

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**)

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.

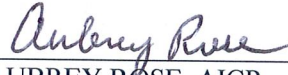
Outreach

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:



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Reviewed by:



ROBERT D. MERKAMP
Zoning Manager

Approved for forwarding to the Planning Commission:



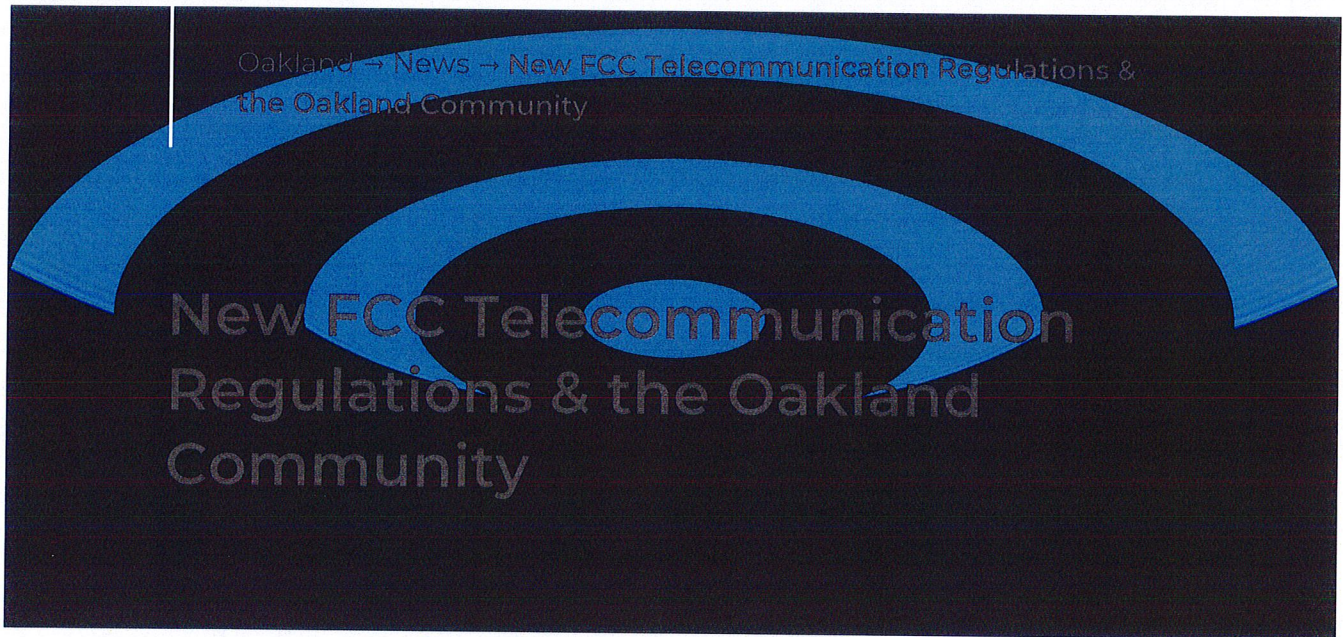
ED MANASSE, Interim Deputy Director
Planning Bureau

ATTACHMENTS

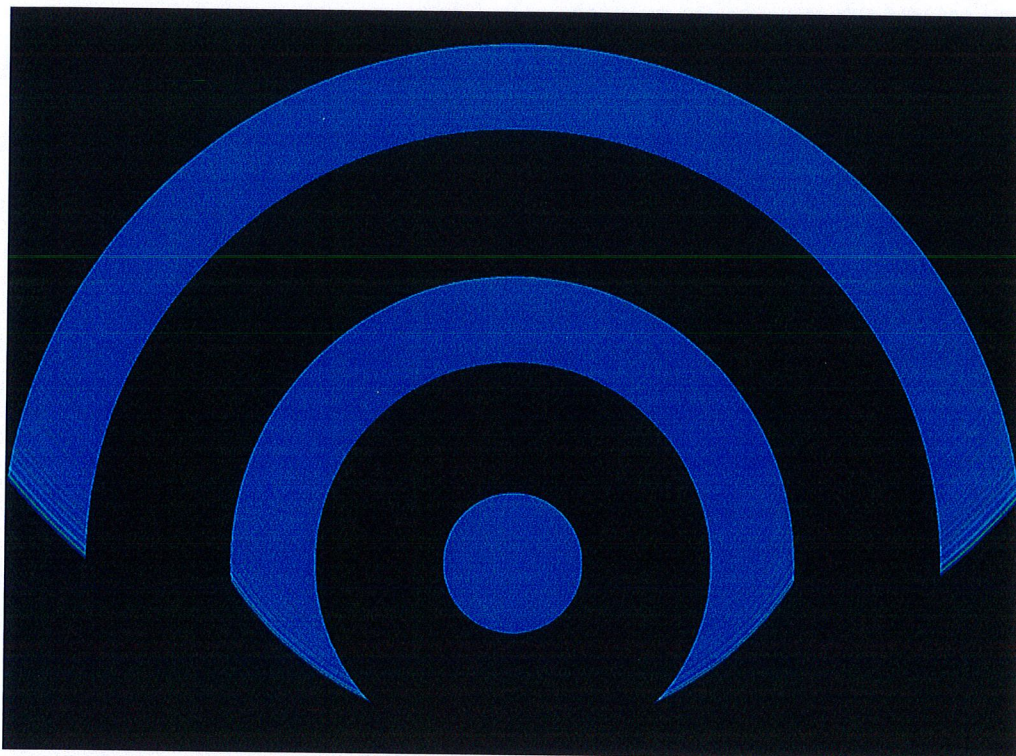
- A. DRAFT Design Standards for Small Wireless Facilities Located in the Public Right-of Way dated May 29, 2019
- B. Zoning Code Bulletin 2005 Telecom Exclusions revised April 8, 2015
- C. Telecommunications Background
- D. FCC Order <https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf>
- E. Design Review Exemption checklist (existing)
- F. Public Comment on draft Design Standards

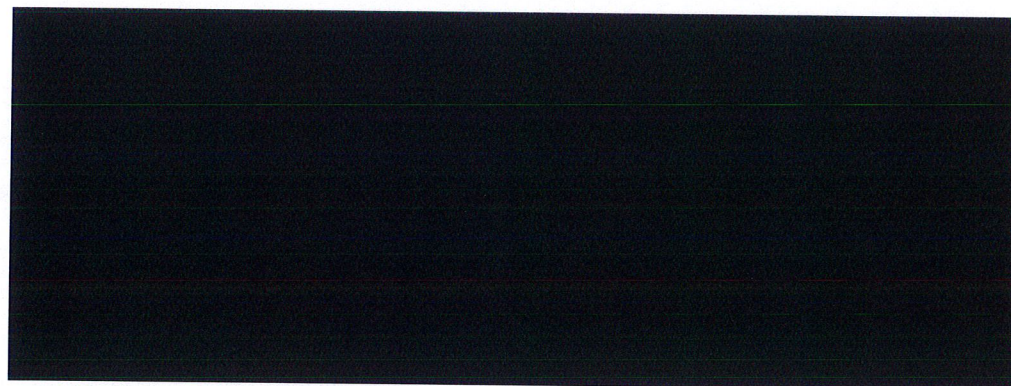
ATTACHMENT A

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

Publish Date: May, 29 2019

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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:

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(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.

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- 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

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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).

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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



Cobra (L)



Cobra (S)



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 CI-3 & DI-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).

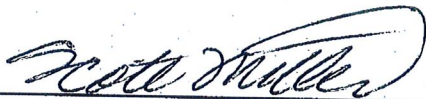
QUESTION 2) California Public Utilities Code section 7901

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 agendaing.

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>

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

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

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 <johannaфинney@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.

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

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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.
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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 <donaldswitlick42@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:donaldswitlick42@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

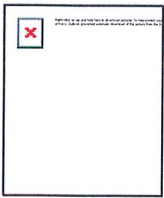
To All,

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 [REDACTED] 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

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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