



City of Culver City

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Staff Report Details (With Text)

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Title: CC - PUBLIC HEARING ITEM: Appeal of the Administrative Approval of Wireless Encroachment Permit to Crown Castle for 4604 Sepulveda Boulevard, Culver City Permit Number U23-0390.

Sponsors:

Indexes:

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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 4604 Sepulveda Boulevard, Culver City Permit Number U23-0390.

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: Ari Pourat, Appellant (04/29/2024); Brad Ladua, Crown Castle, Applicant (04/29/2024); Mail: All residents within 500 feet of the subject 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 Ari Pourat (the “Appellant”) 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 4604 Sepulveda Boulevard, permit number U23-0390, 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 December 04, 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 4604 Sepulveda Boulevard. The existing 24.5 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 primary arterial adjacent to properties zoned CG (commercial general) and CN (commercial neighborhood). 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 properties 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, one property owner near the subject location voiced concern about the proposed small cell facility.

Staff’s evaluation of the subject application 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 September 28, 2023, staff approved the application and notified the applicant and all persons who submitted written comments on the application. (Attachment 1). The Appellant submitted, in writing, a timely appeal of the 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 Appellant’s request for appeal of the approval of this wireless encroachment permit application did not state any reasons for the appeal, but the Appellant’s communications with city staff prior to the approval of the application stated the following reasons to deny the approval:

1. Negative health effects due to RF emissions
2. Environmental impacts due to construction and effects on wildlife
3. Affect property values due to aesthetic degradation

Also, the Appellant requested the application be reviewed by the Planning Commission and other relevant regulatory bodies.

Response:

1. 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. As mentioned above, Crown Castle submitted a report for the proposed facility that showed compliance with FCC guidelines (Attachment 3).

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 several years ago by Crown Castle to evaluate RF emissions. Crown Castle was not made aware of this testing beforehand. The test showed the greatest amount of RF emissions exposure to the public was 0.7% of the maximum permissible exposure allowed by the FCC.

2. Environmental Impacts: Staff determined this project to be categorically exempt from CEQA pursuant to CEQA Guidelines Section 15303. Section 15303 exempts from further environmental review projects involving the construction of new small structures or facilities, installation of small new equipment and facilities in structures, and conversion of existing small structures from one use to another with only minor exterior modifications, and (e) is the example of an “appurtenant structure.” Construction of the proposed small cell facility will include removing the existing utility pole and replacing it with a new one that is approximately 15 feet higher than the existing pole. This type of project is common by telecommunications companies and construction will have minimal impacts to wildlife, traffic, pedestrians, and adjacent businesses. To the extent Appellant’s concern about wildlife relates to potential exposure to RF emissions, this is speculative and as discussed below in Response #3, the facility complies with FCC guidelines.

3. Reduced Property Values: The Appellant provided no support for the claim about property value reduction. Moreover, whether or not the facility will reduce property values is not a required finding under the CCMC.

To the extent the Appellant’s concerns about property value relate to concern about RF emissions exposure, the City may not deny a wireless facility application on the basis of impacts on human health or the environment if the facility complies with FCC RF emissions exposure guidelines.¹ As discussed, the evidence in the record is that the proposed facility will comply with the FCC guidelines.

To the extent the Appellant’s concern about property values relates to aesthetics, the City’s adopted Design and Development Standards (“Standards”) require certain aesthetic requirements be observed that mitigate the visual impact small cell equipment may create. The replacement utility pole and matching shroud which Crown Castle is proposing in its application adheres to those Standards.

Review by Planning Commission and other regulatory body: CCMC Section 11.20.065 establishes the procedure for reviewing small cell applications. City staff followed that procedure. The CCMC does not require this type of application be reviewed by the Planning Commission or other regulatory bodies.

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 Appellant has 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 4604 Sepulveda Boulevard
- 2024-05-28_ATT2 Appeal 4604 Sepulveda Boulevard
- 2024-05-28_ATT3 RF Emissions Compliance Report 4604 Sepulveda Boulevard
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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 4604 Sepulveda Boulevard, Culver City Permit Number U23-0390, based on the findings set forth in the February 26, 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 4604 Sepulveda Boulevard, Culver City Permit Number U23-0390, 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 of Decision 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."