

CITY COUNCIL MEMBER PROPOSED AGENDA ITEM

MEETING

DATE: May 10, 2022

TO: City Council

FROM: Pat Eklund, Council Member

SUBJECT: CONSIDER ESTABLISHING A POLICY TO POST UPON SUBMITTAL ALL SMALL CELL FACILITY APPLICATIONS ON THE CITY'S WEBSITE AND REQUEST A LEGAL OPINION FOR DISCUSSION ON WHETHER PENDING APPLICATIONS CAN BE DETERMINED INCOMPLETE AND/OR CONSIDER ENTERING INTO A 'TOLLING' AGREEMENT WITH APPLICANTS UNTIL THE FINAL ORDINANCE IS ADOPTED BY COUNCIL

PROPOSED AGENDA ITEM:

Consider establishing a policy to post upon submittal all small cell facility applications on the City's website and request a legal opinion for discussion on whether pending applications can be determined incomplete and/or consider entering into a 'tolling' agreement with applicants until the final ordinance is adopted by Council.

BACKGROUND

On February 12, 2019, Council approved my request to **"Evaluate options and adopt an ordinance to regulate 4G and 5G cell towers/facilities in the City of Novato"**.

On October 8, 2019, staff placed a draft emergency ordinance on the agenda that was adopted by the Council. During the Council meeting staff stated a more 'permanent' ordinance would be brought back next summer (time on video 1:08:00). Also, in response to my question about the current status of the Sonoma ordinance, Attorney John Abaci responded that it should be finalized in late 2019 or early 2020 (time on video 1:13:00).

In late March 2022, it was brought to our attention by community members that 4 AT&T small cell facility applications had been submitted. On April 28, 2022, those applications originally submitted in February, 2022 and associated materials were posted on City's website.

Notices to property owners within 600 feet of each proposed location have not been issued for the pending applications since the emergency ordinance states that notices would be issued 10 days before any action of approval. Unfortunately, 10 days before any action of approval does not give property owners sufficient time to learn about the application(s) especially given recent changes in USPS service standards for first class mail. In April, the USPS announced that their service standards for first class mail will be 2-days, 3-days or 4-days which could result in a notice being delivered 5-days before the action (with no postal service on Sunday's). This will need to be addressed (along with other issues) when the permanent ordinance is brought back to Council.

However, by posting all small cell applications when submitted to the City of Novato, it will demonstrate our commitment for transparency and open government especially for those who are interested and/or concerned about this issue.

Lastly, since the permanent ordinance will not be brought back until later this year and given the number of pending applications, it would be helpful for Council to be informed and discuss whether an incomplete determination can be made (as recommended by community members) and/or a 'tolling' agreement can be entered into with the applicants pending adoption of the final ordinance. To get a legal opinion, a majority of Council need to authorize the work per our Council Policy Manual.