



CITY COUNCIL AGENDA REPORT

MEETING DATE: FEBRUARY 20, 2007

ITEM NUMBER:

SUBJECT: CONSIDERATION OF ABOVE-GROUND UTILITY BOXES IN THE PUBLIC RIGHT-OF-WAY

DATE: FEBRUARY 8, 2007

FROM: PUBLIC SERVICES DEPARTMENT, ADMINISTRATIVE DIVISION

PRESENTATION BY: WILLIAM J. MORRIS, DIRECTOR OF PUBLIC SERVICES

FOR FURTHER INFORMATION CONTACT: WILLIAM J. MORRIS AT (714) 754-5343

RECOMMENDATION:

Provide input to staff on proposed Conditions of Approval, as shown in Attachment 1, for any utility request within the public right-of-way that includes above-ground cabinets greater than 25 cubic feet in size.

BACKGROUND:

At the November 14, 2006, meeting, staff presented a report (Attachment 2, without report attachments) to City Council indicating a concern with the possible size and number of new above-ground utility boxes that are being proposed in the City. This concern is due to new California State legislation, AB 2987, which goes into affect this year, and allows any utility company meeting certain State requirements to provide video service to resident/customers within the City of Costa Mesa. Previously, this was governed by City ordinance requiring a local franchise agreement.

At the November meeting, several utility company representatives spoke on the subject of cabinet size, location, and number of future, proposed cabinets. The representative from AT&T indicated that undergrounding of the new facilities was not possible, and that new smaller height cabinets (48" vs. 63" height originally proposed) can be used where desired by the City for aesthetic reasons. He also stated that the number of cabinets proposed in Costa Mesa cannot be divulged at this time for proprietary reasons. The AT&T representative indicated that their company works with the community, and with the adjacent property owners, wherever a large, above-ground cabinet is proposed. Additionally, and in order to allay any concerns about maintenance and clean-up of graffiti, stickers, etc., he indicated that the finish on the cabinets was "powder coated" for ease of clean-up. Additionally, written correspondence was received from AT&T (Attachment 3) in response to several items contained in the November 14, 2006, staff report.

At that same meeting, a representative from Southern California Edison Co. (SCE) indicated that they would like to work with staff to provide for conditions that would meet the needs of the City, as well as the utility company, as it relates to above-ground cabinets.

Council requested that City staff meet with the utility companies to address their concerns with staff's proposed conditions, while still preserving the aesthetic appearance of the City parkways, where the majority of new above-ground utility boxes presumably will be placed (Attachment 4).

Revised conditions were drafted, based on Council and utility company input at the November City Council meeting, as well as from face to face staff/utility company meetings. These revised conditions were provided to Council in a report for the January 20, 2007, meeting. However, at the request of AT&T, the agenda item was continued for 30 days. During that time, staff has met with both AT&T and SCE, and conditions were again modified in an attempt to resolve further issues.

ANALYSIS:

Staff has redrafted the proposed Conditions of Approval (Attachment 1) for construction of any large utility cabinets within the public right-of-way. These redrafted conditions, which have been reviewed by AT&T, SCE, and Southern California Gas Co., contain several key points, as follows:

- Screening/mitigation of cabinets from view to the greatest extent possible.
- Agreement with City in lieu of an established company policy addressing maintenance concerns (i.e., graffiti, stickers, vandalism, etc.).
- Reduced size of cabinet (48" vs. 63" high) in or near residential neighborhoods.
- Prior notification to property owners in the area of a proposed cabinet.
- "Grandfathering" of existing large cabinets that may need to be refurbished or replaced.

In regards to the second bullet point above, staff has received a copy of an existing company maintenance policy from SCE (Attachment 5). It appears that this policy will fulfill the requirement for the company to maintain their facilities in a timely manner, without a separate maintenance agreement, especially in regards to graffiti and stickers. At the time of writing of this report, no company policy on maintenance of facilities has been received from AT&T.

As Council is aware, correspondence was received from AT&T prior to the January 20, 2007, City Council meeting, concerning the proposed Conditions of Approval (Attachment 6, dated December 2006). Staff has since met with AT&T and resolved most of the issues listed in Attachment 6. However, full resolution and/or compromise has not been achieved on several significant issues. In regards to Condition #1 of Attachment 1, AT&T believes that the California Environmental Quality Act (CEQA) requirements for evaluation of projects does not apply to their proposed "Citywide" installations. Also, they have indicated that they are not willing to disclose the number of large cabinets that may be needed in the future to serve the City under their "Project Lightspeed." Staff is required to conform to CEQA, and believes the entire Citywide project should be reviewed "upfront" for compliance with State law.

Also, AT&T has requested that the last sentence of Condition #9 of Attachment 1 be deleted. Staff is not willing to grant this request, as this condition reflects the requirements of State legislation (AB 2987).

In a recent e-mail correspondence to City staff, SCE has indicated that they take no exception to the latest proposed Conditions of Approval (Attachment 1).

ALTERNATIVES CONSIDERED:

City Council could request additional technical information from the utility companies on the need for large, above-ground cabinets, as opposed to placing the equipment underground in a vault.

Council could also direct that large cabinets be allowed in the public right-of-way without any special conditions or mitigations.

A third alternative is to modify the proposed Conditions of Approval as suggested by staff.

FISCAL REVIEW:

The proposed construction of new cabinets in the public right-of-way would not impact the City financially. However, the City may be required to expend extra maintenance hours/supplies in the future on an ongoing basis to assure that graffiti is removed as quickly as possible from any new above-ground structures within or near the public right-of-way. One of the proposed Conditions of Approval addresses this concern (Attachment 1, Condition # 5), and requires the owner of any above-ground installation to promptly and properly provide maintenance, especially as it relates to graffiti and stickers.

LEGAL REVIEW:

Although any utility company meeting the requirements of AB2987 can provide service within the City of Costa Mesa, the City may impose reasonable conditions, such as location, size, aesthetics, mitigations, on any proposed construction within the public right-of-way.

The City Attorney has provided input and direction on the changes requested by AT&T. At this time, staff believes that the conditions are reasonable for issuance of a permit. These conditions assure that all applicable State and local laws and ordinances are being enforced. They also address a concern for the aesthetics and size of the proposed installations within the City's public right-of-way.

CONCLUSION:

As a follow-up to Council's direction at the November 21, 2006, meeting, and AT&T's request for a continuance at the January 20, 2007, meeting, staff has developed revised Conditions of Approval for construction of any new, large cabinets within the public right-of-way. These conditions have been developed by staff with feedback from the electric and telecommunication companies doing business in the City. They also reflect comments made by City Council at previous meetings concerning the aesthetics and maintenance of the public rights-of-way.

William J. Morris
Director of Public Services

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- ATTACHMENTS:
- 1 - [Proposed Conditions of Approval for Large Cabinets](#)
 - 2 - [November 14, 2006, City Council Report \(without attachments\)](#)
 - 3 - [November 14, 2006, Letter from AT&T](#)
 - 4 - [November 14, 2006, Council Meeting Action Minutes](#)
 - 5 - [Southern California Edison Company Maintenance Policy](#)
 - 6 - [AT&T Comments to Previous Draft Conditions of Approval \(12/06\)](#)

- DISTRIBUTION:
- Mr. Al Henderson, AT&T
 - Ms. Leslie Monty, AT&T
 - Ms. Lori Ortenstone, Sr. Counsel, AT&T
 - Mr. Richard Porras, Exec. Director, Ext. Affairs, AT&T
 - Mr. Eddie Marquez, SCE
 - Mr. Del Heinz, Time Warner Cable
 - Jennifer Gonzalez, Southern California Gas Co.
City Manager
 - Assistant City Manager
 - Administrative Services Director
 - City Engineer
 - Telecommunications Manager
 - Video Production Coordinator

