



City of Culver City

Mike Balkman Council
Chambers
9770 Culver Blvd.
Culver City, CA 90232

Staff Report

File #: 20-112, **Version:** 2

Item #: C-6.

CC - (1) Adoption of a Resolution Establishing Wireless Encroachment Permit Fees in the Public Right-of-Way Pursuant to Culver City Municipal Code Section 11.20.065.F.4; and (2) Adoption of a Resolution Establishing Design and Development Standards for the Installation of Small Cell Sites in the Public Right-of-Way Pursuant to Culver City Municipal Code Section 11.20.065.E.4; and (3) Approval of the General Terms and Conditions Agreement and the Light Pole Facility Addendum Related Thereto.

Meeting Date: August 26, 2019

Contact Person/Dept: Joe Susca/Public Works

Phone Number: (310) 253-5636

Fiscal Impact: Yes ☒ No ☐

General Fund: Yes ☒ No ☐

Public Hearing: ☐ **Action Item:** ☐ **Attachments:** ☒

Commission Action Required: Yes ☐ No ☒ **Date:**

Public Notification: (E-Mail) Meetings and Agendas - City Council (08/21/19); Verizon Wireless (08/21/19); Crown Castle (08/21/19); AT&T Wireless (08/21/19) various other members of the wireless carrier industry (08/21/19).

Department Approval: Charles D. Herbertson (08/19/19)

RECOMMENDATION

Staff recommends the City Council (1) adopt a Resolution establishing wireless encroachment permit fees for installation of wireless facilities in the public right-of-way pursuant to Culver City Municipal Code (CCMC) Section 11.20.065.F.4; and (2) adopt a Resolution establishing design and development standards for the installation of small cell sites in the public right-of-way pursuant to CCMC Section 11.20.065.D; and (3) approve the General Terms and Conditions Agreement and the Light Pole Facility Addendum for attaching small cell equipment upon City-owned light poles.

BACKGROUND

Wireless Telecommunications Networks

Traditionally, wireless carrier antennas and their network equipment were primarily installed on large towers located on private property and on the rooftops of buildings that served devices within a 25 mile range. Demand for wireless services, however, has substantially increased, and with it the number of wireless devices connected to the Internet is expected to increase from one million in 1992 to an anticipated fifty billion in 2020. Accompanying the increase in wireless devices is the demand for ubiquitous and reliable high-speed connections.

Small Cell Sites

To supplement existing large cell towers, wireless carrier networks now include small cell sites to support devices located within smaller coverage areas than large cell sites. Because the use of wireless services is concentrated in urban areas, many small cell sites are expected to be proposed in the public right-of-way of towns and cities.

Wireless carriers are considered “telephone corporations” under section 7901 of the California Public Utilities Code, permitting them to install equipment within the public right-of-way (PROW). Under sections 7901 and 7901.1, however, cities maintain the ability to reasonably control the time, place, and manner in which equipment is installed, which includes the aesthetic elements of the equipment, and to ensure the use does not incommode the public use of the PROW.

The typical small cell site is comprised of one or more antennas, radios and related equipment connected to fiber optic cable backhaul and a power source that may include electric meters and batteries to operate the equipment in the event of a power outage. The antennas must be above ground to function. The other small cell site components typically are placed on the ground or attached to the pole. It may also be feasible to house equipment within an underground vault. It is anticipated that many (over 100+) new small cell site locations may be required citywide to adequately serve customer needs and to facilitate the upcoming 5G network upgrade.

Federal Communications Commission (FCC) Declaratory Order and Regulations

Recent changes in federal law have shortened the deadlines, or “shot clocks,” and other requirements for local review of small wireless facility applications. Under a FCC declaratory order and regulations (the “Order”), if a city does not render a decision on a small wireless facility application within a specified time period (60 days for installations on existing structures, and 90 days for new or replacement structures), the failure to meet the deadline for such decision will be presumed to violate federal law (as both a failure to act within a reasonable period of time and an effective prohibition of personal wireless services).

The FCC Order also requires that all fees (including permit application fees and rental fees for use of government-owned infrastructure, such as streetlights) be based on a reasonable approximation of the local government’s costs (not market rates), such that only objectively reasonable costs are factored into those fees, and fees are no higher than the fees charged to similarly-situated competitors in similar situations. The FCC Order also created “safe harbors” of presumptively reasonable fee levels that include: non-recurring fees equal to \$500 for the first five applications in a single submission and \$100 for each additional application in the submission; and \$1,000 for each new pole. Recurring fees are presumed reasonable if equal to \$270 per facility annually, including the fee for attachment to municipal infrastructure and use of the PROW. On aesthetics, the FCC declared

that such requirements will not be preempted if they are reasonable, no more burdensome than those applied to other types of infrastructure deployments, objective, and published in advance. Relatedly, undergrounding requirements may be permissible aesthetic regulation depending on the circumstances but singling out all wireless facilities to be placed underground could be deemed an unlawful effective prohibition. While the legal validity of this FCC order is being litigated, the effectiveness of the order has not been stayed pending resolution of this litigation.

Culver City's Regulatory Framework for Wireless Facilities

On January 14, 2019, the City Council adopted Ordinance No. 2019-002 adding Section §11.20.065, *Wireless Facilities in the Public Rights-of-Way* to Chapter 11.20 of the CCMC, establishing the regulatory framework necessary to permit the installation of wireless facilities within the City's PROW.

On January 14, 2019, the City Council adopted Ordinance No. 2019-001 amending Section 11.20.025 of the CCMC, allowing applications for placement of telecommunications facilities in the PROW to be approved administratively by the Public Works Director / City Engineer. (Previously, the City Council considered approving them.)

On December 10, 2018, the City Council adopted Resolution 2018-R109 establishing standard conditions of approval for encroachment permits to install wireless telecommunication facilities in the PROW pursuant to CCMC Section 11.20.065.H.1.

On December 10, 2018, the City Council directed the Public Works Director / City Engineer to develop "interim" Design and Development Standards (the "Design Standards") in conjunction with the Smart City Infrastructure Guidelines Subcommittee (Subcommittee), and once completed, to return to the City Council to consider approving them.

DISCUSSION

Resolution Establishing Wireless Encroachment Permit Fees

An encroachment permit is required before wireless carriers can install small cell site equipment or other facilities on City streets, sidewalks, or other places in the PROW. Based on a cost recovery and fee study performed by NBS, the City established a fee of \$3,927 to process applications to obtain an encroachment permit to install wireless facilities in the PROW. \$2,500 of that fee is paid to Alkemi Planning, the firm hired to review application submittals to determine their completeness and to ensure they adhere to City standards.

Since adoption of Ordinance No. 2019-001 allows the Public Works Director / City Engineer to administratively approve encroachment permits, staff no longer writes a report nor presents it to the City Council to consider approving. Based on the NBS cost study, elimination of the staff report writing/presentation tasks, and adding the \$2,500 Alkemi Planning fee, staff recommends adoption of the following two new fees:

- \$2,849 for a PROW Wireless Encroachment Permit - Utility Pole Attachment
- \$3,429 for a PROW Wireless Encroachment Permit - New or City-Owned Pole Attachment

These fees cover 85% of the actual cost to process the encroachment permits pursuant to the existing cost recovery policy approved by the City Council on June 23, 2008. (See Attachments No. 1 - *5/13/13 Fee Adoption Staff Report Excerpt Regarding the Cost Recovery Policy* and Attachment 2 - *Resolution Establishing Wireless Encroachment Permit Fees*)

Resolution Adopting Design and Development Standards for Wireless Facilities

Typically, small cell site equipment is either attached to a utility power pole or a City-owned streetlight. The Subcommittee, comprised of Mayor Meghan Sahli-Wells and Council Member Daniel Lee, primarily focused on the aesthetics of small cell site installations with a strong desire to underground equipment whenever possible, to use “integrated” streetlights that support carrier collocation in lieu of attaching equipment to poles, to eliminate or camouflage above-ground electric meter cabinets, and to ensure their placement will comply with the standards set by the FCC for safe levels of radio frequency emissions exposure of the general public.

The primary objective of the Design Standards is to diminish the visual blight small cell sites may create while at the same time ensuring they are technically feasible to implement. Staff distributed a few interim versions of the Design Standards to the wireless carrier industry for comment, met with industry representatives to go over their comments and shared that feedback with the Subcommittee.

The proposed Design Standards are summarized as follows:

- With exception of antennas, requires all small cell site equipment to be placed underground in the City’s 13 underground districts, with a strong preference to do the same everywhere else.
- Prohibits the installation of electric meters (and their above-ground pedestal cabinets) in Southern California Edison (SCE) territory since SCE offers a flat rate for small cell equipment thus eliminating the need for a meter.
- Since the Los Angeles Department of Water & Power does not offer a flat rate for small cell equipment, requires their above-ground pedestals containing electric meters to be as small as possible and be camouflaged when located in the City’s Business Improvement Districts (BID) in a fashion established by the City for each BID. (Staff will create an administrative policy to impose this requirement.)
- Where other equipment is placed in above ground cabinets (not in designated underground districts), requires the cabinets to be as small as possible and camouflaged if located in the City’s BIDs in a fashion established by the City for each BID.
- Requires antennas to be hidden within a shroud of the same color as the pole they are being attached to and to be mounted as high as possible (so they appear smaller from the ground).
- Encourages the installation of “integrated” streetlights, which contain all of the equipment concealed within their interior, that are substantially similar in type, taper, height, color and texture to the surrounding streetlights.

If an applicant can show that complying with any of these Design Standards would be technically infeasible, the Public Works Director/City Engineer may waive or modify specific Design Standards on a case-by-case basis.

City staff is requesting the City Council adopt a Resolution approving the Design Standards, with the

understanding that, pursuant to CCMC Section 11.20.065.D.1, the Public Works Director/City Engineer may administratively modify the Design Standards from time to time in response to rapidly changing advancements in integrated streetlight designs and small cell technologies, particularly in light of the imminent 5G network upgrade. When those proposed modifications to the Design Standards constitute a material change to the Design Standards, it is staff's recommendation to convene a Subcommittee meeting for their input prior to development and implementation of the modified or new standards. (See Attachment No. 3 -*Resolution Establishing Design and Development Standards for Small Cell Site Installations in the PROW*)

General Terms and Conditions/Light Pole Facility Addendum

Upon conclusion of the application review process, wireless carriers will be issued a wireless encroachment permit to place their small cell sites upon SCE/LADWP utility poles. For those installations on City-owned facilities, however, the applicants will also be required to execute a General Terms and Conditions (GTCs) (See Attachment No. 4 - General Terms and Conditions) and a Light Pole Facility Addendum (Addendum) (See Attachment No. 5 - Light Pole Facility Addendum) prior to receiving a wireless encroachment permit. (The GTCs also can be used along with a few other addenda used by CulverConnect customers -- the City's Municipal Fiber Network). Staff distributed the GTCs and Addendum to the wireless industry for review, thoughtfully considered their feedback, and their proposed final versions of the GTCs and the Addendum address many of industry's concerns and adopted many of the changes requested by the wireless industry.

Pursuant to the FCC Order, the Addendum adopts the presumed reasonable rental rate of \$270 per location annually however, if the local governments' appeal challenging the FCC's authority to establish such rates prevails, then a "market" rental rate of \$1,500 annually will become effective on January 1 of the year following any favorable court decision (See Attachments No. 4 *General Terms and Conditions Agreement* and 5 - *Light Pole Facility Addendum*).

Environmental Review

The proposed Resolution establishing the Design Standards, as well as the proposed GTCs and Addendum forms, are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption of the Design Standards, and these forms, will have a significant effect on the environment. The adoption of the Design Standards and these forms, by itself, does not result in any direct physical changes in the environment, as it only establishes standards and other conditions that may be applied to a subsequent project. Once an application is filed, that application will be subject to further environmental review. It is likely, however, that any applicable wireless facility installation would be exempt from CEQA in accordance with State CEQA Guidelines Sections 15302 (replacement or reconstruction), 15303 (new construction or conversion of small structures), and/or 15304 (minor alterations to land).

The proposed fee Resolution is not a "project" within the meaning of CEQA Guidelines Section 15378, because it has no potential for resulting in direct or indirect physical change in the environment; therefore, it is not subject to CEQA.

FISCAL ANALYSIS

Staff time required to process wireless encroachment permits was determined by a cost and fee study performed by NBS. If the proposed Resolution establishing the encroachment permit fees is adopted this evening, the fee revenue collected will cover 85% of the actual cost to process the wireless encroachment permits pursuant to the existing cost recovery policy approved by the City Council on June 23, 2008. The fees established in the GTC and Addendum adopt safe harbor rental rate established by the FCC and no study was performed of the actual costs associated with the rental of space on City Light Poles.

ATTACHMENTS

1. 2019-08-26_ATT - Fee Adoption Staff Report Excerpt Regarding Cost Recovery Policy.pdf
2. 2019-08-26_ATT - Proposed Resolution Establishing Wireless Encroachment Permit Fees
3. 2019-08-26_ATT - Proposed Resolution Establishing Design and Development Standards for Small Cell Site Installations in the PROW
4. 2019-08-26_ATT - General Terms and Conditions Agreement
5. 2019-08-26_ATT - Light Pole Facility Addendum

MOTIONS

That the City Council:

1. Adopt a Resolution establishing encroachment permit fees for wireless facilities in the public right-of-way pursuant to CCMC Section 11.20.065.F.4; and
2. Adopt a Resolution establishing design and development standards for the installation of small cell sites in the public right-of-way pursuant to CCMC Section 11.20.065.E.4; and
3. Approve the General Terms and Conditions Agreement and its Light Pole Facility Addendum for the installation of small cell sites upon City-owned facilities within the public right-of-way and authorize the Public Works Director / City Engineer to execute such agreements with wireless carriers on behalf of the City;
4. Adopt an exemption related to the Resolution establishing design and development standards, and the GTCs and Addendum, pursuant to CEQA Guidelines Section 15061(b)(3) and direct staff to prepare and file a Notice of Exemption accordingly; and
5. Confirm the Public Works Director / City Engineer's authority to administratively modify the Design and Development Standards from time to time pursuant to CCMC Section 11.20.065.D; and
6. Direct the Public Works Director/City Engineer, when changes to the Design and Development Standards are deemed substantive in nature, to obtain input from the Smart City Infrastructure Guidelines Subcommittee prior to implementation of such changes;
7. Direct the Public Works Director/City Engineer to return to the City Council for review and approval of the Design and Development Standards as needed.