



Planning Commission Agenda

Meeting of March 18, 2019 – 6:00 p.m.
Council Chambers, Civic Center
1243 National City Boulevard
National City, CA 91950



The Planning Commission requests that all cellphones, pagers, and/or smart devices be turned off during the meeting.

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Welcome to the Planning Commission meeting. The National City Planning Commission conducts its meeting in the interest of community benefit. Your participation is helpful. These proceedings are video recorded.

Roll Call

Pledge of Allegiance by Commissioner Dela Paz

Approval of Minutes

1. Approval of Minutes from the Meeting of March 4, 2019

Approval of Agenda

2. Approval of the Agenda for the Meeting on March 18, 2019

ORAL COMMUNICATIONS (3 MINUTE TIME LIMIT).

NOTE: Under State law, items requiring Commission action must be brought back on a subsequent agenda unless they are of a demonstrated emergency or urgent nature.

PRESENTATIONS

CONTINUED PUBLIC HEARINGS

PUBLIC HEARINGS

3. Resolution taking action on a Code Amendment Amending Section 18.30.220 (Telecommunications Facilities) of the National City Municipal Code

OTHER BUSINESS

STAFF REPORTS

Senior Assistant City Attorney

Deputy City Manager

Acting Planning Director

Principal Planner

Commissioners

Chairperson

ADJOURNMENT

Adjournment to the next regularly scheduled meeting on April 8, 2019.



Planning Commission Minutes

Planning Commission
Meeting of March 4, 2019
Council Chambers, Civic Center
1243 National City Boulevard
National City, CA 91950

These minutes have been abbreviated. Video recordings of the full proceedings are on file and available to the public.

Agenda Items

The meeting was called to order by Chair Sendt at 6:02 p.m.

Roll Call

Commissioners Present: Flores, Sendt, Yamane, Dela Paz

Commissioners Absent: Garcia, Baca

Staff Also Present: Senior Assistant City Attorney Nicole Pedone, Acting Planning Director Ray Pe, Principal Planner Martin Reeder, Acting Assistant Planner Chris Stanley

Pledge of Allegiance Presented by Chair Sendt

1. Approval of Minutes from the Meeting of February 4, 2019.

Motion by Yamane, second by Flores to approve the Minutes for the Meeting of February 4, 2019.

Motion carried by the following vote:

Ayes: Flores, Sendt, Yamane, Dela Paz

Abstain: None.

Noes: None.

Absent: Garcia, Baca

2. Approval of the Agenda for the Meeting of March 4, 2019.

Motion by Yamane, second by Flores to approve the Agenda for the Meeting of March 4, 2019.

Motion carried by the following vote:

Ayes: Flores, Sendt, Yamane, Dela Paz

Abstain: None.

Noes: None.

Absent: Garcia, Baca

ORAL COMMUNICATION: None.

PRESENTATIONS: None.

CONTINUED PUBLIC HEARINGS:

3. Resolution taking action on a Conditional Use Permit for the Modification of an Existing Wireless Communications Facility on a Sign located at 1900 East Plaza Boulevard (Family House of Pancakes) (Case File No. 2018-28 CUP)

Presented by Acting Assistant Planner Chris Stanley.

Applicant, Chris Ward on behalf of T-mobile, has read, understands, and accepts the conditions of the Conditional Use Permit.

Commissioner Dela Paz disclosed that she no longer had a financial interest in the project's area and therefore did not have a conflict.

Motion by Yamane, second by Dela Paz to close the public hearing and approve a Conditional Use Permit for the Modification of an Existing Wireless Communications Facility on a Sign located at 1900 East Plaza Boulevard (Family House of Pancakes) (Case File No. 2018-28 CUP)

Motion carried by the following vote:

Ayes: Flores, Sendt, Yamane, Dela Paz

Abstain: None.

Noes: None.

Absent: Garcia, Baca

PUBLIC HEARINGS:

4. Resolution taking action on a Conditional Use Permit for the On-site Sale of Beer and Wine at an Existing Restaurant (Salud) located at 2333 Highland Avenue (Case File No. 2018-16 CUP)

Presented by Acting Assistant Planner Chris Stanley.

On behalf of the applicant, consultant Marco Cortez, has read, understands, and accepts the conditions of the Conditional Use Permit.

The applicant requested that the hour of closing be extended from 10:00 p.m. to 11:00 p.m. on Friday and Saturday.

Motion by Yamane, second by Flores to close the public hearing and approve a Conditional Use Permit for the On-site Sale of Beer and Wine at an Existing Restaurant (Salud) located at 2333 Highland Avenue (Case File No. 2018-16 CUP) with the caveat that the hour of closing be extended from 10:00 p.m. to 11:00 p.m. on Friday and Saturday.

Motion carried by the following vote:

Ayes: Flores, Sendt, Yamane, Dela Paz

Abstain: None.

Noes: None.

Absent: Garcia, Baca

5. Resolution taking action on a Conditional Use Permit for the On-site Sale of Beer and Wine at an Existing Restaurant (Birriera Negro Durazo) located at 1604 East 18th Street (Case File No. 2018-17 CUP)

Presented by Acting Assistant Planner Chris Stanley.

The applicant requested that the hour of closing be extended from 8:00 a.m. to 11:00 p.m. on Friday and Saturday.

Consultant to the applicant Marco Cortez, has read, understands, and accepts the conditions of the Conditional Use Permit.

Public Speaker: Azhocal McManus, representing the National City Chamber of Commerce, spoke in support of the item.

Business owner Carlos Gabriel answered questions posed by the Commissioners.

Motion by Yamane, second by Sendt to close the public hearing and approve a Conditional Use Permit for the On-site Sale of Beer and Wine at an Existing Restaurant (Birriera Negro Durazo) located at 1604 East 18th Street (Case File No. 2018-17 CUP) with the caveat that the hours of operation be extended to 8:00 a.m. to 11:00 p.m. on Friday and Saturday.

Motion carried by the following vote:

Ayes: Flores, Sendt, Yamane, Dela Paz

Abstain: None.

Noes: None.

Absent: Garcia, Baca

OTHER BUSINESS:

6. Election of Replacement Vice Chair for 2019

Motion by Sendt, second by Yamane to elect Commissioner Flores as the Vice Chair for 2019.

Motion carried by the following vote:

Ayes: Flores, Sendt, Yamane, Dela Paz

Abstain: None.

Noes: None.

Absent: Garcia, Baca

STAFF REPORTS:

Senior Assistant City Attorney: None.

Brad Raulston, Deputy City Manager: Absent.

Acting Planning Director: None.

Principal Planner: None.

COMMISSIONER REPORTS:

Chair Sendt advised that he would be absent at the next meeting occurring on March 18, 2019.

There were no other reports.

ADJOURNMENT by Chair Sendt at 6:53 p.m. to the meeting of March 18, 2019.

CHAIRPERSON

The foregoing minutes were approved at the Regular Meeting of March 18, 2019.



CITY OF NATIONAL CITY - PLANNING DEPARTMENT
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

PLANNING COMMISSION STAFF REPORT

TITLE: PUBLIC HEARING – CODE AMENDMENT AMENDING SECTION 18.30.220 (TELECOMMUNICATIONS FACILITIES) OF THE NATIONAL CITY MUNICIPAL CODE.

Case File No.: 2018-02 A

Staff report by: Martin Reeder, AICP – Principal Planner
Roberto Contreras – Deputy City Attorney

Project location: Citywide

Applicant: City-initiated Land Use Amendment

Environmental review: Not a project per CEQA

Staff recommendation: Approve as amended

BACKGROUND

Staff Recommendation

Staff recommends that the Planning Commission recommend approval of the amendment to the City Council.

History

The City Council initiated an amendment on January 16, 2018 related to wireless communication facilities located in the City of National City's ("City") right-of-way. The amendment intends to exempt City-licensed facilities from the Conditional Use Permit (CUP) process and substituting a "license agreement" process where design and placement standards would be regulated. The Planning Commission held a public hearing on February 5, 2018 and recommend approval of the amendment to the City Council by a vote of five to two. At the following City Council meeting, based on public concerns, the Council voted unanimously to hold a community meeting at a later date to address potential concerns and process. A town hall meeting on small facilities was held on March 12, 2019.

Overview

Section 18.30.220 (“Telecommunications facilities”) of the City’s Municipal Code regulates the placement and use of wireless telecommunications facilities and antenna installation within the City. This section requires a CUP for all such facilities.

Several wireless providers have recently expressed interest in locating “small cell” wireless facilities on City-owned utility poles. In order to preserve the City’s maximum regulatory authority, the City Manager is seeking authorization and direction from the City Council to negotiate the terms of a license agreement to locate “small cell” wireless facilities on City-owned utility poles with wireless providers.

Changes in federal and state law have significantly affected the City’s authority to regulate such wireless facilities. These changes include stricter timeframes and limitations on application reviews, new regulatory classifications for collocations and modifications to existing facilities, and even automatic approvals under certain circumstances.

Rulemaking proceedings at the Federal Communications Commission (FCC) on September 27, 2018 largely reduced cities’ authority to regulate small cells. For example, the September 27th Notice & Order capped administrative fees cities could charge at \$270 per installation, per year, reduced discretion regarding aesthetic and design requirements, and created new, shorter deadlines for approving applications to deploy small cells in the right of way.

Staff supports a more streamlined process for “small cell” facilities that does not require a CUP. As a substitute to the formal CUP process, the license agreement will include standard design and placement guidelines. Streamlining the process for facilities on City-owned utility poles would preserve the City’s discretionary authority to the maximum extent permitted by law and allow the City to respond more quickly to future state or federal preemption.

Proposed Change

Section 18.30.220 subsection “B” of the Municipal Code (Commercial Telecommunications Facilities) currently reads as follows:

18.30.220 - Telecommunications facilities.

B. Commercial Telecommunications Facilities.

1. Telecommunication facilities are subject to a conditional use permit and design review and shall comply with all applicable provisions of this section.

Staff proposes the following language (changes in **bold**):

18.30.220 - Telecommunications facilities.

B. Commercial Telecommunications Facilities.

1. Telecommunication facilities, **except those located in the City right-of-way that are permitted through a City license agreement,** are subject to a conditional use permit and design review and shall comply with all applicable provisions of this section.

This change would allow for “small cell” facilities to be located on City-owned utility poles through the associated license agreement, but with added expediency.

Findings

There are two findings for approval, one related to General Plan consistency and one related to compliance with the California Environmental Quality Act (CEQA).

General Plan Conformance

The requested amendment is consistent with the General Plan, as Policy E-3.3 encourages access to wireless internet connections, computers, and other forms of communication technology. The “small cell” facilities would provide the same internet/cellular data and standard cellphone service capability as major facilities.

CEQA Compliance

This amendment is not considered to be a project under CEQA as each “small cell” facility would be considered a ministerial application, which is exempt from the application of CEQA per Section 21080 of the Public Resources Code, or be

individually reviewed under the license agreement to determine if additional environmental review would be needed.

Summary

Staff believes that negotiation of a license agreement to locate "small cell" wireless facilities on City-owned utility poles would preserve the City's discretionary authority to the maximum extent permitted by law and allow the City to respond more quickly to future state or federal preemption. Accordingly, staff recommends that the proposed change to the Land Use Code (LUC) be approved in order to achieve this goal.

OPTIONS

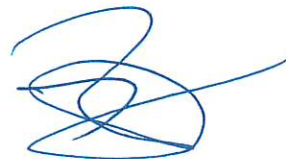
1. Recommend approval of the amendment to the LUC based on the attached findings or findings to be determined by the Planning Commission; or
2. Recommend denial of the amendment to the LUC based on findings to be determined by the Planning Commission; or,
3. Continue the item to a specific date.

ATTACHMENTS

1. Findings
2. Proposed Code change
3. Resolution



MARTIN REEDER, AICP
Principal Planner



BRAD RAULSTON
Deputy City Manager

RECOMMENDED FINDINGS FOR APPROVAL

1. That the requested amendment is consistent with the General Plan, as Policy E-3.3 encourages access to wireless internet connections, computers, and other forms of communication technology. The “small cell” facilities would provide the same internet/cellular data and standard cellphone service capability as major facilities.
2. That the proposed amendment has been reviewed to comply with the California Environmental Quality Act (CEQA); the amendment is not considered to be a project under CEQA as each “small cell” facility would be considered a ministerial application, which is exempt from the application of CEQA per Section 21080 of the Public Resources Code, or be individually reviewed under the MLA to determine if additional environmental review would be needed.

Proposed amendments noted as **underlined bold** font

18.30.220 - Telecommunications facilities.

B. Commercial Telecommunications Facilities.

1. Telecommunication facilities, **except those located in the City right-of-way that are permitted through a City license agreement,** are subject to a conditional use permit and design review and shall comply with all applicable provisions of this section.

PLANNING COMMISSION RESOLUTION NO. 2019-06

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NATIONAL CITY RECOMMENDING ADOPTION TO THE CITY COUNCIL OF A MUNICIPAL CODE AMENDMENT AMENDING SECTION 18.30.220 OF THE NATIONAL CITY MUNICIPAL CODE FOR THE REGULATION OF SMALL WIRELESS FACILITIES AND OTHER INFRASTRUCTURE DEPLOYMENTS.

APPLICANT: City-Initiated.
CASE FILE NO. 2018-02 A

RECITALS

WHEREAS, the City currently regulates all “wireless telecommunication facilities” under Municipal Code § 18.30.220, which requires a use permit and design review for all applications. The provisions in § 18.30.220 are generally applicable do not distinguish between facilities on private property and those within the public rights-of-way.

WHEREAS, since the City last amended its regulations for wireless facilities in 2012, significant changes in federal laws that affect local authority over personal wireless service facilities and other related infrastructure deployments have occurred, which includes, without limitation, new regulations by the Federal Communications Commission (“FCC”) that (1) prohibit temporary moratoria on telecommunications infrastructure deployment; (2) create a new regulatory classification for small wireless facilities; (3) alter existing “shot clock” regulations to require local public agencies to do more in less time; (4) establishes a national standard for an effective prohibition that replaces the existing “significant gap” test adopted by the United States Court of Appeals for the Ninth Circuit; (5) and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition. These new regulations are partially in effect and, on April 15, 2019, will be fully effective.

WHEREAS, City staff, with assistance from outside counsel specialized in telecommunications infrastructure regulations, prepared a proposed amendment to § 18.30.220 that would allow the City to regulate small wireless facilities and other infrastructure deployments through policies adopted by resolution rather than in a codified ordinance, together with proposed such proposed policies (collectively, the “Amendment”). The proposed Amendment is attached to this Resolution as **Exhibit A**.

WHEREAS, on March 18, 2019, at a duly noticed public hearing, the Planning Commission considered a proposed amendment to § 18.30.220 together with proposed regulations for compliance with changes in the law, reviewed and considered the staff report, other written reports, public testimony and other information contained in the record.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of National City that:

A. The Planning Commission recommends that the City Council adopt the proposed Amendment based on the following findings:

1. Given the rapid and substantial changes in applicable law, the active and effective federal prohibition on reasonable moratorium ordinances to allow local public agencies to study these changes and develop appropriate responses and the significant adverse consequences for noncompliance with these changes in applicable law, the Planning Commission finds that the proposed Amendment allows for greater flexibility and responsiveness to new federal and State laws in order to preserve the City's traditional authority to the maximum extent practicable.
2. Recent changes in federal law effectively limit local governments from exercising full zoning controls over small wireless facilities and generally require that the regulations for small wireless facilities be no more burdensome than those applied to other infrastructure deployments. The proposed Amendment would comply with the recent changes in federal law by providing reasonable aesthetic regulations and a review and approval process for such facilities within the City that is consistent with the new, shorter timeframes to act on a permit application. The proposed Amendment would also instruct City officials to use the standards in the proposed Amendment as guidelines for other infrastructure deployments to the extent not specifically prohibited by applicable law.
3. Pursuant to California Public Resources Code § 21065 and the California Environmental Quality Act ("CEQA") Guidelines § 15378, the City Council finds that the proposed Amendment would not be a "project" because its adoption would not be an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Accordingly, the proposed Amendment would not be subject to CEQA. Even if the proposed Amendment qualified as a "project" subject to CEQA, the City Council should find that, pursuant to CEQA Guidelines § 15061(b)(3), there would be no possibility that this project would have a significant impact on the physical environment. The proposed Amendment merely amends the § 18.30.220 to authorize the City Council to regulate small wireless facilities and other infrastructure deployments. The proposed Amendment would not directly or indirectly authorize or approve any actual changes in the physical

environment. Applications for any new small wireless facility or other infrastructure deployment, and/or change to an existing small wireless facility or other infrastructure deployment, would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council should find that the proposed Amendment would be exempt from CEQA under the general rule.

* * *

PASSED and ADOPTED by the Planning Commission at a regular meeting on March 18, 2019, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Vice Chair
Dolores Flores

EXHIBIT A

PROPOSED AMENDMENT

(appears behind this coversheet)

Proposed amendments noted as **underlined bold** font

18.30.220 - Telecommunications facilities.

B. Commercial Telecommunications Facilities.

1. Telecommunication facilities, **except those located in the City right-of-way that are permitted through a City license agreement,** are subject to a conditional use permit and design review and shall comply with all applicable provisions of this section.