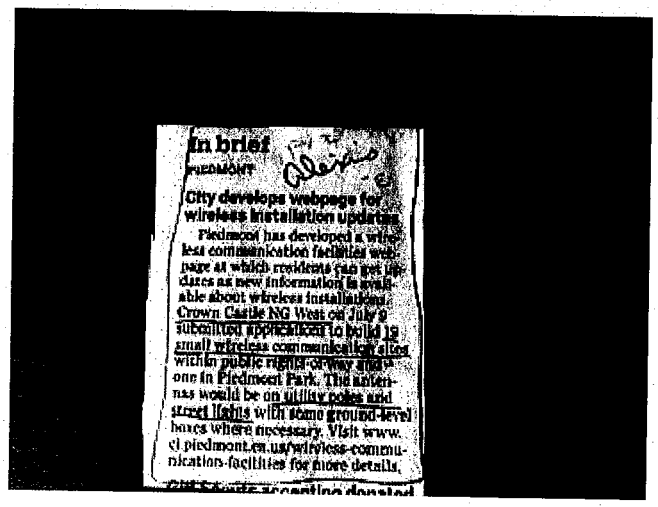
Rose, Aubrey

From: Alexis Schroeder <alexisned@sbcglobal.net>
Sent: Monday, July 22, 2019 5:55 PM
To: Rose, Aubrey; Merkamp, Robert; tlimon.opc@gmail.com; nhegdeopc@gmail.com; jmyres.oakplanningcommission@gmail.com
Subject: Piedmont's solution for public notification regarding SWFs

Dear City of Oakland staff and commissioners,
See the article below which details how the City of Piedmont is addressing the issue of wireless communications facilities in their city. When you go to the site noted in the article, you will see the Crown Castle applications and all the supporting documentation for all 19 SWFs at a variety of addresses.

I thought you'd want to see what other cities are doing to notify the residents, keep them updated and have transparency in their application documentation.
-Alexis Schroeder



in brief

PIEDMONT

City develops webpage for wireless installation updates

Piedmont has developed a wireless communication facilities webpage at which residents can get updates as new information is available about wireless installations. Crown Castle NG West on July 9 submitted applications to build 19 small wireless communication sites within public right-of-way and one in Piedmont Park. The antennas would be on utility poles and street lights with some ground-level boxes where necessary. Visit www.ci.piedmont.ca.us/wireless-communication-facilities for more details.