



BURLINGAME CITY COUNCIL
Approved Minutes
Regular Meeting on April 5, 2021

6:00 P.M STUDY SESSION

a. PRESENTATION AND DISCUSSION OF FUTURE WIRELESS ORDINANCE UPDATE

Interim City Attorney Spansail explained that on February 6, 2012, the Burlingame City Council adopted Ordinance Number 1870, the City's Wireless Communications Ordinance. The ordinance was designed to "establish policy, standards and procedures related to the siting of wireless communications facilities in a fair, equitable and rational manner."

Interim City Attorney Spansail explained that in order to ensure compliance with new state and federal regulations, the City needs to amend the ordinance.

Interim City Attorney Spansail stated that on June 10, 2020, the City hosted a "Wireless Workshop" to discuss small cellular technology in Burlingame. This presentation was designed to educate the public and start a conversation about potential changes to the wireless infrastructure in the city.

Interim City Attorney Spansail explained that the City is currently working with Best, Best and Krieger LLP attorney Gail Karish to amend the Burlingame Municipal Code regarding wireless communications facilities. He stated that Ms. Karish has extensive knowledge of the changing laws and regulations that limit a municipality's ability to regulate wireless activity.

Ms. Karish reviewed the City's current regulations regarding wireless facilities. She explained that the City's regulations apply to private property, public property, and public rights-of-way. She added that there are two permits available: administrative and conditional. She reviewed the locations of the wireless facilities in the city:

- Six installations located on utility poles (none on City-owned poles)
- Washington Park baseball field light pole
- Approximately 32 facilities on the rooftops of 23 buildings

Ms. Karish gave a summary of federal and state regulations. She explained that the principal limitation on the City's authority to govern wireless communication facilities is federal law 47 U.S.C 332(c)(7), which imposes the following limits:

- Action must be within a reasonable period of time

- May not prohibit or effectively prohibit provision of personal wireless services
- Denials must be in writing and supported by substantial evidence
- No consideration of radio frequency emissions if applicant meets FCC standards
- No unreasonable discrimination among providers of functionally equivalent services
- Expedited appeals to court

Ms. Karish discussed 47 U.S.C 1455(a), which governs eligible facilities requests (“EFRs”). This law states that EFRs are certain modifications to existing structures with an existing wireless facility. She explained that an EFR can entail collocation of new transmission equipment; removal of transmission equipment; or replacement of transmission equipment. She noted that the City has no discretion to deny an EFR. However, she explained that a factor that can be used in determining the qualification of a facility as an EFR is whether the proposed work defeats the concealment elements of existing “stealth” structures. She stated that a “stealth facility” is one that is designed to look like something other than a wireless tower or base station.

Ms. Karish outlined key FCC orders:

- 2009 - Adopted two wireless application “shot clocks”
- 2014 - Adopted rules for eligible facilities requests and another shot clock
- 2018 - Adopted shorter shot clocks for small wireless facilities and put limits on local aesthetic rules and fees for permits and use of City-owned poles in public right-of-way
- 2019 - Interpreted scope of cable franchise grant to include wireless devices
- 2019 - Issued order re-affirming existing radio frequency emissions standards
- 2020 - Issued clarification of rules for eligible facilities requests
- 2020 - Issued modification to rules for eligible facilities requests

Ms. Karish discussed key provisions of California state law and noted that the California Legislature is particularly focused on wireless facilities in the public right-of-way. She reviewed the following Sections of the California Public Utility Code:

- Section 7901 - grants state franchise to telephone companies to use public right-of-way, subject to limitations (may not “incommode the public use”)
- Section 7901.1 – reasonable control as to the time, place, and manner in which roads are accessed by telephone company
- Section 2902 – preserves local regulation of use and repair of public streets, location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets where not preempted by CPUC

Ms. Karish noted that AB 556, which is pending, would mandate the use of City light and traffic poles at an annual rental rate of \$270.

Ms. Karish also reviewed key provisions of the California Government Code including:

- Section 65860.6 allows: discretionary permit to approve base facilities that may later add collocation facilities and no discretionary review of facilities collocated on base facilities

- Section 65964 prohibits: escrow deposits for removal of a facility, permits of less than 10 years (unless for “public safety” or “land use” reasons), and requiring all facilities to be located on sites owned by particular parties
- Section 65850.75 (AB 2421) temporarily imposes shot clock and mandatory approval of qualifying emergency generators at macro cell sites; does not apply to small cells, distributed antenna systems, or rooftop facilities

Ms. Karish reviewed shot clocks in reference to wireless facilities. She explained that a shot clock is the specific time period in which a city must take final action on an application and all related authorizations to install or modify a wireless facility. She noted that this includes appeals. She stated that the shot clock may be reset or tolled for two reasons:

- By issuing a timely notice of incompleteness or
- By agreement with the applicant

She explained that the longest shot clock period is 150 days. She stated that the FCC reviews in depth the various shot clocks and their applicable categories. She added that the most frequent shot clocks are between 60 and 90 days in length.

Ms. Karish discussed notice of incompleteness. She stated that the most common length is 30 days followed by a 10-day resubmission period to determine if the application is complete or not. She explained that the clock resets when the application is resubmitted.

Ms. Karish reviewed shot clock remedies:

- 60-day and 90-day small cell shot clocks
 - No federal or state deemed granted remedy
 - Enhanced remedy (if you missed the shot clock) – presumed to be an illegal effective prohibition
- 60-day EFR shot clock
 - Federal deemed granted remedy – applicant send notice to exercise it
- 60-day California emergency generator shot clock
 - State deemed granted remedy
- 90-day and 150-day collocation and other wireless shot clock
 - State deemed granted remedy (California Government Code Section 95964.1)

Ms. Karish next discussed the legal limits on aesthetic regulations. She noted that generally, local governments can regulate aesthetics. However, EFR rules may override aesthetics in some situations. She explained that aesthetic regulations for personal wireless facilities must not prohibit or effectively prohibit the provisions of personal wireless services. She noted that aesthetic regulations for small cells must be reasonable such that they are “technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments.” Additionally, aesthetic regulations must be published in advance.

Ms. Karish stated that under state law, wireless carriers and telecommunication providers have a right to

install wireless facilities in the public right-of-way, so long as the placement does not inconvenience the public use of the right-of-way.

Ms. Karish gave an overview of the changes that would need to be made to the City's wireless ordinance. She added that the City would also need to create standards for the implementation of wireless facilities through resolution, update the process by which to get a permit, and adopt a master license agreement.

Ms. Karish explained that one of the major policy issues is balancing public input with the need to streamline the process due to shot clocks. She stated that another major policy issue is updating location and installation preferences and design standards.

Ms. Karish reviewed areas of the wireless ordinance that would need to be amended including:

- Design criteria for wireless communication facilities
- General requirements including:
 - Locations within non-residential zoning districts, which are more than 500 feet from residential zoning districts or the Burlingame Downtown Districts
 - Non-residential zoning districts within 500 feet of residential zoning districts or the Burlingame Downtown Districts
 - Residential zoning districts

Ms. Karish discussed City light poles. She stated that there are 1,130 City-owned steel light poles, with 1,050 being standard and 80 decorative. She mentioned that PG&E also provides lighting service.

Vice Mayor Ortiz asked if any nearby cities have adopted resolutions that the City could utilize. Ms. Karish replied in the affirmative.

Vice Mayor Ortiz asked about creating a standardized look for the wireless facilities to address aesthetic concerns and thereby streamlining the process. Ms. Karish replied in the affirmative. She explained that some cities have samples of approved designs that they give companies. However, she noted that different carriers have different facilities, so the approved design has to be able to work with all carriers.

Mayor O'Brien Keighran asked about a citizen appealing a Planning Commission approval and whether the Council would have time to address the appeal within the shot clock period. Ms. Karish replied that under the current ordinance, an individual has 21 days to appeal a Planning Commission decision. She noted that this makes it difficult for the Council and staff to handle the appeal within the shot clock period. She added that as a result, some cities have shortened the time in which an individual can file an appeal.

Councilmember Brownrigg stated that he believed it would be hard to limit where the wireless facilities are installed. However, he noted that he was worried about the power sources that would be needed. He asked if the City can restrict companies to use shorter wavelengths as that will require fewer facilities. Ms. Karish replied in the negative. She explained that local governments cannot regulate the technology that carriers use. She stated that in terms of power sources, smart meters can be used, and for metal poles, equipment can be hidden within the pole.

Councilmember Colson stated that the City needed to figure out a way to convey this information to the public so that they understand what role the City plays in the installation of wireless facilities. She added that the City should work with Caltrans on its El Camino Real corridor plans to see if new facilities can be integrated into the plan.

Councilmember Beach asked if any studies had been undertaken at the federal level on the effect of cumulative radio frequency exposure. Ms. Karish stated that when the FCC reaffirmed their rules, it looked at current research and found it was acceptable. However, she noted that she expects this will be an ongoing issue.

Mayor O'Brien Keighran adjourned the study session.

1. CALL TO ORDER

A duly noticed meeting of the Burlingame City Council was held on the above date via Zoom Webinar at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

The pledge of allegiance was led by Councilmember Colson.

3. ROLL CALL

MEMBERS PRESENT: Beach, Brownrigg, Colson, O'Brien Keighran, Ortiz

MEMBERS ABSENT: None

4. REPORT OUT FROM CLOSED SESSION

There was no closed session.

5. UPCOMING EVENTS

Mayor O'Brien Keighran reviewed the upcoming events taking place in the city.

6. PRESENTATIONS

a. ABILITY PATH PRESENTATION

AbilityPath representative Bryan Neider stated that the organization serves around 1,500 individuals every week and offers 180 online classes for people with disabilities. He explained that their programs are offered on a quarterly schedule and are held both virtually and in-person. He added that AbilityPath is restarting limited in-person therapy and early intervention services mid-April. He stated that a hybrid model provides more parental choice and ensures quality therapeutic outcomes.