



Small Cell Wireless Appeal – Near 4351 Clark Ave

City Council Public Hearing – October 18, 2022

Small Cell Telecommunications

- Federal Law and Policy Supports the Deployment of Wireless Facilities.
 - Small cells can provide additional coverage in smaller geographic areas than traditional macro cell sites cannot reach – these are often residential areas.
- This area is **highly regulated** by the Federal Telecommunications Act, implementing FCC orders and guidelines, the California Public Utilities Code, and implementing orders and guidelines from the California Public Utilities Commission.
- In 2018, City Council adopted Chapter 15.34 (Wireless Telecommunications Facilities In The Public Rights-of-way) of the LBMC to regulate wireless facilities in the public right-of-way.



Regulatory Authority

Federal Limitations	State Limitations
✓ Shall Not Effectively Prohibit Telecommunications Services	✓ Shall Respect Statewide Franchise
✓ Shall Not Discriminate Among Functionally Equivalent Services	✓ Shall not Discriminate
✓ Shall Not Consider Radio Frequency Emissions	✓ Shall Regulate to Avoid “Incommoding” Use of Rights of Way
✓ Shall Act Promptly (Within Shot Clock Periods)	✓ Shall Act Promptly (Within Permit Streamlining Act Timelines)
✓ Shall Base Decisions on Substantial Evidence	✓ Shall Not Charge More Than Costs of Providing Access
✓ Shall Not Charge More Than Costs of Providing Access	

- 47 U.S.C. Section 332(c)(7)(B)(iv) provides that:
 - “No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions”.

Ordinance and the California Environmental Quality Act

- Wireless Ordinance Adoption: Initial Study/Negative Declaration ND-11-17.
 - Studied all possible impacts of implementation of the ordinance and determined that there would be no significant impact on the environment.
- Wireless Ordinance Implementation: In 2019, the City issued a Categorical Exemption (CE-19-013) intended to cover most, if not nearly all, small cell wireless telecommunication permits
 - Small scale and footprint, and general low potential for environmental impacts when properly regulated by Chapter 15.34 of the LBMC.
 - Supported by case law:
 - *Francisco Beautiful, et al. v. City and County of San Francisco, et al. (AT&T California, RPI)* (2014) 226 Cal.App.4th 1012
 - *Robinson v. City and County of San Francisco (T-Mobile West Corporation, et al., Real Parties)* (2012) 208 Cal.App.4th 950

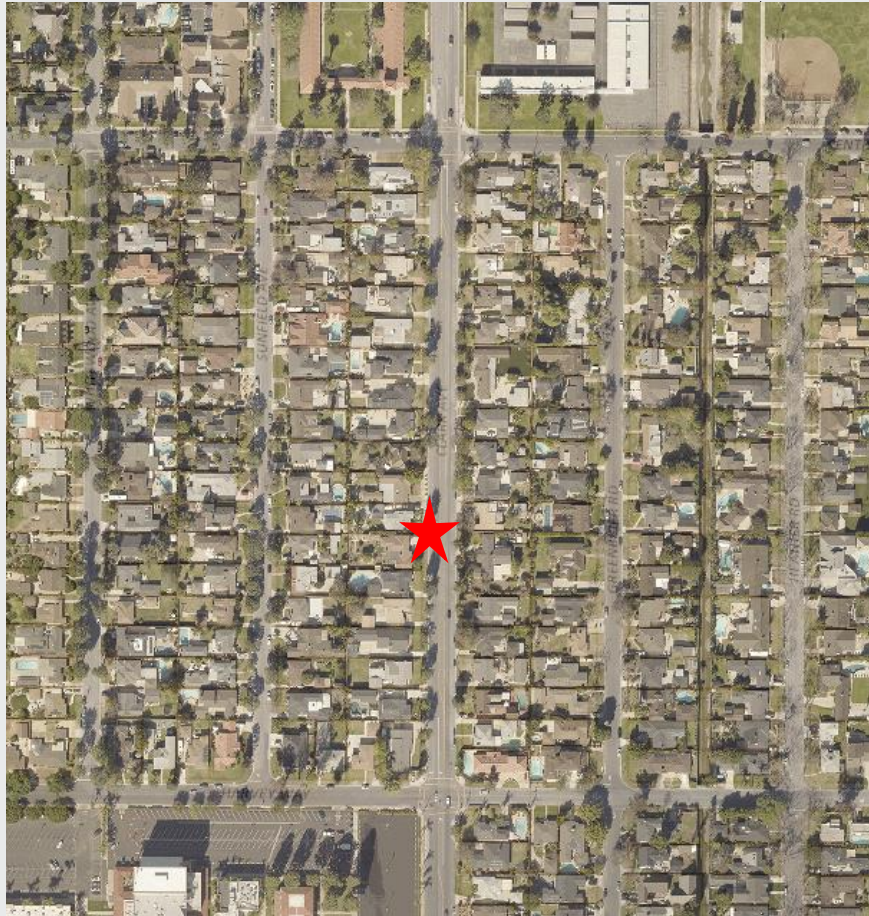
Permitting and Appeal Process

- Permits issued by Public Works Department
- Appeals of “Tier B” Permits allowed by Wireless Ordinance
- Appeal Hearings are conducted by an Impartial Administrative Hearing Officer
- The Impartial Hearing Officer issues a written resolution containing its determination
- The decision resolution shall include a summary of the evidence and the ultimate determination whether to grant, grant with modifications, or deny the appeal
- Further challenges to the Impartial Hearing Officer decision are subject to legal challenge, except CEQA based appeals, which are appealable to the City Council

Background

November 16, 2020	Application for the proposed project filed with the Public Works Department
February 17, 2021	Public notices for the small cell permit mailed and posted in accordance with the noticing requirements in Chapter 15.34 of the LBMC
February 26, 2021	Letter of appeal filed
April 2021 through January 2022	City engaged with appellant about potential accommodation under the Americans with Disabilities Act
March 18, 2022	Appeal hearing was held before an Independent Hearing Officer
April 18, 2022	Final decision of the appeal hearing made to deny the appeal and uphold the issuance of small cell permit (PWRW48749-8)
April 26, 2022	Appellant's legal counsel filed an appeal of the hearing officer's decision and the Categorical Exemption CE-19-013 under CEQA

Vicinity Map

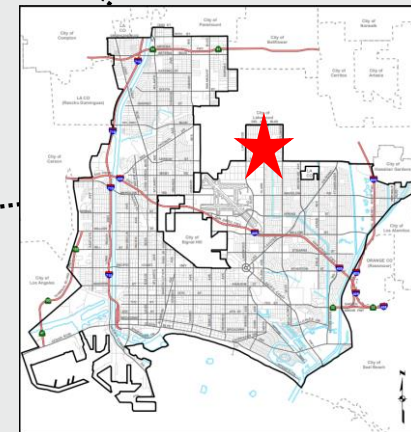


Abutting Zoning:

- R-1-N

General Plan (2019):

- Founding and Contemporary Neighborhood (FCN)/2 stories



Existing Conditions



Project Summary

- Replacement of an existing streetlight pole (#HB1300) with a new streetlight pole and small cell wireless transmission facility on a new foundation in the same location
- Small cell equipment includes:
 - One 14-port Gamma Nu Antenna,
 - Two (2) 4402 Radios,
 - One (1) 2205 Radio,
 - One (1) Raycap Surge Protector; and,
 - Conduit for power would be installed within the cavity of the light pole and connect to conduit within the paved public street (Clark Avenue)
- The project is compliant with the development standards for small cell wireless facilities, including project location

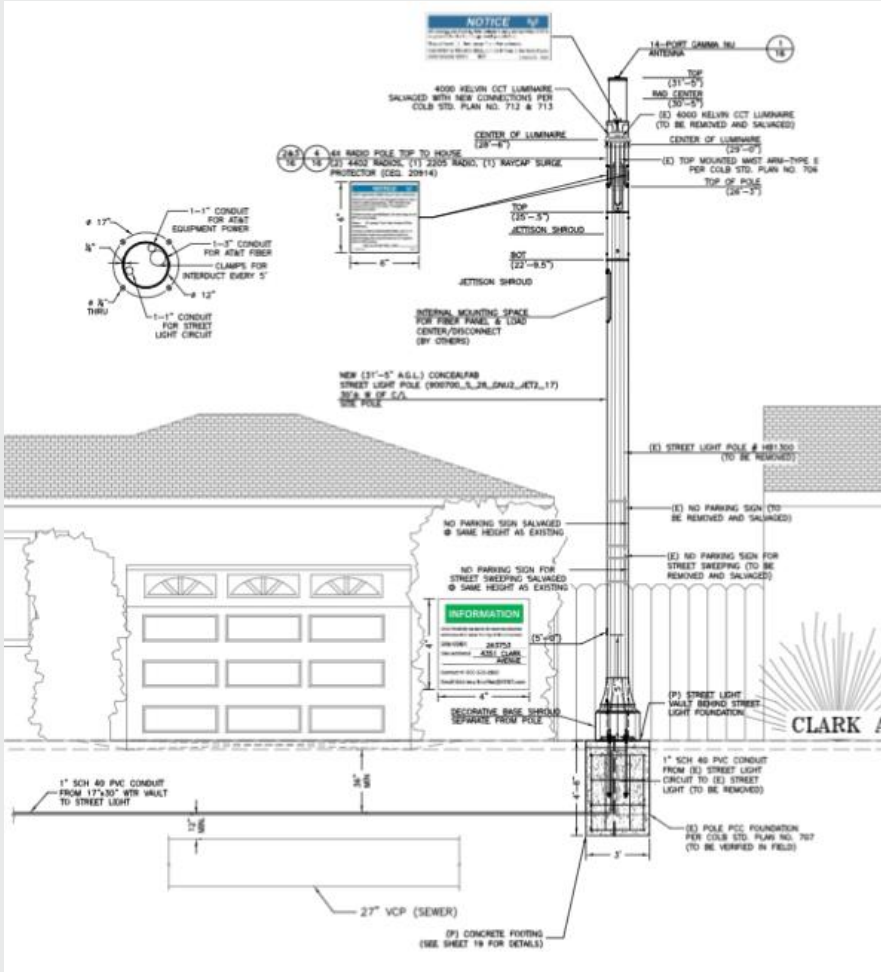


Photo Simulations

Existing



Proposed



Appeal

- One third-party appeal was filed within the 10-day appeal period of the Public Works notification
- Appeal hearing was held before an Independent Hearing Officer
- The hearing officer denied all portions of the appeal and affirmed the permitting decision
- The appeal to City Council alleges the Citywide categorical exemption violates CEQA

California Environmental Quality Act

- The project qualifies for a categorical exemption under the following exemption under the California Environmental Quality Act (CEQA):
 - 15302 (Class 2 – Replacement or Reconstruction)
 - 15303 (Class 3 – New Construction or Conversion of Small Structures)

California Environmental Quality Act

- The proposed project would not meet the provisions that result in a cumulative impact or substantial adverse impact that would disqualify the project from using a categorical exemption:
 - The replacement pole will be in the same location as the structure replaced and will have substantially the same purpose and capacity.
 - Section 15.34.030 includes distancing requirements that would prevent cumulative impacts for previous and successive applications. The amount of energy from RF waves decreases rapidly as the distance from the antenna increases.
 - Project design and construction, including excavation for replacement pole foundations, would be completed in conformance with regulatory and engineering requirements.
 - The replacement pole would not represent a substantial change to the existing aesthetic context along Clark Avenue.
 - The project location is not included on any list compiled pursuant to Section 65962.5 of the Government Code.
 - The project would not affect a historic resource or a historic-age resource.

Previous Court Rulings

California Courts have upheld use of Class 2 and Class 3 exemptions from CEQA on the basis specified by City in factually analogous scenarios

- *Francisco Beautiful, et al. v. City and County of San Francisco, et al. (AT&T California, RPI) (2014) 226 Cal.App.4th 1012*
- *Robinson v. City and County of San Francisco (T-Mobile West Corporation, et al., Real Parties) (2012) 208 Cal.App.4th 950*

Noticing

- Noticing of the hearing was completed in accordance with LBMC Section 15.34
 - All previously noticed individuals and commenters were noticed of this appeal hearing
 - Additional public comments have been received in response to the appeal noticing

Recommendation

Receive supporting documentation into the record, conclude the public hearing, and consider an appeal by Kathryn Pettit of Chatten-Brown, Carstens & Minter LLP on behalf of Moira Hahn and Mark Hotchkiss;

Determine that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 (Class 2 – Replacement or Reconstruction) and 15303 (Class 3 – New Construction or Conversion of Small Structures) of the CEQA Guidelines and none of the exceptions in 15300.2 apply, (CE19-013); and,

Deny the appeal, determine that the project complies with CEQA and, on that basis, affirm the approval of a Small Cell Wireless Telecommunications Facilities (Small Cell) Permit (PWRW48749-8) for the replacement of an existing streetlight pole (#HB1300) and replacement with a new streetlight pole with a small cell wireless telecommunications facility on a new foundation in the same location within the public right-of-way, abutting a property addressed as 4351 Clark Avenue in the R-1-N (Single-Family Residential – Standard Lots) Zoning District (District 5).



Thank you

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