



Legislation Text

File #: 17-0436, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Mark Danaj, City Manager

FROM:

Anne McIntosh, Community Development Director

Laurie B. Jester, Planning Manager

Jason Masters, Assistant Planner

SUBJECT:

Update on Telecommunications and Coastal Permits for Four AT&T Telecom Sites in the Public Right of Way on Light Poles in the Appealable Area of the Coastal Zone Located at Manhattan Avenue and 5th Place, Manhattan Avenue and 29th and 36th Streets and Ocean Drive and 18th Street (Community Development Director McIntosh).

RECEIVE UPDATE AND CONTINUE ITEM TO A FUTURE DATE

RECOMMENDATION:

Staff recommends that:

- 1) the Council receive an update on telecommunications; and
- 2) continue the public hearing to November 21, 2017.

EXECUTIVE SUMMARY:

AT&T ("AT&T" or "applicant") is proposing a 16-Node oDAS system to enhance cellular telephone coverage particularly in the Coastal Zone and adjacent areas where coverage is currently marginal or non-existent. The proposed AT&T oDAS network includes 16 locations on utility and lights poles, and one on a City-owned banner pole. The City provided public notice to property owners and residents adjacent to the proposed facilities and the City will provide notice of decisions made by the Community Development Director where she is the initial decision-maker.

The Federal Communications Commission (FCC) regulates WCF, but preserves local authority over individual zoning decisions regarding the placement, construction and modification of WCF, with the focus primarily on aesthetics. Local discretion to deny wireless telecom facilities is limited by the federal Telecommunications Act. This law prohibits cities from denying a wireless facility based on potential health or environmental impacts of radio frequency emissions. Additionally, cities cannot unreasonably discriminate among similar carriers or impose regulations and deny a facility if the denial precludes a carrier from addressing a significant gap in its wireless coverage.

At the City Council meeting of August 15, 2017, the City Council held a public hearing on four of the 16 nodes. Those four nodes are within the area of the Coastal Zone known as the "appealable"

area. The City Council is the decision-making body on the four nodes in the appealable area, and the Council's decisions are appealable to the California Coastal Commission. With respect to the other 12 nodes, the Community Development Director is the decision-making body. The Director is currently reviewing those applications, and intends to make a decision as to each of those applications no later than the day of the Council meeting (October 17, 2017).

On August 15, 2017, the City Council requested that the Master License Agreement be considered concurrently with the applications, and prior to the City's completion of the purchase of the Southern California Edison light poles, anticipated in early 2018. The telecommunication facilities will not be installed until after acquisition of the light poles.

On September 26, 2017, the City conducted a Telecommunications Workshop to help educate residents, business owners, and interested individuals about the Telecommunication Facilities process. This included discussion on the different types of facilities; City, State and Federal regulations, and the City's permitting process. The Workshop material, including a powerpoint presentation is provided on the City's website at:

<http://www.citymb.info/Home/Components/News/News/3315/43>.

To provide yet another opportunity for the public to provide comment at a public hearing staff is recommending that the Council continue this item until November 21, 2017. A continuance will also provide the Council with an opportunity to consider the Master License Agreement concurrently with the applications; and to consolidate a review of not just the four nodes in the Appealable Area, but applications for other project locations as well.

DISCUSSION:

City Staff has been working with the applicant since the August 15 City Council meeting to identify opportunities to address concerns voiced by the Council and residents (see Staff Report and Minutes from the August 15 City Council meeting-Attachment A).

City Staff and the applicant have discussed conducting the review and decision process to provide additional opportunities for community input on the application package.

Given the level of interest in most, if not all of the proposed locations, staff believes that community members will be inclined to appeal some if not all of the individual approvals in order to be heard by the City Council. In addition, the City Council has a past practice of calling for the review of the decision's regarding controversial decisions in lieu of requiring community members to appeal.

In this particular case, due to the extensive and duplicative noticing requirements of both the Director's decision, and then subsequent appeal, the City Council may want to consider conducting a public hearing on not just the four applications in the appealable coastal zone, but others as well. Even though each antenna is a separate application, the request is actually an integrated system (Distributed Antenna System - DAS). One notice would be sent to all properties within 500 feet of each location stating the Director's decision as well as the date of the City Council hearing. If individuals wish to appeal any Director decision, they would still retain that right. The appeals would be included in the same hearing item.

AT&T understands the utility of having the Council consider all applications at one time, and initially executed a tolling agreement to toll the "shot clock" through October 31, 2017. Under the federal Telecommunications Act, the Federal Communications Commission established a "shot clock" time

deadline for local decisions on telecommunications applications. Applications for new non-collocation facilities must be approved or denied within 150 days of a complete application. However, the applicant and local agency may mutually agree to extend the shot clock by executing a tolling agreement. Staff and AT&T have been exploring an extension of the tolling agreement of the FCC “shot clock” provisions, and AT&T’s counsel indicated this morning that AT&T will agree to an extension through November 22, 2017, contingent on timely decisions by the Director on the 12 administrative applications.

POLICY ALTERNATIVES:

Alternative #1:

The Council may consider continuing this public hearing to another day prior to November 22, 2017.

PUBLIC OUTREACH/INTEREST:

A public notice for the August 15 City Council meeting was mailed to property owners within 500 feet and residents within 100 feet of the site, interested parties, and the California Coastal Commission and published in the Beach Reporter newspaper, as required by Coastal and Telecommunication regulations. Additionally, as previously stated, a Telecommunications Workshop was held on September 27 to further increase public outreach.

ENVIRONMENTAL REVIEW

The City has reviewed the proposed project for compliance with the California Environmental Quality Act (CEQA) and has determined that the project qualifies for a Class 3 categorical exemption pursuant to Section 15303(d) of the State CEQA Guidelines since the proposed project requires installation of small new equipment and facilities and the conversion of existing light poles where only minor modifications are made in the exterior of the structure. Thus, no further environmental review is necessary.

LEGAL REVIEW

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

Attachments:

1. Link to Staff Report, Minutes, and Attachments from City Council Meeting of August 15, 2017
<<https://manhattanbeach.legistar.com/LegislationDetail.aspx?ID=3159608&GUID=ECCCBAD8-8CC9-4261-851C-9F652F660C9E>>
2. Link to Telecommunications Workshop Presentation
<<http://www.citymb.info/home/showdocument?id=29995>>