

Review of City Council Policy 300-04 trs 021818

Subject: DEVELOPMENT OF TELECOMMUNICATION FACILITIES ON CITY PROPERTY AND INSTALLATION OF ANTENNAS ON CITY FACILITIES. Policy Number Effective Date Number of Pages 300-04 2/14/2017 1 of 3 pages

BACKGROUND:

The City has received requests from public agencies and private companies to develop telecommunications facilities on City property and to install antennas on said property for wireless personal communications and other services. The Telecommunications Act of 1996 addresses the proliferation of personal wireless services in the United States, and contains important provisions concerning the placement of towers and other facilities for use in providing these services. Section 704 of the Act governs federal, state, and local government oversight of siting of personal wireless services facilities, and supports the use of publicly owned land and facilities for locating towers and antennas.

PURPOSE:

The purpose of this policy is to establish procedures by which requests from public agencies and private entities to develop telecommunications facilities on City property, and to install antennas on City facilities, will be considered, provide guidance to City staff, and to describe the application process.

DEFINITIONS:

Telecommunication Facility: A stationary exterior facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns, and any other type of equipment for the transmission or receipt of such signals; telecommunication towers or similar structures supporting said equipment; equipment buildings; parking areas; and other accessory development.

Antenna: Any system of wires, poles, rods, reflecting discs, or similar devices used for transmission or reception of electromagnetic waves when such system is either external or attached to the exterior of a structure. Antennas shall include,

but are not limited to, devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be part of the antenna.

City facility: Any building, tower, water reservoir, treatment plant, pump or lift station, street light or traffic signal standard, sports field light, infrastructure, or other real property owned by the City of Santa Rosa or any of its Enterprise Funds.

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Note: Other related definitions or requirements may be found in City Code Chapter 20-44 TELECOMMUNICATION FACILITIES and City Code Chapter 13-04 STREET ENCROACHMENTS

POLICY: Council acknowledges the proliferation of wireless and other telecommunication services and the facilities and antenna, as well as the utility infrastructure, required for their functioning, and supports the Telecommunications Act of 1996. The citizens of Santa Rosa may be best served by a policy that considers the development of telecommunications facilities on City owned or leased property, and the installation of antennas on said property. This policy stresses public safety, facility compatibility and function, and community aesthetics, allows application from any public agency or private entity, and intends to both cover City expenses and maximize revenue generated from licenses associated with developments on City property. Council also desires to manage City properties and facilities with potential for telecommunication developments and antennas installations, including co-location of multiple antennas on single facilities, to maximize the benefits to the citizens of Santa Rosa. In addition, no installation will be permitted upon a City structure when to do so would interfere with routine or emergency maintenance and/or create facility access issues for the City. It is emphasized the primary purpose or function

for which a property or facility was intended, to include future and presently unknown City uses, and the structural integrity or security, shall in no way be compromised as a result of any telecommunications development or antenna installation. The City's land use zoning, building permit, encroachment permit and design review policies, as applicable, shall also be fully complied with.

PROCEDURE:

The following procedures shall be followed when a public agency or private entity (Applicant) is interested in developing a telecommunication facility on **City property** or installing an antenna on a City facility:

- a) *Does "City property" definition include right of ways? In the Master License Agreement with Verizon, it states, "WHEREAS, Licensor owns certain real property and rights of way, and certain street lights and traffic signals located in the city of Santa Rosa, California (collectively, "Licensor's Property")..."*
- b) *In this case the Licensor is the City. Licensor Property = City Property, which includes rights of way.*
- c) *In paragraph 5b, the language specifically exempts right of ways from the 'good building practices' specified in City Code 20-44. See additional comments underneath Paragraph 5b.*

1) Applicant shall review City Code Chapter 20-44 Telecommunication Facilities to be fully informed about the standards, requirements and regulations for telecommunication facilities in the City of Santa Rosa.

2) Applicant shall contact the City Manager or his designated representative, who will coordinate with the department responsible for the property or facility, as determined by the City Manager, to determine if there is sufficient interest in pursuing the request based upon the criteria set forth in this policy.

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3) Should the City Manager or designee determine there is interest in pursuing the request, the Applicant shall be asked to submit a written Conceptual Proposal (See Exhibit A) to the City for consideration. Review of the Conceptual Proposal by the City is still at a very preliminary level and is meant to identify any prohibitions contained in the zoning code, compatibility with life and safety codes, potentially costly improvements or accommodations associated with the request, compatibility with City facilities and existing uses or major community aesthetic issues that could warrant significant public or environmental review. This information will be shared with the Applicant.

a) Do date the City has not been able to produce Exhibit A.

b) Verizon appears to have a categorical CEQA exemption from the CPUC. This exemption could not have included the battery backup system as part of Verizon's exemption application. If the CPUC granted this exemption to Verizon and included the battery backup system, CPUC would need to explain how the CEQA exemption was granted in that the batteries in the battery backup system are commercial nickel cadmium batteries, which are classified as a class 8 toxin hazard, and are explosive under dead-short conditions.

c) The battery and its cabinet would also require specific safety measures when approached by firefighting personnel, and would require a Hazardous Materials Release Response plan per SB1082.

d) Therefore, adding hundreds of battery backup systems to the city build out plan must have been a local government request. If that were the case, wouldn't the city be responsible for CEQA environmental review of the battery cabin on right of ways (parking-strip) in front of residences?

e) This lead to the question, who ordered the battery backup and when?

4) Should the City Manager or designee determine the development or installation is potentially feasible after the preliminary Conceptual Review, the Applicant shall be asked to submit an Application (see Exhibit B) with a non-refundable fee of \$2,000 to the City. This fee is to cover costs associated with the preliminary analysis and administrative processing associated with project consideration on City property, site inspections, possible license negotiations, preparations, and credit check, and is in addition to any other applicable permit fees that may apply. This fee may be reduced or waived for public agencies at the discretion of the City Manager.

a) Do date; the city has not produced Exhibit B document.

b) After reviewing the plans that Verizon submitted to the Planning Department, granted by California Freedom of Information Act, we could not find Exhibit B or Exhibit A in the documents that the building department provided.

c) The plans do not specify the batteries, or the power output of 'small cell tower' pole-mounted radios (transceivers).

d) Furthermore, the electrical portion of the plans was stamped-off by a professional structural engineer. This violates state law Professional Engineers Act B&P Code Section 5537.2, 5537.4, and 6737.4. The electrical portion of the plans (drawings) should have been stamped-off by a professional electrical engineer.

5a) After consideration of the Application, the City Manager or designee will render a determination as to the project's feasibility for moving into the applicable City permit review process, and notify the Applicant.

5b) For telecommunications projects to be located within the City right of way, such as on street lights, traffic lights or other City right of way facilities, Applicant shall obtain an encroachment permit pursuant to City Code Chapter 13-04. The City may enter into a master license agreement which will allow subsequent site licenses to be approved pursuant to said master license agreement. For telecommunications projects to be located on City property other than City right

of way, Applicant shall obtain a building permit and any other City approvals required pursuant to City Code Chapter 20-44. For such projects, the City may enter into a site license agreement for each new location. Any license for telecommunications facilities shall be in a form approved by the City Attorney's Office and shall not be final until such time as Applicant has obtained all necessary City permits for any such project. The City Manager, or designee, shall have the authority to execute site license agreements that comply with this Policy, City Code and any other applicable requirements adopted by Council.

- a) *Note in the first sentence "City right of way" does not exclude parking-strips which are considered right of ways. So encroachment permits would be required in parking-strips where utility poles reside, along with home owner's trees, shrubs, lawns, and flowers.*
- b) *Note in the third sentence "City property" would normally include right of ways, except the following words "other than City right of way" excludes right of ways from having to comply with City Code 20-44, nor will each location in a right of way (parking strip) need a site specific license agreement.*
- c) *In the case where battery cabinets are placed in parking-strips; no city building codes, electrical codes, seismic codes, inspections, or any other requirement specified in City Code 20-44 would be required. However, seismic codes for the battery cabinet's concrete pad would not be exempt in that these are specified in City Code Chapter 16, ASCE 7-10, and NEHRP FEMA 232.*
- d) *The last sentence gives authority to the City Manager to execute the license agreement as soon as it complies with City Council Policy 300-04, City Code, and any other requirements adopted by the City Council. It does not have to come back to the City Council again before it is executed.*
- e) *In the last sentence it states, "...this Policy, City Code, and any other..." In this sentence the City Manager cannot execute license until it complies with City Code, for example City Code 20-44. Then this leads to: Can the City*

Manage execute a license that does not comply with City Code, because in the third sentence; right of ways (parking strip) are exempt from having to comply with City Codes according to 300-04. In my understanding, if there is a discrepancy between City Code and City Council Policy; City Code overrides Policy.

f) Even though Verizon indemnifies the City from toxic and hazardous conditions in the lease agreement, part of the City's charter is to protect its citizens from hazardous and toxic conditions. In conclusion, if the City Council Policy 300-04 allows the battery cabinet to be installed in right of ways (parking-strips) without complying with applicable City Codes, such as City Code 20-44, and an incident should occur, (such a vehicle crashing into a battery cabinet) the City could be liable for Regulatory Negligence in the Duty of Care.

6) Once Applicant has obtained all necessary permits and has entered into a license agreement with the City for such site, Applicant may then begin the development or installation process.

Amended by Resolution No. RES-2017-022 Dated: February 14, 2017

Amended by Resolution No. 27830 Dated: February 15, 2011

Adopted by Resolution No. 24490 Dated: July 11, 2000

Exhibit A

Conceptual Proposal Checklist

The Conceptual Proposal shall contain the following information (3 copies):

1. Site address and square footage required or space required.
2. Reason for project, scope of services that will be provided, (eg. local area cellular telephone services), and names of all represented clients.

3. Detailed project description, as applicable, a plan showing the type and size of antenna or tower to be installed, equipment shelter or cabinets, power requirements, frequency or frequency ranges, transmitter output power, antenna gain, and effective radiated power. The plan should show the location of all the Applicant's needs and planned installation or construction in relation to any and all existing facilities at the site. Photos or renderings may also be submitted for clarification.
4. Interference analysis if there is existing communication equipment on site.
5. Access requirements
6. Testing requirements, if desired.
7. Name, address, and telephone number of contact individual.

Note: Applicants will provide their own dedicated power sources, telephone lines, and site access whenever possible. The integrity and present or future function of any existing facility, antenna, or system must be protected, and access road use must not be adversely affected. Work within the City's rights of way will require an encroachment permit.

Exhibit B

Application Checklist

The application shall contain the following information (3 copies):

1. The Conceptual Proposal and
2. Descriptions and/or alternative solutions to mitigate real estate, telecommunications, or any other issues identified as a result of the Conceptual Proposal.
3. Desired license term, including any options to extend.

4. Date project would be installed or constructed if approved, proposed construction schedule, and estimated time for completion.
5. A non-refundable Application fee.
6. For major telecommunications projects - a site plan showing all dimensions, proposed elevations and landscaping and for telecommunications projects to be located within the City right of way - a design plan, as determined to be appropriate based on actual location and size of the proposed project.
7. Engineering calculations, if requested by the City, and prepared by an engineer approved by the City.
8. A detailed description of the operating maintenance schedule.
9. Approximate cost of project, including construction, permanent improvements to site, removable improvements, and required upgrades.
10. A rendering or visualization photo of the entire proposed telecommunication facility, or existing facility with proposed antenna.