



ORINDA

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Opinions vary on small cell 5G safety, but Orinda garners praise for handling

By Sora O'Doherty

Public opinions differ on the safety of small cell technology, known as fifth generation or 5G, but there was a broad consensus among speakers that Orinda is dealing with the situation as well as is possible. The Federal Communications Commission has ordered that local governments cannot deny any reasonable application for a small cell installation, but the federal order leaves localities some discretion with regard to the aesthetics of 5G equipment.

Orinda hired outside counsel Telecom Law Firm to help draft an ordinance on small cell applications for Orinda. The law firm had previously drafted rules for Danville and Mill Valley, among other localities. Under the FCC rules, localities have until April 15 to put local regulations in place. If they don't, they would have no say at all on any proposed 5G installation. Orinda decided to adopt their rules by means of a resolution, rather than an ordinance, with attached aesthetics guidelines. Resolutions can be changed more easily than ordinances, according to the staff report. On April 9 the city council adopted Resolution No. 16-19 and Policy No. 16-19. The resolution and policy become effective immediately.

The policy covers small wireless facilities and other infrastructure deployments within the public rights-of-way. One point that is clarified in the policy document is that a private road is deemed a public right-of-way. A right-of-way use permit is required for all small wireless facilities and other infrastructure deployments located in

whole or in part within the public right-of-way, with limited exceptions. No permit is required for facilities owned and operated by the city for its use, for over-the-air reception devices, or for wireless facilities or infrastructure deployments already covered by a valid franchise, pole license or other encroachment agreement between the applicant and the city. Also exempted are applications to collocate, replace or remove transmission equipment at an existing wireless tower or base station.

Neighbors within 300 feet of a proposed installation will be given notice of any application. The approval of applications is governed by FCC's "shot clock," a term utilized by the FCC to indicate that applications must be approved on a very short time scale. Because the applications will be for installation of the 5G equipment in the public right-of-way, the responsibility for approval will fall to the Director of Public Works Larry Theis, but he will work closely with the Director of Planning Drummond Buckley in evaluating the applications. Mayor Inga Miller expressed a preference for black or dark green as the color of the installations, because that will make them less noticeable.

Over 20 members of the public came out to speak about the small cell agenda item at the well-attended April 9 council meeting. The staff report on the small cell resolution was presented by Orinda Senior Planner Mayank Patel, and the main presentation was by Robert "Trip" May of Telecom Law Firm. May explained that al-

though many local jurisdictions are challenging the FCC order, petitions for judicial review do not stay the effectiveness of the order. Vice Mayor Darlene Gee quipped, "I have a feeling we'll all wish we'd gone to law school before we're done with this!" She wondered about other jurisdictions, that appear to be defying the FCC order. May explained that while it may appear that their rules prohibit 5G installations in residential districts, they generally have an exception that says, "except where exempted by federal law."

Council Member Dennis Fay echoed public concern about installations close to schools and nursing homes in residential areas. Council Member Amy Worth thanked the public for coming out to express their opinions and acknowledged that it is frustrating when the federal government preempts local control.

Different opinions were expressed about whether or not sensitivity to radio frequencies is a disability recognized by the Americans with Disabilities Act (ADA). Alice Lee came from Alamo to urge the council to exercise its power and require annual checks of equipment. However, attorney May stated that regular checks have not been upheld by the courts. Checks can only be performed, he said, when there is a reason to suspect that the installation is out of compliance with the federal standards.

Cancer survivor Christine Firstenberg praised the council for drafting the best rule. She said she had met with the mayor and that everything she asked for was included. On the other hand, Dan Miller, an electrical engineer educated at Cornell

and Stanford Universities, assured the council that "radio waves are radiation, like light is radiation. It is non-ionizing, it doesn't give you cancer." He explained that small cell is "like wifi, low power, as safe as shining a flashlight in your face." Nora Paymer also spoke in favor of 5G, saying, "I hope that Orinda will grow with modern technology." She added, "I want our city not to fall behind in technology."

A speaker who works for Verizon Wireless assured the council of the safety of small cells, and said, "we're keeping up with capacity, not driving it." He suggested that small cell technology is necessary to meet people's expectations that when they call 911 or text a police department that it will work.

Several speakers suggested fiber optic as an alternative, although Fay questioned whether fiber optic can provide wireless service, and May explained that small cell installations require fiber optic, while other speakers opined that cell service in Orinda is wonderful, and that there is no need for 5G. Valerie Benkman wondered if Orinda could simply declare that it was not a market for 5G, but May said that would not be possible.

Gee concluded that Orinda staff and their consultant have done a good job and come up with the best and most restrictive rules possible right now. She moved to adopt the resolution with one slight amendment, and the council voted unanimously to do so. The city will continue to monitor efforts to overturn the FCC order, and can amend the resolution as the law evolves.

Quick thinking OUSD facilities director uses goats to save the day



Photo Sora O'Doherty

By Sora O'Doherty

Last December a group of residents from Ivy Drive attended a meeting of the Orinda Union

School District board to complain that the district was not doing enough to guarantee that the creek bed they share with Orinda Intermediate School

was fire safe. The district took their complaints to heart, and asked OUSD Facilities Director Stuart House to investigate how the situation could be alleviated. He sought bids from tree service companies, but the bids were very high.

House has explained, "We received two informal bids from tree service companies, one was for \$105,000 and the other for \$120,000. We did not seek a third bid because it was clearly too much money to spend from the Orinda Union School District's precious General Fund dollars. Although some residents believed we could spend (not yet disbursed) Bond funds for this project, Bond dollars were not allocated for such maintenance projects in the Master Plan." He believed that the reason for the very high estimates was, in

part, owing to the presence of poison oak in the creek bed.

Not having the funds on hand for such a large project, House tried to find another solution. "We decided to contact Goats R Us, an Orinda-based small business owned by Terri Oyarzun, to get a bid," House said recently. He explained that Oyarzun's son Zephyr, who supervised the project, attended Orinda Intermediate School a few years ago.

The cost for the seven days (Saturday, March 30 to Friday, April 5) for the 150 Goats R Us goats to clear underbrush and poison oak on the Orinda Intermediate School side of the creek banks was \$7,200. The area is approximately two acres from the school bus turn-in on Ivy Drive to Coral Drive (about 50 feet wide by 1,800 feet long equal to 90,000 square

feet or about 2 acres). The property line runs, for the most part, down the center of the creek.

The district plans to also get rid of the remaining dead branches that litter the creek and is gathering bids for this minor work now that it sees what the goats have substantially cleared. OUSD will also be working to clear some of the branches and dead trees.

House added that OUSD is entertaining the idea of having volunteers or Boy Scouts help do this work now that the poison oak has been completely eaten by the goats. For general safety and liability reasons, over the past five years numerous Monterey pines have been removed along the creek that had fallen or were threatening to fall.

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Wagner Ranch Nature Area Wildlife Festival offers public a glimpse of rare resource

By Sora O'Doherty

The public will once again have an opportunity to visit the Wagner Ranch Nature Area from 11:30 a.m. to 4:30 p.m. Sunday, April 28, for the 2019 Wildlife Festival. The nature area is located near Wagner Ranch Elementary School at 350 Camino Pablo in Orinda. The free event is family-friendly, but according

to school district policy, dogs are not allowed in the Nature Area.

The historic ranch and 18-acre nature preserve is rarely open to the public. There will be a variety of activities for all ages, especially kids. Wildlife fun at the Frog Pond will feature red-legged frogs and resident western pond turtle, Mr. T. There will be animals to visit in the garden, including

friendly goats and beautiful parrots. In addition, visitors will be able to try hands-on nature arts and crafts, science magic, earth day games, or get a temporary nature tattoo from Coyote Brush. A tour will take in the meadows, woodland, ponds and streams, as well as the historic home site of Theodore Wagner, California's first surveyor general.

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City Council

Tuesday, April 23, 7 p.m. Regular Meeting
Library Auditorium, Orinda Library,
26 Orinda Way

Orinda Public Meetings

Planning Commission

Tuesday, April 30, 7 p.m.
Library Auditorium, Orinda Library,
26 Orinda Way

Citizens' Infrastructure Oversight Commission

Wednesday, May 8, 6:30 p.m.
Sarge Littlehale Community Room,
22 Orinda Way, Orinda, CA 94563

Orinda Union High School District Board Meetings

Monday, May 13, 6 p.m.
Regular Board Meeting
8 Altarinda Rd., Orinda, www.orindaschools.org
See also AUHSD meeting page A2