



## Legislation Text

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**File #:** 22-1228, **Version:** 1

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Recommendation to receive supporting documentation into the record, conclude the public hearing, and consider an appeal of the environmental review for a small cell permit in the public right-of-way abutting 4351 Clark Avenue 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)

On April 18, 2022, an Independent Administrative Hearing Officer approved a project on appeal for the replacement of an existing streetlight pole (#HB1300) and replacement with a new streetlight pole with small cell equipment on a new foundation in the same location within the public right-of-way, abutting private property located at 4351 Clark Avenue (Attachment A). The appeal process was carried out in conformance with Chapter 15.34 (Wireless Telecommunications Facilities in the Public Rights-of-Way) of the Long Beach Municipal Code (LBMC). The appeal before the City Council pertains to the hearing officer's decision granting approval of the small cell permit at 4351 Clark Avenue and finding that the approval is categorically exempt from CEQA.

### **Proposed Project**

The proposed project is the replacement of an existing streetlight pole (#HB1300) with a new Concealfab streetlight pole on a new foundation in the same location within the public right-of-way, abutting a property addressed as 4351 Clark Avenue. The existing streetlight pole measures 28-feet-3-inches in height to the center of the existing luminaire. The replacement pole would feature a streetlight luminaire over the public right-of-way (Clark Avenue), with a vertical extension and wider pole to be able to support the installation of small cell equipment (one 14-port Gamma Nu Antenna, two 4402 Radios, one 2205 Radio, and one Raycap Surge Protector) (Attachment B). The replacement streetlight pole would measure 31-feet-5-inches in height to the highest point of

the vertical extension and 28-feet-6-inches to the center of the luminaire. 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 surrounding land uses include single-family residential uses and the public right-of-way (Clark Avenue) (Attachment C). The existing right-of-way along the west side of Clark Avenue features street trees, landscaping, and turf areas. There is no public sidewalk in this segment of the parkway abutting the location of the existing or proposed streetlight pole.

## **Background**

The initial application for the proposed project was filed with the Public Works Department on November 16, 2020. As part of permit review protocol, the construction drawings were approved by the Public Works staff on January 29, 2021, which was followed by a “Ready to Issue” notification provided to the applicant on February 2, 2021.

In accordance with the noticing requirements in Chapter 15.34 of the LBMC, public notices for the small cell permit were mailed and posted on February 17, 2021. The noticing was mailed to the property adjacent to the proposed site and to the properties directly across the street. The site was posted on February 17, 2021. Within the 10-business-day appeal period, a letter of appeal was filed on February 26, 2021 by Moira Hahn and Mark Hotchkiss (Appellants) (Attachment D).

An appeal hearing was held on March 18, 2022 before an Independent Hearing Officer. The topics raised during the appeal hearing included noticing, timing for review, discrepancies in the provided photo simulations, project description, noise levels, health and safety concerns, aesthetic impacts, and the CEQA determination. On April 18, 2022, the final decision of the appeal hearing was made and the hearing officer denied the appeal and upheld the issuance of small cell permit (PWRW48749-8). The Appellant’s legal counsel filed an appeal of the hearing officer’s decision and the Categorical Exemption CE-19-013 under the California Environmental Quality Act (CEQA) on April 26, 2022 (Attachment E).

## **Project Compliance**

Public Works staff has analyzed the project in accordance with the requirements outlined in Chapter 15.34 of the LBMC. The project meets the objective standards outlined in the LBMC for small cell wireless facilities. Furthermore, all required documentation for compliance with the Federal Communications Commission have been provided in the record.

## **Appeal**

The appeal subject to this public hearing is filed in opposition to the hearing officer’s decision and the City’s use of a Categorical Exemption under CEQA. Pursuant to CEQA, the City of Long Beach issued a Citywide Categorical Exemption (CE-19-013), for the construction and

modification of small cells in various locations in the public right-of-way, in a manner consistent with the approvals allowed by Chapter 15.34 of the LBMC (Attachment F). This citywide exemption uses Sections 15301 (Class 1, Existing Facilities), 15302 (Class 2, Replacement or Reconstruction), and 15303 (Class 3, New Construction or Conversion of Small Structures) exemptions. The proposed project has been determined to be consistent with the findings made for the categorical exemption per Sections 15302 (Class 2, Replacement or Reconstruction) and 15303 (Class 3, New Construction or Conversion of Small Structures) of the CEQA Guidelines.

This appeal is limited to the CEQA determination for the project and does not pertain to the approval process under Chapter 15.34 of the LBMC. The determinations made by the Hearing Officer that are beyond the scope of the CEQA issues identified in the Appellants' initial appeal are governed by Chapter 2.96 of the LBMC and are subject to a writ proceeding pursuant to Code of Civil Procedure section 1094.6 and are therefore not subject to appeal to the City Council.

While the underlying permitting decision relative to the requirements of LBMC § 15.34 is not before the City Council, it is important to note that the installation of telecommunications infrastructure is highly regulated by federal and state laws and regulations, leaving only a limited scope of regulatory authority for local agencies such as the City. The Federal Telecommunications Act was adopted in 1996 expressly to "remov[e] barriers to entry" into the telecommunications market thereby fostering competition. (47 U.S.C. § 253.) Federal law prohibits the City from considering the health effects of wireless facilities when deciding whether to approve or deny an application to the extent such facilities comply with the Federal Communications Commission's regulations concerning such emissions, as was the case here. Similarly, state law places an additional layer of limitations on local authority over wireless facility installations. Local agencies, like the City of Long Beach, must respect statewide franchises when making decisions on proposed facilities; they retain authority over aesthetic and public safety issues, but do not have the right to outright prohibit installations.

The City updated its telecommunications regulations to comprehensively exercise its limited authority over telecommunications installations in the public right-of-way thereby adopting the City's Telecom Ordinance (LBMC § 15.34). The City brought the proposed Telecom Ordinance to the City's Planning Commission for review and recommendation on February 15, 2018 where the Planning Commission ultimately voted 5-0 (2 members absent) to recommend approval of the ordinance. The proposed Telecom Ordinance was then brought before the City Council for introduction on April 17, 2018. After hearing and consideration, the City Council introduced the Telecom Ordinance for first reading by a vote of 8-0 (one Councilmember absent) <<http://longbeach.legistar.com/View.ashx?M=M&ID=601961&GUID=BABF99B6-6A08-4716-9BC0-9B62798102BC>>. The ordinance came for second reading and was adopted by a unanimous vote of the City Council at the following regular meeting, on May 1, 2018 <<http://longbeach.legistar.com/View.ashx?M=M&ID=604593&GUID=72FA50A1-9E5C-4538-B292-DEDC52F1F55E>>. This prior adoption of the citywide Ordinance included an environmental analysis of the citywide impact

of the Ordinance.

The appeal documentation notes that the CEQA review requires the analysis of a project's cumulative impacts and precludes application of an exemption where a project will cause significant cumulative impacts (Guidelines Section 15300.2(b)). The appeal states that the citywide categorical exemption accepted by the City Council at the time of the adoption of small cells without analysis of the cumulative impacts violates CEQA.

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 (Attachment G). The project entails the replacement of a streetlight pole in the same location with a new streetlight pole with the capacity to support new small cell wireless telecommunications facilities. Chapter 15.34 of the LBMC regulates the location of small cell wireless telecommunications facilities within residential zoning districts. The project is compliant with the development standards for small cell wireless telecommunications facilities, including project location. Section 15.34.030, establishes requirements and standards for wireless telecommunications facilities in the public right-of-way, including distancing requirements that would prevent cumulative impacts for previous and successive applications in the same location. None of the exceptions to the use of a categorical exemption, outlined in Section 15300.2 of the CEQA Guidelines, would be met. Because the proposed installation that is the subject of this appeal is categorically exempt from the CEQA.

This matter was reviewed by Deputy City Attorney Erin Weesner-McKinley on October 3, 2022 and by Revenue Management Officer Geraldine Alejo on September 21, 2022.

## **Public Hearing Notice**

Public notices for the small cell permit were distributed on February 17, 2021 in accordance with public notification requirements in LBMC Chapter 15.34 (Wireless Telecommunications Facilities in the Public Rights-of-Way). Notices of this public appeal hearing were sent to the same individuals included in previous noticing on October 4, 2022. In addition, a poster notice was posted onsite and mailed to the applicant and appellant. As of the date of preparation of this report, no written comments have been received in response to the noticing of the appeal. Any comments received prior to the City Council hearing will be provided to the City Council.

## **ENVIRONMENTAL REVIEW**

Pursuant to the California Environmental Quality Act (CEQA), the City has issued a citywide Categorical Exemption (CE-19-013), for the construction and modification of small cells in various locations in the public right-of-way, in a manner consistent with the approvals allowed by Chapter 15.34 of the LBMC. Categorical Exemption (CE-19-013) was filed with the Los Angeles County Clerk-Recorder on January 31, 2019. This exemption uses Sections 15301 (Class 1, Existing Facilities), 15302 (Class 2, Replacement or Reconstruction), and 15303 (Class 3, New Construction or Conversion of Small Structures) exemptions. The proposed

project is consistent with the findings made for the categorical exemption per Sections 15302 (Replacement or Reconstruction) and 15303 (Class 3, New Construction or Conversion of Small Structures) of the CEQA Guidelines.

City Council action is requested on October 18, 2022 to hear the appeal.

This recommendation has no staffing impact beyond the normal budgeted scope of duties and is consistent with City Council priorities. There is no fiscal or local job impact associated with this recommendation.

Approve recommendation.

CHRISTOPHER KOONTZ  
ACTING DIRECTOR OF DEVELOPMENT SERVICES

APPROVED:

THOMAS B. MODICA  
CITY MANAGER