



City of Culver City

Mike Balkman
Council Chambers
9770 Culver Blvd.
Culver City, CA 90232
(310) 253-5851

Staff Report Details (With Text)

File #: 24-1016 **Version:** 1 **Name:** Appeal of Small Cell Wireless Approval at 11622 Port Road, U23-0386

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Title: CC - PUBLIC HEARING ITEM: Appeal of the Administrative Approval of Wireless Encroachment Permit to Crown Castle for 11622 Port Road, Culver City Permit Number U23-0386.

Sponsors:

Indexes:

Code sections:

Attachments: 1. 2024-05-28_ATT1 Notice of Application Approval 11622 Port Road, 2. 2024-05-28_ATT2 Appeal 11622 Port Road, 3. 2024-05-28_ATT3 RF Emissions Compliance Report 11622 Port Road, 4. 2024-05-28_ATT4 Photosims 11622 Port Road, 5. 2024-05-28_ATT5 Standard Conditions of Approval, 6. 2024-05-28_ATT6 Supplemental Conditions of Approval, 7. 2024-05-28_ATT7 Application 11622 Port Road, 8. 2024-05-28_ATT8 Application Addendum 11622 Port Road, 9. 2024-05-28_ATT9 Alternate Site Analysis and Justification 11622 Port Road, 10. 2024-05-28_ATT10 Site Plans 11622 Port Road, 11. 2024-05-28_ATT11 Verizon Wireless Coverage Map 11622 Port Road, 12. 2024-05-28_ATT12 Noise Study 11622 Port Road, 13. 2024-05-28_ATT13 Shotclock Letter 11622 Port Road, 14. 2024-05-28_ATT14 Structural Calculations 11622 Port Road, 15. 2024-05-28_ATT15 Proof of Mailing 11622 Port Road, 16. 2024-05-28_ATT16 Post-Installation Test and Report at Random Site

Date	Ver.	Action By	Action	Result
5/28/2024	1	City Council Meeting Agenda		
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CC - PUBLIC HEARING ITEM: Appeal of the Administrative Approval of Wireless Encroachment Permit to Crown Castle for 11622 Port Road, Culver City Permit Number U23-0386.

Meeting Date: May 28, 2024

Contact Person/Dept.: Sammy Romo/Public Works-Engineering Division

Phone Number: (310) 253-5619

Fiscal Impact: Yes No **General Fund:** Yes No

Attachments: Yes No

Public Notification: E-Mail: Meetings and Agendas - City Council (05/22/2024); E-mail: Don and Cynthia Maia, Appellants (05/01/2024); Brad Ladua, Crown Castle, Applicant (05/01/2024); Mail: All residents within 500 feet of the subject Wireless Small Cell Facility (05/16/2024)

Department Approval: Yanni Demitri, Public Works Director/City Engineer, (05/22/2024)

RECOMMENDATION

Staff recommends the City Council consider the appeal by Don and Cynthia Maia (the “Appellants”) of staff’s approval of Crown Castle’s wireless encroachment permit application for a small cell facility to be located within the public right-of-way in proximity to 11622 Port Road, permit number U23-0386, and render a decision by either:

1. (**Staff Recommendation**) Denying the appeal and approving the wireless encroachment permit application with the same conditions and findings as the staff approval or with modified conditions and/or findings, and adopting a finding that the project is categorically exempt from CEQA pursuant to CEQA Guidelines §15303; **OR**
2. Granting the appeal and denying the wireless encroachment permit application based on the findings specified by the City Council, indicating which finding(s) for approval cannot be made and the reasons such finding(s) cannot be made.

PROCEDURES

1. Mayor calls on staff for staff report and City Council Members pose questions to staff as desired.
2. Mayor opens the Public Hearing, providing the Appellant the first opportunity to speak, followed by the Applicant and then the general public.
3. Applicant and Appellant are given one final opportunity to provide rebuttal comments.
4. Mayor seeks a motion to close the Public Hearing after all testimony has been presented.
5. City Council discusses the matter and arrives at its decision.

BACKGROUND

The City regulates the placement of small cell wireless facilities in public rights-of-way pursuant to Culver City Municipal Code (“CCMC”) Section 11.20.065 and the “Design and Development Standards for Wireless Facilities in the Public Rights-of-Way,” adopted by the City Council on February 28, 2022, by Resolution 2022-R019.

On November 28, 2023, Crown Castle submitted an application to obtain a wireless encroachment permit for the installation of a small cell facility on a utility pole in the public right-of-way fronting 11622 Port Road. The existing 23.7 ft utility pole will be removed and replaced with a new pole with a height of 40 ft. The pole is proposed to be located on a local street adjacent to properties zoned R1 (residential single family). Per the City’s requirements, Crown Castle submitted a complete application (see, Attachments, listed below) which included a Radio Frequency (“RF”) emission report prepared and signed by an independent California-registered electrical engineer demonstrating that the RF emissions from the proposed small cell wireless facility will comply with the FCC guidelines that limit exposure to RF emissions.

Initially, staff determined the application was incomplete. However, through the submittal and resubmittal-with-changes process, Crown Castle eventually responded with a submittal that was deemed complete. Per the City's public noticing requirements, Crown Castle mailed notification letters via U.S. Post to all residents within 500 feet of the proposed location and affixed posters upon the existing utility pole notifying the public of the proposed small cell facility. In response to the public notifications, two property owners residing at the same residence near the subject location expressed concerns about the proposed small cell facility.

Staff's evaluation of the subject application now under appeal concluded that Crown Castle complied with all the City's requirements contained in CCMC Section 11.20.065 to obtain a wireless encroachment permit, and without exception, adhered to all of the City's applicable design and development standards. On February 15, 2024, staff approved the application and notified the applicant and all persons who submitted written comments on the application, which included the Appellants (Attachment 1). The Appellants appealed this approval, pursuant to CCMC Section 11.20.065.D.3 (Attachment 2) (the "Appeal").

DISCUSSION

Section 11.20.065.D.3(a) of the CCMC states:

Any person adversely affected by the decision of the Public Works Director/City Engineer pursuant to this Section may appeal the decision to the City Council, which may decide the issues de novo, and whose written decision will be the final decision of the City. Any appeal shall be conducted so that a timely written decision may be issued in compliance with any legally-required deadline.

The Appeal:

Claim:

The Appellants stated concerns with respect to the proposed small cell facility's negative health effects due to RF emissions.

Response:

RF Emissions: The FCC is the sole regulatory agency that establishes RF guidelines nationwide to limit public exposure to emissions, and the City requires applicants to submit an RF emission report demonstrating compliance with those guidelines. The City may not deny a wireless facility application based on concern about RF emissions exposure if the facility complies with FCC guidelines.¹ As mentioned above, Crown Castle submitted a report for the proposed facility that showed compliance with FCC guidelines (Attachment 3).

In addition, this application proposes a small cell facility that is similar to other small cell facilities Crown Castle has installed elsewhere in the City. Staff recently had an engineering consultant perform a "post-construction" test of a random small cell site installed by Crown Castle several years ago to evaluate RF emissions. Crown Castle was not made aware of this testing beforehand. The test (Attachment 16) showed the greatest amount of RF emissions exposure to the public was 0.7% of the maximum permissible exposure allowed by the FCC.

Findings Required For Approval:

CCMC Section 11.20.065(G)(1) provides the following findings are required for approval of a wireless encroachment permit application for a small cell wireless facility:

1. Findings required for approval
 - a. ... the Public Works Director/City Engineer or City Council, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - i. The facility is not detrimental to the public health, safety, and welfare;
 - ii. The facility complies with this Section and all applicable design and development standards; and
 - iii. The facility meets applicable requirement and standards of State and Federal law.

All of the above required findings are supported by the administrative record and, therefore, justified. The Appellants have not, to-date, submitted any evidence to contradict these findings; therefore, staff recommends the City Council deny the appeal and approve the wireless encroachment permit with the same conditions and findings as the staff approval.

Federal Requirements Related To Denial Of Wireless Permit Applications:

Federal law requires that if a wireless facility application is denied, the denial decision must be “in writing and supported by substantial evidence contained in a written record.” 47 U.S.C. Section 332 (c)(7)(B)(iii). The law also requires that the denial and the reasons for denial be issued essentially contemporaneously. *T-Mobile South, LLC v. City of Roswell, Ga., 574 U.S. 293 (2015)*. Thus, if the City Council determines that the appeal should be granted, thereby denying Crown Castle’s permit application, the City Council should explain its denial of such permit application by specifically indicating which finding(s) for approval cannot be made and the reasons such finding(s) cannot be made.

FISCAL ANALYSIS

There is no fiscal impact associated with denying or granting the Appeal.

ATTACHMENTS

- 2024-05-28_ATT1 Notice of Application Approval 11622 Port Road
- 2024-05-28_ATT2 Appeal 11622 Port Road
- 2024-05-28_ATT3 RF Emissions Compliance Report 11622 Port Road
- 2024-05-28_ATT4 Photo Sims 11622 Port Road
- 2024-05-28_ATT5 Standard Conditions of Approval
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- 2024-05-28_ATT7 Application 11622 Port Road
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MOTIONS

That the City Council:

- 1.A. **(Staff Recommendation)** Deny the appeal and approve Crown Castle’s wireless encroachment permit application for 11622 Port Road, Culver City Permit Number U23-0386, based on the findings set forth in the February 15, 2024, Notice of Application Approval (Attachment 1) and subject to the conditions of approval set forth in Attachments 5 and 6 of the report; and adopt a finding that the approval is categorically exempt from CEQA pursuant to CEQA Guidelines §15303. (Note: If the City Council determines to modify or supplement the conditions of approval, those should be articulated in the record.)

OR

If the Council intends to deny any application:

(Note: If the City Council decides to deny the application, the motion for denial should specifically indicate which finding(s) for approval cannot be made and the reasons such finding(s) cannot be made, based on substantial evidence in the record.)

- 1.B. Grant the appeal and deny Crown Castle’s wireless encroachment permit application for 11622 Port Road, Culver City Permit Number U23-0386, because of the following findings for approval cannot be made for the following reasons: [insert as applicable]

AND

2. Direct Public Works staff to prepare and issue, pursuant to CCMC Section 11.20.065.G.2, a written Notice of Decision, signed by the City Manager, consistent with the City Council’s findings and decision set forth in the May 28, 2024 record. The Notice shall be issued no later than May 30, 2024.

NOTES

¹ In *AT&T Wireless Servs. v. City of Carlsbad*, 308 F. Supp. 2d 1148, 1161 (S.D. Cal. 2003), the city made a finding that the wireless facility would “negatively affect property values of nearby homes based upon the perceived fear of the health effects cause by the RF emissions.” The court held against Carlsbad, ruling that cities may not regulate based on the “direct or indirect concerns over the health effects of RF.” The court explained that a denial could not be based on substantial evidence (as required by law) “...if the fear of property value depreciation is based on concerns over the health effects caused by RF emissions.”