



AGENDA REPORT SUMMARY

Meeting Date: June 14, 2022

Subject Wireless Telecommunications Facilities Ordinance and Design Guidelines

Prepared by: Gabriel Engeland, City Manager

Attachment(s):

1. Resolution 2022-__, Wireless Telecommunications Facilities CEQA Resolution
2. Ordinance 2022-__, Wireless Telecommunications Facilities Locational Standards, as presented on May 10, 2022
3. Ordinance 2022-__, Wireless Telecommunications Facilities Locational Standards, as recommended
4. Resolution 2022-__, Wireless Telecommunications Facilities Design Guidelines

Initiated by:

City Council

Fiscal Impact:

None

Environmental Review:

Negative Declaration. An Initial Study/Proposed Negative Declaration was distributed for a 30-day public review on January 26, 2022. No comments specifically directed to the initial study were received by the City during the public review period; however, comments asserting that radio frequency emissions are an environmental effect to be addressed in CEQA documents were received subsequent to the public review period and Planning Commission public hearing. Proposed Resolution No. 2022-__, approving a Negative Declaration, has been revised to specify the findings discussed during the City Council's May 10, 2022 public hearing that support the Initial Study's conclusion that the proposed Ordinance and Design Guidelines would not have a significant effect on the environment.

Reviewed By:

City Manager

GE

City Attorney

JH



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Summary Background:

- The technology for wireless telecommunications facilities is moving away from large, powerful towers that are very visually intrusive to smaller, less powerful facilities that are less visually intrusive. As a result, a greater number of wireless telecommunications facilities are needed to provide coverage.
- The attached CEQA resolution, locational standards, and design guidelines have been revised based on City Council members' consideration and discussion at the April 12, 2022 and May 10, 2022 public hearings. In addition, the Planning Commission held hearings on March 3, 2022 and March 17, 2022, resulting in the recommendations presented to the City Council on April 12, 2022.
- The proposed Ordinance and Design Guidelines regulate wireless facilities on the basis of aesthetics, traffic safety, noise, and other criteria. However, due to federal preemption, the proposed Ordinance and Design Guidelines do not regulate the placement of wireless facilities based on the environmental effects of radio frequency ("RF") emissions that comply with FCC regulations. Neither do the proposed Ordinance and Design Guidelines require or prohibit any specific type of technology, also consistent with the limitations imposed on the City based on federal preemption.

Policy Question(s) for Council Consideration:

- Does the City Council wish to modify the City's current locational, design, and development standards for wireless telecommunications facilities to:
 - Set new locational criteria for where small wireless telecommunications facilities may be permitted?
 - Set additional regulations as to the visual and physical effects of wireless telecommunications facilities through appropriate location, siting, design, and visual screening of facilities?
 - Expand the City's existing design guidelines to ensure wireless telecommunications installations have aesthetic design and placement in line with community expectations?
- Does the City Council wish to identify non-residential Zoning Districts as preferred locations for wireless telecommunications facilities and residential Zoning Districts as less preferred locations subject to specific additional preferences and design and development standards?



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Staff Recommendation:

1. Approve Resolution 2022-__, Wireless Telecommunications Facilities Adopting a Negative Declaration in compliance with CEQA.
2. Approve Ordinance 2022-__, Wireless Telecommunications Facilities Locational Standards, as recommended by the Planning Commission with additional modifications per City Council discussion on April 12 and May 10, 2022 as reflected in Attachment 3.
3. Approve Resolution 2022-__, Wireless Telecommunications Facilities Design Guidelines, as recommended by the Planning Commission with additional modifications per City Council discussion on April 12 and May 10, 2022 as reflected in Attachment 4.

Purpose

The overarching intent of the proposed Ordinance and Design Guidelines is to balance the need to provide for a reasonable range of potential sites for the location of wireless telecommunications throughout the City while preserving its essential wooded, small community character and its inherent aesthetic quality. The proposed Ordinance and Design Guidelines achieve this by minimizing the visual and physical effects of wireless telecommunications facilities through appropriate location, siting, design, and visual screening of facilities; encouraging the installation of wireless telecommunications facilities at locations where other such facilities already exist; and providing for the installation of wireless facilities so as to minimize potential adverse impacts to Los Altos.

Proposed locational standards and design guidelines are intended to better reflect the community's land use and address advancements in wireless telecommunications technology that is trending away from large, powerful, and very visually intrusive towers and "macro" facilities to smaller, less powerful, and less visually intrusive small wireless facilities.

Background

Current regulation of wireless telecommunications facilities within the City of Los Altos is provided in two documents:

- City of Los Altos Resolution No. 2019-35, *Design and Siting Guidelines and Standards for Wireless Facilities*, which provides design guidelines and locational standards for the installation of wireless facilities within the City.



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- City of Los Altos Municipal Code Chapter 11.12, *Wireless Facilities*, which addresses wireless telecommunications facility permit requirements and sets forth standard conditions of approval for such facilities.

The City adopted Resolution No. 2019-35 and Municipal Code Chapter 11.12 in August 2019 following a City Council study session and several public hearings, at which stakeholders discussed wireless and other infrastructure deployment issues; reviewed potential local regulatory responses to the recent changes in federal law in the FCC orders; and expressed their design and locational preferences, practical and safety concerns, aesthetic concerns, policy views and the essential local values that make Los Altos a unique community.

Discussion/Analysis

Starting with the Planning Commission's recommendations, the City Council undertook detailed review of wireless facilities locational standards and design guidelines on April 12, and May 20, 2022. Based on these reviews, staff is proposing revisions to the proposed CEQA Resolution (Attachment 1), Ordinance 2022-__ (locational standards), and Resolution 2022-__ (design guidelines). The City Attorney and the City's outside counsel, Meyers Nave, have undertaken a legal review of the proposed CEQA Resolution, Ordinance 2022-__, and Resolution 2022-__, and recommend their adoption.

Attachment 1 presents a revised CEQA Resolution for adoption of a Negative Declaration based on the discussion of environmental impacts and findings that occurred on May 10, 2022. The revised CEQA Resolution adds a more definitive conclusion regarding the Initial Study's findings regarding the CEQA implications of federal preemption of local regulations addressing the environmental effects of RF emissions on the environment.

Attachment 2 reflects Ordinance 2022-__, which was presented to the City Council on May 10, 2022 and reflects City Council discussion and direction given at prior Council hearings.

Attachment 3 reflects the City Council's May 10, 2022 discussion, at which time Council members identified certain revisions to the proposed ordinance and design guidelines, requested that staff review legal issues and bring back recommended revisions to the ordinance, and directed staff not to make certain other revisions to ordinance's findings and standard conditions of approval. Following the May 10, 2022 public hearing, City staff and its consultant team prepared revisions to the proposed Ordinance in keeping with the direction given by the Council as a whole and conducted a review of associated legal issues. Staff is recommending approval of the Ordinance with proposed revisions to the document reviewed by the City Council on May 10,



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2022 identified in underline / ~~strikeout~~ text. Notes found in the margins of the Ordinance and Design Guidelines summarize staff's reasons for its recommendations.

Recommended Revisions to Proposed Ordinance No. 2022-__

Based on the City Council's May 10, 2022 discussion and staff's legal review, the following revisions to proposed Ordinance No. 2022-__ are recommended:

1. *Minor modifications to Findings B, C, K, and O.*

These recommended modifications clarify certain findings and address grammatical issues.

2. *Identify colocation of new wireless facilities with existing facilities as the City's first preference (Section 14.82.030 A).*

Explicitly identifying colocation with existing wireless telecommunications facilities as the City's first preference for the location of new wireless facilities, which is consistent with the intent of the proposed ordinance as it was originally drafted.

3. *Reorganizing locational standards to reflect the preferences discussed by City Councilmembers on May 10, 2022.*

The organization of the proposed ordinance providing a complete set of locational standards for facilities within public rights-of-way and public utilities easements along with a complete set of locational standards for facilities on properties outside of these areas was best achieved by a reorganization of the ordinance. Consistent with the City Council's May 10, 2022 discussion, the following organization is recommended to reflect the order of preference:

- Colocation with existing wireless facilities (Section 14.82.030 A).
- Preferred locations (Section 14.82.030 B).
 - Outside of public rights-of-way and public utilities easements (e.g., building- or roof-mounted) (Section 14.82.030 B1).
 - Within public rights-of-way and public utilities easements (Section 14.82.030 B2).
- Less preferred locations (Section 14.82.030 C).



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- Outside of public rights-of-way and public utilities easements (e.g., building- or roof-mounted on non-residential structures) (Section 14.82.030 1).
- Within public rights-of-way and public utilities easements (Section 14.82.030 C2).

Staff therefore recommends that the presentation of location standards in the ordinance reflect the locational preferences identified above. By doing so, Ordinance 2022-__ as it is recommended provides a clearer statement of the City’s locational preferences than did previous versions. Note that underline / ~~strikeout~~ in the proposed ordinance reflects only proposed revisions to the text of the ordinance reviewed by the City Council on May 20. Text revisions related to this recommended reorganization add headings where needed and provide for consistent presentation of locational preferences. Moving text from one location to another in the proposed ordinance with no change to the wording is not shown in underline / ~~strikeout~~ text.

4. *Specify “small” wireless facility for ordinance provisions addressing only small facilities.*

The proposed Ordinance and design guidelines address both small wireless facilities as well as larger telecommunications towers. Because cellular technology is moving toward use of small wireless facilities rather than the larger towers, public discussion tends to focus on small facilities. To clarify the ordinance’s provisions, which restrict facilities within public rights-of-way and utility easements to small facilities, provision that apply only to small facilities are recommended to be so noted throughout the document.

5. *Revise guidelines for separation of new wireless facilities from residential dwelling units (see Sections 14.82.030 B2 a and b).*

To better describe preferences for separation of permitted small wireless facilities within residential zones from dwelling units, staff recommends:

- Revising the preferred distance for separation of a small wireless telecommunications facility from a residential dwelling unit to be based on the required setback of the zoning district within which the dwelling unit is located; and
- Preventing a small wireless facility from being placed within a public utility easement that runs across a required front, side, or rear yard residential setback.



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6. *Adding aesthetic-based criteria addressing small wireless facilities within public rights-of-way and public utility easements within and adjacent to parks (see Sections 14.82.030 C1a and C2d).*

Based on comments made by some members of the City Council, City staff undertook a review of the potential aesthetic effects of wireless facilities in relation to schools and parks and potential restrictions on placement in these areas. This review, which focused on aesthetic effects since the City is precluded from regulating on the basis of RF emissions, reached the following conclusions:

- Installation of a wireless facility on a new pole would have substantially greater aesthetic impacts than would installation of a small wireless facility on an existing facility within a public right-of-way or utility easement adjacent to a park or school.
- Installation of a small wireless facility on an existing pole within a public right-of-way or utility easement adjacent to a park or school would have similar aesthetic impacts as, for example, installation of a small facility on an existing utility pole across the street from a park or school.
- Installation of a wireless facility on a school or park property outside of a public right-of-way or utility easement could adversely affect school or park use due to required maintenance of wireless facilities.

Staff thus concluded that wireless facilities should not be permitted within a school or park facility outside of a public right-of-way or utility easement, with small wireless facilities permitted as less preferred locations within adjacent public rights-of-way and utility easements.

7. *Modifying the standard requiring upgrading of wireless facilities to incorporate new technology where feasible, to apply only when a modification of an existing facility is proposed or when a new permit is sought to replace an expiring permit for an existing facility (see Section 11.12.065).*

The City's existing Municipal Code Section requires that approvals of wireless telecommunications facilities include the following condition of approval:

“Where feasible, as new technology becomes available, the permittee shall:



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- a. Place above-ground wireless telecommunications facilities below ground, including, but not limited to, accessory equipment that has been mounted to a telecommunications tower or mounted on the ground; and
- b. Replace larger, more visually intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary permits and approvals required pursuant to the Los Altos Municipal Code.”

Based on the City Council’s May 10, 2022 discussion, staff recommends replacing this existing Code provision with a new Section 11.12.065 that would apply only when an existing permit is proposed to be modified and when a new permit is sought for an existing wireless facility. The new condition of approval would, in addition to the current condition of approval, above, require that approval of a permit modification or a new permit for an existing facility require that the permittee “bring the facility into compliance with the most current FCC, PUC, and City of Los Altos requirements and guidelines.

Attachment 4 is Resolution 2022-___, which includes design guidelines for wireless telecommunications facilities. Following its detailed review of the proposed ordinance on May 10, 2022 the City Council reviewed the proposed design guidelines and found that only minor revisions were needed to the findings for Resolution 2022-___ to reflect proposed revisions to the findings for Ordinance 2022-___.

At its May 10, 2022 meeting, the City Council discussed having staff study and report with recommendations as to what modifications, if any, may be needed to the proposed wireless telecommunications facilities ordinance or to the City’s insurance and permit requirements addressing fire safety, structural design, and insurance requirements. Following the May 10, 2022 City Council meeting, staff confirmed that the City’s review process provides the City with the ability to require the information necessary to address insurance, fire, and related safety issues.

In relation to structural design, staff also confirmed that the standard recently requested by various commenters during and subsequent to the May 10, 2022 public hearing is already incorporated into design requirements for emergency communication networks. Thus, any wireless components within the area’s 911 network already adheres to the requested standard. The most recent requests ask that the City require that the rest of the wireless network also comply with the (APCO ANS 2.106.1) standard. Staff believes that the structural safety of future wireless telecommunications facilities can be successfully achieved through the City’s existing review process reviewing the structural design of proposed facilities on a case-by-case basis.



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Such a review process would also maintain any liability for the structural integrity of wireless facilities with carriers and the owners of poles upon which new wireless facilities are proposed (primarily PG&E), rather than imposing liability on the City.

Staff believes that existing insurance requirements for facilities placed within public rights-of-way and public utility easements are adequate and do not need to be increased at this time. In large part, this is due to the fact that insurance requirements requested by various commenters would be for wireless telecommunications facilities, while the owners of utility poles, such as PG&E who are responsible for the structural integrity and safety of the poles. Insurance requirements for wireless facilities would mirror the requirements placed on other facilities within public rights-of-way and would be in addition to insurance carried by owners of utility poles.

Staff is therefore not recommending that the City Council direct staff to study and report back with recommendations as to what modifications, if any, may be needed to proposed wireless facilities regulations or the City's insurance and permit requirements addressing fire safety, structural integrity, and insurance requirements.

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