



CITY OF GLENDALE, CALIFORNIA REPORT TO THE CITY COUNCIL

AGENDA ITEM

Report: Public Hearing on the Appeal of the Decision of the Director of Public Works Granting Encroachment Permit No. EP-823 for the Installation of Wireless Telecommunications Facilities in the Public Right of Way located in front of 1544 W. Kenneth Road

1. Motion DENYING the appeal and upholding the decision of the Director of Public Works granting Encroachment Permit No. EP-823.
2. Motion GRANTING the appeal, reversing the decision of the Director of Public Works, and continuing the matter until November 28, 2023, for the City Attorney to prepare findings consistent with Council direction.

COUNCIL ACTION

Item Type: Public Hearing

Approved for November 7, 2023 **calendar**

EXECUTIVE SUMMARY

This is an appeal filed by Appellant Mr. Patrick Masihi, appealing the decision of the Director of Public Works granting Encroachment Permit No. EP-823 ("EP-823") for the installation of Wireless Telecommunications Facilities in front of 1544 W. Kenneth Road.

RECOMMENDATION

Staff recommends that the City Council DENY the appeal of the decision of the Director of Public Works granting EP-823 for the installation of small cell wireless telecommunication ("Small Cell") facilities in the public right-of-way ("ROW") located in front of 1544 W. Kenneth Road and UPHOLD the decision of the Director of Public Works Granting Encroachment Permit No. EP-823.

ANALYSIS

1. On February 21, 2023, ExteNet Systems, LLC ("ExteNet"), a company that is licensed by the State of California Public Utilities Commission, applied for an Encroachment Permit (EP) to install 5G small cell wireless telecommunication (Small Cell) facilities within City's public right-of-way located in front of 1544 W. Kenneth Road. ExteNet's application for EP-823 is attached as Exhibit 1.
2. On July 17, 2023, a public hearing was held, in accordance with City's municipal code relating to and governing the application for such Small Cell facility encroachment permits. Minutes from the July 17, 2023 public hearing are attached as Exhibit 2.
3. On August 11, 2023, the Director of Public Works granted EP-823 to ExteNet for the proposed Project. The Director's correspondence granting EP-823 is attached as Exhibit 3.
4. On August 24, 2023, the instant appeal was filed challenging the granting of EP-823.

ExteNet's proposed project in accordance with EP-823 ("Project") is comprised of the following:

- Removal & replacement of existing 25'-0" Above Ground Level (AGL) round metal street light pole & foundation with new 25'-0" AGL round metal street light pole (CA002_Glendale_137) & foundation 5'-0" east of original location
- New 3'-6" x 8'-0" reinforced foundation 5'-0" east of original location.
- Three new 16.2" x 8.1" x 6.1" panel antennas with integrated Remote Radio Units (RRU) within concealment shroud.
- 11.50" x 8.0" x 3.313" meter can locate within round metal street light pole.
- 10.43" x 9.38" x 5.06" AC disconnect/load center with integrated surge protection within new round metal street light pole.
- One 24" x 36" x 18" pull box for underground fiber infrastructure connection (under separate permit).
- Proposed facility will not emit any sound.
- Two 17" x 30" x 24" pull box for service power connection; and
- Proposed facility will not emit any sound.

On July 17, 2023 the Public Works Department held a properly noticed public hearing regarding the consideration of EP-823 as well as 6 other Small Cell facilities encroachment permit applications. A total of three individuals spoke during the public hearing. A summary of the public speaker comments from the July 17, 2023 hearing is attached as Exhibit 2. On August 11, 2023, the Director of Public Works granted EP-823 to Extenet for the proposed Project, as well as the permits for the other Small Cell facilities.

The Appeal:

On August 24, 2023 Mr. Patrick Masihi (“Appellant”) filed an appeal appealing the decision of the Director of Public Works granting EP-823 for the proposed Project. Glendale Municipal Code, 1995 (GMC) Section 12.08.037(K)(2) requires that appeals from the decision of the Director of Public Works relating to encroachment permits for wireless telecommunications facilities in the public right-of-way in non-preferred zones be heard by the City Council. The Appellant’s appeal is attached to this report as Exhibit 4.

Appellant contends that the proposed radio frequency (“RF”) emissions from the proposed facility will adversely impact the health and safety of residents and decrease property values.

Appellant also contends that the proposed location is near a private childcare facility and that Verizon has not presented the city with a study on the health and safety of 5G technology in the past 15-20 years.

Appellant seeks an alternate location for the proposed facility.

Public Notice of the Appeal Hearing:

The GMC requires public notice for appeal to the City Council pursuant to GMC Chapter 2.88. Notice of this appeal hearing has been given, in accordance with GMC Section 2.88.070, by publishing notice once in Glendale Independent at least 10 days before the appeal hearing; by providing mailed notice, at least 10 days prior to the appeal hearing date, to all persons within a radius of 500 feet of the property which is the subject of the proposed appeal; and by posting notice of this hearing at the property subject to the proposed appeal at least 10 days prior to the appeal hearing date. In addition, Public Works staff posted the public hearing notice on the city’s website under the Public Works Department page. In the case of this appeal, the proper public notices have been given in compliance with the GMC.

City Council Review:

GMC Section 2.88.090 governs the appeal proceedings at issue. Pursuant to GMC 2.88.090, the City Council’s review of this appeal shall be *de novo*, meaning the City Council shall make an independent re-examination of the matter. The Appellant has the

burden of proof to present evidence to demonstrate that the Director of Public Works erred in granting the Encroachment Permit for the Project.

The City Council, after considering all evidence, written and oral, may decide to either uphold the decision of the Director of Public Works issuing the Encroachment Permit for the Project or reverse the decision of the Director of Public Works and deny the Encroachment Permit issued for the Project. The decision of the City Council will be the city's final decision.

Independent Expert Review:

The city's consultant Telecom Law Firm, P.C. (TLF), who assists the Public Works Department with the review of wireless facilities applications, has reviewed the applications for EP-823 for completeness and compliance with all requirements of the GMC, as well as to ensure that the applicant has met all federal RF safety requirements. The TLF Memo is attached hereto as Exhibit 5.

Additionally, during the public hearing, ExteNet's expert responded to questions and concerns relating to RF safety.

The Project is in compliance with Glendale Municipal Code Section 12.08.037. All facilities to be constructed or placed in the public right-of-way require Encroachment Permits. GMC Section 12.08.037 regulates wireless transmission facilities, inclusive of small cell attachments, proposed in the public right-of-way.

The TLF Memo did not consider or discuss property values. In preparation for this appeal hearing, staff raised this issue with TLF's report author, Dr. Kramer, who reviewed the appeal materials provided by the Appellant. He reports that courts most often want expert testimony on the question from qualified real estate appraisers, not merely real estate agents, and that the appraisers have direct and on-point experience appraising the impact of actual cell sites. There is no such qualified expert and reliable evidence of any expected property value diminution provided in the instant appeal.

The requirements of GMC 12.08.037 are addressed below:

1. All notification requirements have been met by mailed notice of the proposed Project, as well as the notice of public hearing, sent to properties within a 500 ft. radius and by posting the location of the Project with said notice as required by GMC Section 12.08.037(H)(1).
 2. The proposed facility meets the provisions of GMC Section 12.08.037, which are addressed in this Council Report and TLF's Memo (Exhibit 5 mentioned above).
 3. The proposed facility will not interfere with the use of the public right-of-way and existing improvements and utilities thereon.
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4. The proposed facility will not physically or visually interfere with vehicular, bicycle, and/or pedestrian use of streets, intersections, bicycle lanes, driveways, sidewalks, and/or walkways.
5. The proposed facility will comply with the Americans With Disabilities Act.
6. To the maximum extent reasonably feasible, the proposed facility has been designed to blend with the surrounding area and the facility is appropriately designed for the specific site.
7. ExteNet has provided three 'alternative' locations for the proposed small cell site. Alternative Site 1 is at the corner of Justin Avenue and Kenneth Road (nearest address: 1555 Kenneth Road). Extenet ruled out this alternative because of an immediately adjacent mature tree that would block a portion of the proposed radio signals. Alternative Site 2 is at the corner of Ruberta Avenue and Kenneth Road (nearest address: 1523 Kenneth Road). ExteNet also ruled out this alternative because of immediately adjacent mature trees that would block a portion of the proposed radio signals. Alternative Site 3 is in front of 1265 Justin Avenue. Extenet ruled out this location asserting that a small cell at this location will not meet the coverage objectives. In the case of this site, the city does not consider it to be a true alternative because ExteNet asserts this 'alternative' would not be a viable candidate given its location.
8. The proposed facility is not a high visibility facility, but rather a low visibility design for the proposed facility. The proposed Project is camouflaged wireless facility mounted atop of a streetlight.
9. That specific physical or technical factors make infeasible the use of co-location upon a preexisting antenna support structure or preexisting building or structure.
10. That there is a significant gap in the existing wireless service that the proposed facility is intended to close. The application and propagation maps submitted by ExteNet assert a significant gap and poor data rates by Verizon, for whom ExteNet is constructing this site.

State or local agencies are prohibited from establishing statutes, regulations, or local requirements which "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 USC Section 253(a). The regulatory authority of municipalities is limited to time/place/manner – e.g. traffic safety, aesthetics, pole load, noise.

The FCC has exclusive jurisdiction over RF safety standards. "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.” 47 USC Section 332(c)(7)(iv). Municipalities are allowed to request that an applicant provide proof of compliance with FCC RF safety standards, as well as antenna height standards adopted by the Federal Aviation Administration (“FAA”).

As set forth in the city’s independent expert consultant Memo, the proposed Project meets all requirements for application completeness and compliance with the federally- required RF safety rules.

Based on the foregoing, staff recommends that the City Council deny the appeal.

STAKEHOLDERS/OUTREACH

Not Applicable.

FISCAL IMPACT

There will be minimal fiscal impact as a result of the denial or grant of the appeal. If the appeal is granted, the city will not collect the \$200 annual attachment fee and the other related cost-based fees. Conversely, if the appeal is denied, the revenue to the city from the attachment will be minimal.

ENVIRONMENTAL REVIEW (CEQA/NEPA)

This Project falls within the Class 3 categorical exemption under the California Environmental Quality Act (CEQA) guidelines. (14 Cal. Code of Regulations, Section 15303). Class 3 exempt projects consist of “construction and location of limited numbers of new small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. Class 3 examples include, but are not limited to, water main, sewage, electrical, gas and other utility extension, including street improvements of reasonable length to serve such construction. (Section 15303(d)).

CAMPAIGN DISCLOSURE

Not Applicable.

ALTERNATIVES TO STAFF RECOMMENDATION

Alternative 1: The City Council may uphold the decision of the Director of Public Works granting EP-823.

Alternative 2: The City Council may reverse the decision of the Director of Public Works granting EP-823.

Alternative 3: The City Council may consider any other alternative.

ADMINISTRATIVE ACTION

Submitted by:

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Prepared by:

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Approved by:

Roubik R. Golanian, P.E., City Manager

EXHIBITS/ATTACHMENTS

Exhibit 1 – Encroachment Permit Application Packet by ExteNet.

Exhibit 2 – Summary of Minutes of Public Speaker Comments – July 17, 2023.

Exhibit 3 – August 11, 2023, Director of Public Works correspondence granting the Encroachment Permit.

Exhibit 4 – Appeal filed by Appellant Patrick Masihi.

Exhibit 5 – Report of Dr. Jonathan L. Kramer, Telecom Law Firm, P.C., the City's independent expert.