

**PORTOLA VALLEY TOWN COUNCIL REGULAR MEETING NO 957, NOVEMBER 14, 2018**

**CALL TO ORDER AND ROLL CALL**

Mayor Richards called the Town Council's Regular meeting to order at 7:00 p.m. and led the Pledge of Allegiance. Ms. Hanlon called the roll.

Present: Councilmembers Jeff Aalfs and Craig Hughes; Vice Mayor Ann Wengert; Mayor John Richards

Absent: Councilmember Mary Anne Moise Derwin

Others: Jeremy Dennis, Town Manager  
Brandi de Garneau, Assistant to the Town Manager  
Cara Silver, Town Attorney  
Howard Young, Public Works Director  
Laura Russell, Planning & Building Director  
Sharon Hanlon, Town Clerk

**ORAL COMMUNICATIONS**

None

**CONSENT AGENDA**

- (1) Approval of Minutes – Town Council Regular Meeting of October 24, 2018.
- (2) Approval of Warrant List – November 14, 2018, in the amount of \$94,921.86.
- (4) Appointment by Mayor – Ray Williams to the Board of Trustees for the San Mateo County Mosquito and Vector Control District.

Councilmember Aalfs moved to approve the Consent Agenda. Seconded by Councilmember Hughes, the motion carried 4-0, by roll call vote.

**REGULAR AGENDA**

**STAFF REPORTS AND RECOMMENDATIONS**

- (5) STUDY SESSION – Update on the Federal Communications Commission's (FCC) New Small Wireless Facility Regulations and the Town's Response to FCC Order

Town Attorney Silver presented the background, discussion items, and fiscal impact as an introduction to the study session regarding the new small wireless facility regulations, including the FCC's recent ruling (effective January 14, 2019) designed to further promote the expeditious deployment of small cell sites in the public right of way, as detailed in the staff report.

In response to Councilmember Aalfs' question, Town Attorney Silver said she did not think the Town charged carriers franchise fees. Councilmember Aalfs said Comcast and PG&E pay franchise fees. Town Manager Dennis said there is not clarity in the law regarding franchise fees. Town Attorney Silver said in the current regulatory environment, franchise fees would not be likely.

In response to Councilmember Hughes' question, Town Attorney Silver said 28 cubic feet in volume is essentially the size of a small refrigerator. She agreed that it could be considerably bigger than that if in a different shape and mounted on a pole 50 feet in the air. She said the Town would have limited ability to regulate that.

Town Attorney Silver explained there are several different categories of wireless facilities with different rules that apply to the different categories.

In response to Vice Mayor Wengert's question, Town Attorney Silver confirmed that there are no Town-owned poles, only PG&E poles, and said that no wireless carriers have ever installed their own poles. Councilmember Hughes pointed out the Town owns the short poles that hold the LPRs at the entrances to town.

Town Attorney Silver confirmed that these regulations provide no limitation to the number of poles to be installed. Vice Mayor Wengert said, given that there is some cell break-up in certain parts of town, there will likely be applicants trying to fill those voids, which could result in a significant number of installations either on existing poles or additional poles. She asked if there was any opportunity to limit this in any way. Councilmember Hughes asked if the aesthetics of the density of poles could be controlled. Town Attorney Silver said some Towns have established minimum spacing requirements, but the order found that could be in violation of the new standard of not inhibiting provision of services.

Vice Mayor Wengert pointed out that Portola is a rural environment with many fewer poles than urban areas. Mayor Richards said the most likely area of influence would be negotiated situations regarding placement.

Town Attorney Silver said it is unusual to have coverage gaps in urban environments but there are coverage gaps in Portola Valley. She said once those gaps are filled, there is no longer a need to do gap coverage studies. She said the small cell sites are designed to make sure people have access, for example, in their basements. She said the small cell sites are not trying to deal with major capacity gaps and are a different type of technology.

Vice Mayor Wengert said the Town might suggest a fake tree or other solution if there was time to assess a location-specific request. She said that would not be possible if carriers brought in a significant batch of requests, given the shot clocks time limits. Town Attorney Silver said that is why it is desirable to have an ordinance in place before that occurs. She said many carriers want to locate on city-owned poles and the license agreements must be negotiated, giving the cities some leverage. She said Portola Valley does not have that situation so carriers could come in under Federal law and, without an ordinance in place, very little can be done to control it.

Mayor Richards asked if the proposed fee schedule with "reasonable approximations" would cover the Town's expenses. Town Attorney Silver said it would not. She said she was less concerned about that because the Town's fees are cost recovery based and justification can be provided for the higher costs that would typically be recovered.

Vice Mayor Wengert said it appeared the Town's aesthetic regulations would be the most effective means to achieve some bit of control. She said the Town has a robust history of regulating on rights of way and the aesthetics of anything that occurs in the scenic corridors. She said the definition of "reasonable" for Portola Valley will be obviously different than for other places.

Town Manager Dennis said staff focused on aesthetics as the primary tool. He said there is a lot of opportunity to maximize the aesthetics issues.

Councilmember Hughes recalled a few years ago a carrier coming in with a preliminary discussion about 15 or 20 sites. He asked if it would be expected that a typical carrier would come in with a batch of 20 applications on January 15. Town Manager Dennis said that is possible and said that Public Works Director Young has already received some inquiries. Councilmember Hughes asked how staffing would be handled if all the carriers submit batches of applications in January. He asked if the costs of hiring consultants to meet the 60-day window would be passed on to the applicants. Town Attorney Silver said she and Public Works Director Young have just started having those conversations. She said it is likely consultants will need to be hired if the applications come in large batches.

Town Attorney Silver staff it is likely the Council will need to adopt an urgency ordinance in January with a companion regular ordinance that will move forward in case the urgency findings are attacked.

Vice Mayor Wengert described a scenario where the three major telecom companies come in with batched requests in January and they request poles 5 feet apart. She asked if the Town had any ability to consolidate them and how it would be determined which company to favor. Councilmember Hughes said he would assume first-come-first-served. Vice Mayor Wengert asked if there was any way from an aesthetic standpoint to choose among them.

Councilmember Aalfs said this issue came up in 2009 with Peak Lane. He said the applicant was a third-party company who wanted to secure the site and lease the poles and the Town required them to put two or three facilities on the same pole.

Vice Mayor Wengert asked Town Attorney Silver if she had seen regulations that had been developed to avoid this issue. Town Attorney Silver said it's a tiered preference – first, try to locate on an existing pole; second, have a partnership with another carrier and co-locate. Town Manager Dennis said the argument around aesthetics and the number of poles is compelling based on the traditions of the Town. He said the Town could approach it more aggressively and start from a stronger place where there were already minimum distance requirements and let the carriers come in to tell the Town there are problems with the regulations. Town Attorney Silver said poles should not obstruct vision and, because of the winding roads, there may be some flexibility in terms of distance requirements. Vice Mayor Wengert said that would go to the issues of reasonable, i.e., a safety issue.

In response to Councilmember Aalfs' question, Town Attorney Silver said all the major carriers had CPCN licenses.

Town Manager Dennis asked the Council if there were other aesthetic options to explore.

Councilmember Hughes said he would like to see as little as possible on the poles and as much as possible underground. He had some questions around the 3 cubic feet versus 28. He said, depending on how it's defined, the antenna is a very thin wire inside antenna housing held by a bracket to a pole. He said he didn't understand what 3 cubic feet of antenna would include. He said if things needed to be above ground it should be screened by bushes. He says for these facilities, he would prefer a utility pole versus a fake tree, as long as they were not too dense. He said the fake trees would be quite obvious on the side of a road.

Vice Mayor Wengert agreed with keeping the equipment as low as possible. She said she would encourage undergrounding but said it would likely be a difficult battle. She said she is concerned with duplication. She supported Town Manager Dennis' suggestion of starting out with a more stringent minimum spacing requirements given the rural nature of the town.

Mayor Richards agreed with keeping the equipment low, trying to minimize the number of poles in close proximity to each other, and the use of dark paint. He would not support fake trees.

Councilmember Hughes said the preference for brown or green paint depended on the background view but it should have low light reflectivity. He suggested providing a pre-approved pallet of colors.

Vice Mayor Wengert suggested creating an incentive for the carriers to co-locate or provide a streamlining option. Councilmember Hughes said the downside to that would be three or four 28-cubic-foot boxes on the same site. Vice Mayor Wengert said it would be a decision of more poles or more boxes on less poles, which would be situation-specific on a case-by-case basis.

The Council discussed the possibility of having ASCC members rotate to be on-call to weigh in with the decision-making. Planning & Building Director Russell said most of the review work is based on location whereas that element is not a part of this. She said she and Town Attorney Silver will need to get creative regarding some of the details of bringing some of those elements back into it. She said details such as paint color can be managed but strong preferences must be expressed in advance. She said they will not be able to review things such as above-ground or below-ground on a case-by-case basis and those types of things should be clear from the beginning so staff can hold to lines believed to be defensible with the best chance of being successful. She said it would be challenging to set an expectation with ASCC member of public members that there is much discretion over this. She said if people are going to be involved in that process, it needs to be clear on what can and cannot be reviewed.

The Council suggested the ASCC could be involved in some of the decisions in the development of the standards. Planning & Building Director Russell said there is a provision in the ruling that provides some time to develop the standards but then it goes into effect so it is not clear how applications will be processed in the meantime. She said she attended a joint venture of Silicon Valley session and she believed that because the carriers are busy preparing their 5G technology to roll out later in 2019, she does not think there will be a rush of applications in January. She said, however, Portola Valley has more gaps in coverage than a lot of the communities so carriers will likely come in with 4G technology, knowing it will be upgraded to 5G in the coming year.

Vice Mayor Wengert asked Planning & Building Director Russell if they knew where the gaps in coverage were located and where the requests would likely come from. Councilmember Hughes said it doesn't really matter where the gaps in coverage are located. He said the carriers will be looking at how much area the new site will cover with the 5G technology. Councilmember Aalfs said carriers have provided coverage maps in the past so that research has already been done. Councilmember Hughes said the new sites will not just be on the arterials. Town Manager Dennis said staff is starting to receive emails that are site-specific. Planning & Building Director Russell said Public Works Director Young has received inquiries regarding the existing utility configurations so the carriers can plan for fiber and trenching. She said that in Portola Valley that could mean quite significant trenching.

Councilmember Hughes asked how it would be handled if the Town requires that most of the equipment be put on the ground at a lot of possible sites where there are existing utility poles in the right of way but there's not a lot of room on the ground. He asked if they would then be required to underground it. Vice Mayor Wengert said they could request that any equipment with substantial volume be located at or as close to the ground as possible.

Vice Mayor Wengert encouraged some kind of spacing requirements for the poles, perhaps the same density as required for PG&E poles.

Town Attorney Silver will draft an urgency ordinance and provide it to Council at the January 9, 2019, meeting.

(6) STUDY SESSION – SB 946 Sidewalk Vendor Decriminalization

Town Manager Dennis presented the background, discussion items, and fiscal impact as an introduction to the study session regarding sidewalk vendors, as detailed in the staff report. Staff requested feedback from the Town Council on potential follow-up ordinances regarding SB 946 and the expansion of opportunities for vendors to sell their products on public sidewalks.

Councilmember Hughes asked if it was currently illegal to be a sidewalk vendor in Portola Valley. Town Manager Dennis said there is nothing that says it is not allowed and currently vendors can set up anywhere in Town.

The Council agreed that requiring a business license would be a huge stumbling block for street vendors.

Mayor Richards said the discussion is whether or not the Town should allow vendors. Town Manager Dennis said the new law changes nothing in Portola Valley.

Vice Mayor Wengert suggested that Recommendations #1 and #5 were primary.

Councilmember Hughes pointed out there are existing use conditions for use of facilities whether or not there are events. He said he would be in favor of whatever modifications were needed to maintain those conditions. He would not be in favor of creating new rules to forbid things that have always been permitted, such as informal lemonade stands, Girl Scout cookies, etc. Town Manager Dennis said he does not think that most cities conduct a lot of reactive code enforcement on things such as lemonade stands and that would also not be the Town's intention.

The Town Council approved the following staff recommendations:

- #1) Maximize protection of the town's Farmers' Market by expanding the Market's license area on the site plan and included in the Farmer's Market Agreement.
- #5) Consider the creation of a temporary special permit for Town-sponsored events.

The Town Council approved applying the following staff recommendations to Town-Owned Properties:

- #2) Require any sidewalk vendor who wishes to vend in Portola Valley to obtain a Business License.
  - #3) Require proof of County Environmental Health permit for food sales.
- (7) Discussion and Council Action – Formation of Council Subcommittee for Town Attorney Annual Performance Review

Town Attorney Silver recommended that the Town Council form a subcommittee to manage this year's annual performance evaluation process for the Town Attorney, as detailed in the staff report.

Mayor Richards and Vice Mayor Wengert were appointed to the Subcommittee.

(8) **COUNCIL LIAISON COMMITTEE AND REGIONAL AGENCIES REPORTS**

Councilmember Hughes – Attended the San Mateo County Connect 18 Technology Conference at Facebook where they discussed technology and government.

Councilmember Aalfs – Attended a Peninsula Clean Energy meeting where they discussed the California fires and the potential liability for PG&E.

Vice Mayor Wengert – Attended the November Bicycle, Pedestrian & Traffic where they introduced the new Sheriff's Deputy who reported on the traffic report in October. They discussed Windy Hill parking and the enforceability of no parking because the Sheriff Department is saying tickets cannot be issued for the Town's brown signs. Town Manager Dennis said he is having a meeting with Capt. Corpus to discuss this issue in early-December to get everybody on the same page. Vice Mayor Wengert said they also discussed that Woodside Patrol will be picking up crossing guard duties. Town Manager Dennis said that will start on the first week of December. Vice Mayor Wengert said they also discussed PG&E's upcoming sewer project that will be starting on Alpine and Portola Roads. Vice Mayor Wengert also attended the Bicycle and Pedestrian Advisory Committee (BPAC) meeting where they discussed a bikeway classification system to help prioritize projects. She attended the first subcommittee meeting with Stanford on housing where they discussed creating a timetable and figuring out possible projects, probably bringing in legal counsel on both sides to advise about the zoning, regulations, and housing element issues. She also attended a San Francisco Roundtable meeting where they discussed PIRAT, the newly renamed Woodside VOR. She said the Roundtable has a new process where one month prior they can provide questions to the FAA representative who will be attending.

Mayor Richards – Attended the Emergency Preparedness Committee meeting where they discussed the continued search for medical volunteers. He and Town Manager Dennis referenced Vic Schachter and M. J. Lee who started community service divisions that are similar to CERPP. They discussed PG&E sending warnings about shutting the power off in emergency situations. If the power is shut off, it cannot be turned back on for days until PG&E has examined all the lines. He said the Committee is starting to send out emergency preparedness messages via PV Forum and holding more events displaying water containers and Go Bags. He also attended the November 7 Planning Commission meeting where they discussed ADUs.

(9) Town Manager Report – Town Manager Dennis reported that PV Connect launched on Tuesday, November 13. He said they have received nice feedback. He said no one has requested service yet so it hasn't been tested. He said staff will advertise the recently approved Communications position on November 15 or 16. He attended the Farmers' Market on November 8 where he spoke with residents about various issues. He said Assistant to the Town Manager de Garmeaux will be there next month. He said Senate Bill 821 allows Counties to access resident contact information via a public utility to enroll them in a public emergency warning system (SMC Alert). He said SMC Alert is moving to an opt-out model.

## **WRITTEN COMMUNICATIONS**

(10) Town Council Digest – October 25, 2018

None.

(11) Town Council Digest – November 1, 2018

#5 – Letter from Cities Association of Santa Clara County re Formation of the Santa Clara/Santa Cruz Community Roundtable. Mayor Richards noted that not all cities participated.

#6 – Email from Mayor Doug Kim, City of Belmont re Bay Area Air Quality Management District - Grant Opportunity for Clean Air Projects. Mayor Richards asked if the Town can take advantage of the grant opportunity.

(12) Town Council Digest – November 8, 2018

None.

**ADJOURNMENT** [8:48 p.m.]

Mayor Richards adjourned the meeting.

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Mayor

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Town Clerk