

CITY OF OAKLAND

AGENDA REPORT

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

2006 DEC -7 PM 5:53

TO: Office of the City Administrator
ATTN: Deborah A. Edgerly
FROM: Community & Economic Development Agency
DATE: December 12, 2006
RE: **A Supplemental Report and Recommendations Regarding the Design of Utility Boxes Installed In the Public Right Of Way in the City Of Oakland, Including the Consideration of Undergrounding and Designs Appropriate to Residential Neighborhoods**

SUMMARY

The Public Works Committee of November 28, 2006 received an initial report regarding current regulatory requirements and practices for placement of above ground utility boxes in the public right of way. At the November 28th Committee, Councilmember Brunner distributed a memo outlining specific issues for staff to return with recommendations for City Council approval. This staff report provides options for consideration.

FISCAL IMPACT

The fiscal impact of the recommendations presented in this report is neutral and will not have a direct fiscal impact on the City. The administration of existing policies and practices will not have a fiscal impact. However, should the Council choose to adopt different policies that impact the regulatory process for utility boxes in the public right of way, permit review and inspection costs will need to be increased accordingly to cover staff time and other processing costs.

BACKGROUND

The November 28th report to the Public Works Committee provided an analysis of current permitting and review process for Above Ground Utility boxes that are placed in the public right of way by public agencies (such as the City), quasi-public utilities (such as Pacific, Gas & Electric or East Bay Municipal Utility District), or private entities (such as phone or cable providers). Per direction from the Committee, staff continued its research in order to develop a set of recommendations to address the outstanding issues. Councilmember Brunner, whose district is the first being impacted by the deployment of a new set of Above Ground Utility boxes (AT&T's Project Lightspeed), presented a memo outlining several recommendations for installation of said boxes. Staff was directed not to issue any permits until the City Council has approved the revised design review standards and procedures.

Item: _____
Public Works Committee
December 12, 2006

KEY ISSUES AND IMPACTS

1) All Utility Boxes in the Public Right of Way Be Subject To Design Review With Regards to Exact Location, Orientation, Appearance, Color of Each Box, With Specific Attention to Pedestrian Right of Way, Disabled Access and Pedestrian Safety:

The placement of utility boxes in the public right of way is regulated in the City of Oakland through Oakland Municipal Code (OMC) Chapters 12.08 (Encroachment) and 12.12 (Excavation). The encroachment permit review process is intended to ensure that above ground utility boxes do not obstruct pathways (such as public sidewalks, especially for disabled access) or the line of vision required for safe pedestrian and vehicle traffic flow. For example, the width of a sidewalk is analyzed to maintain a minimum five (5) feet width after a box is placed on the sidewalk to ensure that disabled residents can operate their wheelchairs without obstruction. The excavation permit review process is intended to ensure that trenches being dug to place cables and other infrastructure do not harm existing infrastructure by other public utilities (such as gas or sewer lines).

As part of the encroachment and excavation review process, the City will implement an additional set of design review standards to analyze and review the orientation, appearance, concentration, and screening of all above ground utility boxes in the public right of way. Within technological limits, applicants will not be allowed to create a concentrated collection of boxes in residential areas in order to minimize the impact to the surrounding areas. As opposed to residential areas, in commercial areas, applicants will be encouraged to combine the location of facilities and pursue options in adjacent private commercial areas, such as loading docks or parking facilities. The design review process will also analyze and review screening requirements for each box to minimize their impact to the surrounding community (additional details are provided in No. 3 below).

2) Design Review Standards Shall Require Boxes in Residential Areas to Be Smaller Than Those Mentioned In the November 28th Staff Report

The November 28th staff report outlined the current policy of allowing the installation of above ground utility boxes up to a height of 78 inches. Current zoning regulations allow Oakland residents to place any fence, dense hedge, or barrier or similar freestanding wall, but excluding retaining walls, up to a height of 42 inches in their front yard or portions of the a parcel facing public right of ways.¹ The installation of above ground utility boxes require structural components (such as pedestals and frames) for safety purposes (i.e. avoiding electric shocks) and reducing the potential for public nuisances (anti-graffiti cabinet frames). Therefore, staff is proposing that above ground utility boxes in residential areas be limited to a height of 50 inches. In communication with utility firms, staff believes that it will be reasonable to expect utility

¹ OMC Chapter 17.108

boxes with a height of 48 inches to be available for residential areas. This 48 inch height represents a substantial reduction in the current policy used by the City (reducing the height of utility boxes in the residential areas from 78 inches down to 50 inches, a reduction of 28 inches or 36%).

3) The Owners Of The Box Shall Mask (Screen) Each Box, At Their Cost Exclusively, To Mitigate Or Minimize Any Negative Impacts Associated With Each Utility Box:

The screening requirements will include a combination of landscaping, painting, surface texture/materials to match the existing structures consistent with surrounding backdrop or placed behind screening fences. Screening is to be implemented by the owner of the box and they shall be responsible for future maintenance and upkeep, including but not limited to graffiti and other public nuisance regulations. Utility firms and the City will develop 5 to 6 proto-types (illustrating design standards and elements for hillside, flat lands, residential, commercial and other applicable categories) of their above ground boxes. These proto-types will accompany specific screening criteria as set forth by the City. Each application for a box submitted to the City will require a screening requirement pertaining to the applicable and adopted proto-types and other standards.

4) Design Review Procedures Shall Include Public Notice to Both Property Owners And Tenants Within A 300 Foot Radius of The Proposed Location And Owners And Tenants That Are Within Sight of The Box From The Street In Front of Their Residence, with a 30-day Comment Period.

Currently, utility companies provide a 30-day notice by letter to impacted property owners, tenants and community associations (if applicable). Impacted property owners are the addresses shown on the Assessor's Maps located within the visual field of the proposed above-ground structure. Waiver of the 30 day notice is granted if a company representative discusses construction plans with owners and obtains their acknowledgement of the plans via face-to-face discussion. Notice shall include clear language addressing the following:

- A drawing/schematic showing the type and size of the structure that will be placed and showing the relationship to the right-of-way.
- The location related to the neighborhood.
- A picture of the structure within the location – using an illustrated overlay.
- Contact name and phone number of City's CEDA representative and Company's representative knowledgeable of the site for questions and concerns prior to the 30 days.

This requirement will be modified to include property owners and tenants within a 300 foot radius of each proposed box.

5) There Will Be an Additional 10-Day Public Comment Period for Each Box Prior to Construction

In addition to the 30-day notice outlined in No. 4 above, utility firms will be asked to provide a 10-day notice to impacted property owners before construction activity begins, to provide an additional notice to the community. This additional noticing requirement will allow both the City and utility firms to work with impacted property owners to identify the most effective location, orientation, and screening options for each box.

6) The Owner Of The Box, When Feasible, Shall Underground The Box,

CEQA section 15364 defines “feasible” as capable of being accomplished in a successful manner within reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. This is the definition the City will also use. If the owner of the box wants it above ground, they must submit supporting materials at the time of permit application which demonstrates that it is infeasible to place the utility box underground. At the November 28th Committee meeting, staff was asked to provide additional detail from the City of Newport Beach. The ordinance adopted by the City of Newport Beach “promotes” the use of undergrounding and specifically states that:

13.20.030 CITY POLICIES REGARDING USE OF THE PUBLIC RIGHT OF WAY.

A. Promotion of Undergrounding. It is the policy of City to promote undergrounding of Facilities whenever and wherever Feasible. Whenever existing Facilities are located underground along a particular PROW, new Facilities must be installed, at Company’s sole expense, underground along that PROW. Further, whenever any Above Ground Facilities are located or relocated underground by a Public Utility Provider along a particular PROW, other Companies shall concurrently relocate Company’s Facilities underground on a cost-sharing basis for all companies involved in a manner consistent with applicable law. No new Above Ground Facilities will be allowed in areas where Facilities are undergrounded.

B. Limits on Above-Ground Facilities (AGF). It is the additional policy of the City to limit the number and control the location of AGF used in conjunction with underground Facilities consistent with the technical requirements for providing high quality utility service. Companies shall place all newly installed Facilities underground or flush mounted vaults, whenever Feasible. Companies shall coordinate with all

affected property owners to locate all newly installed AGF to minimize inconvenience and disruption to residents.

C. Excess Capacity. Facilities shall be installed within existing underground ducts or conduits whenever Excess Capacity is available on reasonable terms.

According to the City of Newport Beach, to date, no utility boxes have been undergrounded in their city. Utility boxes have been placed in the public right of way owned and operated by the State of California (Department of Transportation).

7) Application of CEQA

Impacts of discretionary actions, such as approval of utility boxes, which may have physical effects on the environment, are governed by the California Environmental Quality Act (CEQA). The proposed regulations presented to the Council are intended to minimize the project-specific and cumulative impacts of these facilities; therefore, staff does not believe that additional CEQA review of projects is required at this time. Accordingly, the Council could find that the installation of utility boxes are exempt from CEQA pursuant to CEQA Guidelines sections 15303(d) (New Construction or Conversion of Small Structures); 15304 (Minor Alterations to Land); and/or 15016(b)(3) (General Rule: No Possibility of Significant Effects).

SUSTAINABLE OPPORTUNITIES

Economic: Robust technology and utility infrastructure are necessary for the economic growth and vitality of Oakland.

Environmental: It is important to protect the use and access of the public right of way through appropriate regulations and requirements.

Social Equity: The programs and policies for utility boxes in the public right of way are intended to ensure all Oakland residents have access to new technologies and services.

DISABILITY AND SENIOR CITIZEN ACCESS

The placement of each utility box is regulated to require adequate pathways and access for disabled residents by maintaining the requirement of the American with Disabilities Act.

RECOMMENDATION(S) AND RATIONALE

The changing nature of new technologies and the required infrastructure to provide these new technologies to residents in Oakland necessitates the deployment of additional infrastructure components, such as utility boxes in the public right of way. These new or enhanced

technologies are vital to the economic growth and vitality of Oakland. However, the placement and nature of the infrastructure required to deliver these new technologies should not reduce the quality and accessibility of public rights of way. Therefore, staff recommends the following set of regulations for above ground utility boxes in the public right of way:

Residential Area²
<ul style="list-style-type: none">• Height of boxes be reduced from 78 inches to 50 inches;• Required permits for Encroachment and Excavation will analyze and consider pedestrian, disabled, and traffic flow areas, in addition to other issues.• Design Review analysis, as part of the encroachment and excavation review to provide screening, location, and orientation requirements• 30-day Public Notice property owners and tenants in line of site or within 300 foot radius• 10-day additional notice to impacted property owners prior to construction activity starting• Avoid concentration of boxes in a single location, within technological limits• Require undergrounding, when feasible

Commercial Area³
<ul style="list-style-type: none">• Height of boxes be reduced from 78 inches to 63 inches;• Required permits for Encroachment and Excavation will analyze and consider pedestrian, disabled, and traffic flow areas, in addition to other issues.• Design Review analysis, as part of the encroachment and excavation review to provide screening, location, and orientation requirements• 30-day Public Notice property owners and tenants in line of site or within 300 foot radius• 10-day additional notice to impacted business owners prior to construction activity starting• Encourage concentration of facilities, especially in available location in private property• Require undergrounding, when feasible

² Defined consistent with Zoning Ordinance

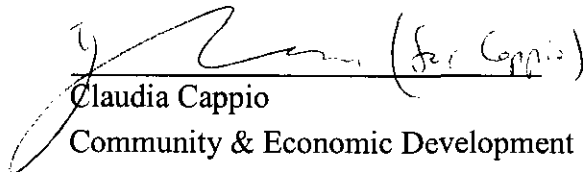
³ *Ibid*

The proposed regulations will minimize the impact to the City while not deterring the investment required to deploy infrastructure critical for delivery of new technology services to Oakland residents.

ACTION REQUESTED OF THE CITY COUNCIL

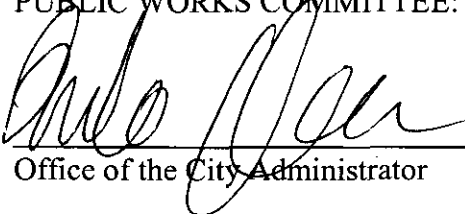
Staff is requesting Council to approve the proposed regulations for above ground utility boxes in public right of way.

Respectfully submitted,


Claudia Cappio
Community & Economic Development Agency

Prepared by:
Maziar Movassaghi
Community & Economic Development Agency/

APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE:


Office of the City Administrator

Item: _____
Public Works Committee
December 12, 2006