



# COUNCIL STAFF REPORT

CITY COUNCIL of SALT LAKE CITY

**TO:** City Council Members

**FROM:** Nick Tarbet, Policy Analyst

**DATE:** February 9, 2021

**RE: Text Amendment:  
Public Notice for Permits to Work in the  
Public Right of Way**

## **PROJECT TIMELINE:**

Written Briefing: Jan 12, 2021  
Briefing #Feb 9, 2021  
Set Date: December 8, 2020  
Public Hearing 1: Jan 19, 2021  
Potential Action: TBD

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## **PUBLIC HEARING SUMMARY**

During the public hearing members of the public spoke about the proposed changes and asked some questions, Additionally, a letter from Verizon was submitted pertaining to the proposed change.

A few individuals requested the Council require public notice for below ground work as well. Some also said current contractors are not doing a good job of restoring property to the way it was before the work happened.

Verizon representatives spoke during the public hearing and also submitted a letter, outlining their concerns. They stated the current process is efficient and they would prefer to provide notice to property owners after the permit has been received. The new ordinance would require them to provide notice before they obtain a permit.

Council staff met with staff from CAN and the Attorney's Office to go over the comments and formulate the following responses.

- 1. Request to apply the notification requirement to work "below ground" as well.**
  - Administrative staff said this is obviously possible, but it will likely require an increase in staff and costs for the city to monitor and / or respond to concerns about projects.
  - The proposed change before the Council would only require public notice to adjacent property owners for above ground work – typically, this type of work is limited to a few properties that are near the above ground poles/facilities.

- Underground work can go for hundreds of yards (larger/longer projects would be miles). It would take more staff to verify and ensure the public notices were properly provided.
- Administrative staff have prepared some very preliminary estimates for cost/staffing impact to the City.
- They will be available during the briefing to respond to questions the Council may have about potential cost of notifying for below ground work.

## 2. Responses to Verizon's Letter

- **Verizon's request:** Allow permit holders to post notice after the permit is obtained. Prefer to submit template with permit application and actual notice is provided 48-72 hours before work commences.
- **Administration response:**
  - CAN staff said the current process has not been working and that is the reason for the proposed changes. The goal is to get the notifications out sooner, so the public is aware of the work before the permit is issued.
  - The new process would require the permit holder to submit evidence that the notice was provided to adjacent property owners. They then submit that as part of their permit application. The work would typically commence about 2-3 weeks later.
- **Verizon's request:** Clarify type of evidence that is required to demonstrate applicant has satisfied notification requirement.
- **Administration response:**
  - CAN staff said notice such as a door hangar, with timestamped photos is one way to satisfy this requirement.
  - The goal is to avoid situations where a piece of paper is placed on a doorstep that can easily be blown away.
- **Verizon's request:** Adopt definition of adjacent owner currently in notification process.
- **Administration response:**
  - CAN staff stated this could be clarified.
- **Verizon's request:** Clarify purpose of the notice and what is to be included in the description of the purpose of construction.
- **Administration response:**
  - CAN staff has stated they can help provide examples of the type of language they that should be on the notice.
  - They can do this to help ensure consistency for all permit holders.
- **Verizon's request:** Clarify definition of above ground work; does it include excavation to run conduit or lay fiber.
- **Administration response:**
  - CAN staff has stated this type of work applies to facilities that are permanently above ground or on poles or anything that would fall under the master license agreement for small cells.
  - Typically, this type of work would also include trenching for conduit.

- **Verizon’s request:** Any other info reasonably required by City engineer is too broad
- **Administration response:**
  - CAN staff stated this is meant to be specific to notice requirements. They can provide some language to clarify that.

**POLICY QUESTIONS**

1. Some Council Members have expressed interest to require more public notice for below ground work.
  - Does the Council want to adopt these proposed changes and also adopt a legislative action asking the Administration to come back with a proposal for increased public outreach for underground work in the public right of way?
    - This may include identifying options to require contractors to do the outreach and an option for the city to be responsible for providing the public notice
2. The Council may want to ask about the description of information that would be suggested / requested for the notice. For example, location, description, duration of type of work; contact information for the contractor and City, etc.?
3. The Council may wish to ask what the change in the timeline for permit holders would be and how the Administration can notify potential applicants of the changes.

*The following information was provide for the January 19 public hearing. It is provided again for background purposes.*

**WORK SESSION SUMMARY**

This item was on the January 12 agenda as a written briefing. Council Members did not raise any concerns or ask staff questions about the proposed changes.

The public hearing is scheduled for January 19.

*The following information was provide for the January 12 work session briefing. It is provided again for background purposes.*

**ISSUE AT-A-GLANCE**

The Council will be briefed on proposed amendments to City code requiring permit holders to provide notice to property owners whose properties are adjacent to the above groundwork that will be performed in the public way.

The proposed changes were requested in response to numerous constituent inquiries about the lack of notice to adjacent property owners. Much of the right-of-way work that is performed is governed by State statute and limits the amount of interaction the City has with the work. However, in balancing the work that is performed and the impact to residents, some additional noticing steps are being added to the ordinance.

The key changes would require the franchise holder/applicant to provide the following:

- Evidence that they provided notice to all property owners whose properties are adjacent to the portion of the public way where the work is being performed.

- Notice that includes the name of the permit holder performing the construction, the purpose of the construction, and a contact phone number and email for the permit holder.
- Evidence shall be satisfactory to the City Engineer that all adjacent property owners have received notice.
- Related text cleanups to match current practice.

Since work in the public right of way is overseen by the City's Engineering Division, they have reviewed the ordinance in collaboration with the Attorney's Office. Engineering has expressed their support for these proposed changes.

Administrative staff have noted the contractor will have to give notice of the construction prior to submitting an application for a permit to Engineering. Once Engineering approves the permit, the contractor may move forward with construction.

### **PUBLIC PROCESS**

Engineering provided Council Staff a list of the companies who do much of the work in the public right of way. Council staff emailed this group to let them know about the proposed changes, and the dates of the briefing and public hearing.

### **POLICY QUESTIONS**

1. For the properties that would be included in the notification, the Council may wish to consider expanding the requirement beyond the proposal of adjacent property owners.
2. If the Council has questions about the timing of when the notice must be given to when the permit is granted, the Council may wish to ask the administration to explain the process for when the notice must be given before receiving the permit for construction.
3. If it would be helpful, the Council may wish to ask the Attorney's office or Administration representative to provide a quick review on the types of things the City is able to require or request versus items that are monitored or regulated by the State.
4. The Council may also ask Engineering to provide a description of their typical interaction with the permit holders.
5. The Council may wish to raise any other issues that have been raised by constituents.
6. The Council may wish to ask about options to address issues when the noticing requirements are not followed.

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January 15, 2021

## **VIA E-MAIL**

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City Council  
2001 South State Street, N2-200  
Salt Lake City, UT 84114-4575  
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Re: Salt Lake City – Municipal Code – Amendments to Sections 14.32.030 and  
14.32.035 to Require Notice for Permits to Work in the Public Way

Dear City Council Members:

We serve as counsel to Verizon Wireless. We appreciate the opportunity to provide comments on and participate in Salt Lake City's proposed amendments to Sections 14.32.030 and 14.32.035 to require notice of permits to work in the public way ("SLC Wireless Code"). Verizon Wireless wishes to work with City Council and City Staff to adopt revisions to the SLC Wireless Code that address the City's concerns of ensuring residents whose properties are adjacent to above groundwork that will be performed in the public way while balancing an efficient notification process prior to construction that falls within the parameters of what is permitted under federal and state law. Verizon Wireless currently provides notice to adjacent property owners after it receives its permit, which is typically 48-72 hours prior to performing its wireless and wireline work. The current process is efficient, notifies the correct property owners, provides notice at the appropriate time during the process, and complies with federal and state law. Verizon Wireless recommends City Council codify the notification process that currently is in practice. This letter outlines the notification process currently in place, provides comments regarding the proposed Sections to align with the process currently in place, and addresses the policy questions outlined in the City Staff's agenda.

## 1. **Current Verizon Wireless Notification Process of Wireline and Wireless Work in Public Way**

Currently, for each Verizon Wireless small wireless facility deployed in public ways in Salt Lake City, Verizon Wireless notifies adjacent property owners (where work will be conducted in the public way) of its wireless and wireline work 48-72 hours in advance of performing the work. The notification process Verizon Wireless follows is:

- *Notice - Door Hanger Template.* Verizon Wireless prepares a door hanger notification template for the above ground work it performs in the public way with respect to the small wireless facility. The door hanger template includes name, company identifying information, description of the work and where it will be performed, an email address, informational website, and phone number. A copy of Verizon Wireless's door hanger notification template is enclosed as **Exhibit 1**. Verizon Wireless's wireline counterpart also prepares a door hanger for notification template for the fiber work it performs in the public way and submits it with their application. This door hanger includes name, company identifying information, description of the work and where it will be performed, and an email address. A copy of wireline door hanger notification template is enclosed as **Exhibit 2**.
- *Notice Door Hanger Template submitted with Permit Application.* The door hanger template is submitted as part of Verizon Wireless's permit application, and the fiber contractor also submits its door hanger template as part of its permit application for the fiber work. The City provides the applicant notice if the door hanger template is not provided, and the applicant is provided the opportunity to submit the door hanger template.
- *Scope of Door Hanger Notification - Adjacent Property Owners.* The door hangers are placed on the properties of adjacent property owners. Adjacent property owners are defined as all residential properties directly adjacent the path of the above-ground construction work being performed in the public way or directly impacted by the route of the work to the location of the proposed small wireless facility (*e.g.* the homes affected by boring and directly around the site construction).
- *Timing of Door Hanger Notification.* After the permit application is approved by the City Engineer, Verizon Wireless places the door hanger notifications on the residential adjacent property owners approximately 72 hours prior to when the work is commenced in the public way. The timing of the notification aligns with the City's goal to provide notice to adjacent property owners that work will be performed that may directly impact those property owners.

As the City Staff notes in its January 12, 2021 memo, the current notification process is not a written requirement at this time in the SLC Wireless Code or the City's Design Guidelines

or application requirements. Importantly, Verizon Wireless has followed this notification process for the past two years commencing in 2019. The notification process the City currently uses is efficient and provides adequate notice because: 1) the notice is provided after the permit is issued and 48-72 hours prior to the construction work in the public way and notifies adjacent property owners that work is going to be performed; 2) the notice notifies “adjacent property owners” whose property is adjacent to the public way where work will be performed; and 3) the timing of the notification complies with the goal of the City to notify property owners that work will be performed and is within the scope of what the City may do with respect to approval of small wireless permits under state and federal law.

**2. Verizon Wireless’s Comments to Proposed Amendments to Section 14.32.030 and 14.32.035**

Verizon Wireless requests City Council kindly accept the following comments concerning the proposed Sections on behalf of Verizon Wireless. Also, attached you will find a redline of the proposed SLC Wireless Code with Verizon Wireless’s proposed changes and suggestions as set forth in detail below.

**a. Section 14.32.030(A)(13)**

- i. *Proposed Language in Ordinance:* For all above ground installations, evidence that the applicant has provided notice to all property owners whose properties are adjacent to the portion of the public way where the work is being performed. The notice shall contain the name of the permit holder, the purpose of the construction, and a contact phone number and email for the permit holder. Such evidence shall be satisfactory to the City Engineer that all adjacent property owners have received notice.
- ii. *VZW Comment - Timing of When Notice Is Required.* The proposed amendment is in the section titled “Permit Application Requirements.” Under the proposed amendment, the applicant will have to provide evidence that “the applicant **has provided notice**” to adjacent property owners before it submits the permit application. Verizon Wireless respectfully requests that an applicant be required to provide the notification template that it will use to provide notice at the time it submits its application permit and, then, an application will provide the notification to the adjacent property owners 48-72 hours in advance of the work to be performed in the public way. This proposed timing is consistent with the current notice practice where an application submits the template with the permit application and, then, posts notice shortly before the work commences. It is not a logical step in the process to require an applicant to post a notice for construction work when the applicant does not yet have a permit. To do so may confuse the adjacent

property owners as it may indicate the applicant has started the construction process when it has not yet started.

Also, this proposed timing of notice aligns with the City's goal of providing notice about the work that will be performed in the public way. Providing the notice in advance of the permit being issued does not allow the applicant to specify when the work will be done and may raise questions and confusion if the notice is provided weeks in advance of when the work will be performed.

Further, providing notice in advance of the application permit may improperly suggest that the City may consider any public input as part of its decision making process to approve the permit. Small wireless facilities in the right-of-way; and the co-location, installation, operation, modification, maintenance or replacement of small wireless facilities are a permitted use by right in any zone and subject only to administrative review. Utah Code Annotated § 54-21-204(1). The Utah Legislature determined, in enacting S.B. 189 that deployment of small wireless facilities is most effective in rights-of-way to ensure that all citizens in the state will have access to advanced technology and information and is a matter of statewide concern and interest. By declaring that placement of small wireless facilities or networks in the right-of-way are "a permitted used under the authority's zoning regulation and subject only to administrative review", the statute furthers the legislative declaration that small wireless facilities should be deployed most effectively in public way. Under S.B. 189, a local authority has the power to give consent to any wireless provider to erect poles or construct any small cell facilities or small cell networks in public rights-of-way. However, the local authority's consent cannot be unreasonably withheld and Utah Code Annotated § 54-21-103 specifies the limitations on a local authority's permitting authority.

Given the City is limited on when it may withhold its consent for a wireless provider's permitted by use of the public way, it is important to be mindful of this as to when the City requires notice to adjacent property owners. If the City requires notice prior to the issuance of a permit, adjacent property owners may view this as providing discretion and consideration of their comments and the opportunity for valid applications to be denied in a process where a statutory right involved. To allow for any public input into this review process improperly conveys that the City Engineer may consider any public input as part of its decision making process. The City Engineer cannot improperly deny an application where the applicant has satisfied these requirements or the city will be in violation of state and federal law.

iii. *VZW Comment - Evidence of Notification Requirement.* Verizon Wireless respectfully requests that City Council clarify the type of evidence that will be required to demonstrate an applicant has satisfied the notification requirement. Verizon Wireless recommends the City accept a one-page construction drawing that denotes which adjacent property owners the applicant notified of the work to be performed in the public way, the signature of the applicant representative that provided the notices, and the date the notices were provided. A copy of a sample of the proposed one-page form to evidence the notification is enclosed as **Exhibit 3**. This one page construction drawing is an excerpt from the construction drawings that are submitted to the City and approved as part of the permit application. The wireline / fiber provider would also provide a similar drawing after their notices have been provided, subject to whether notices are required for fiber work in the public way. The applicants would upload this document to the City's system after the notices have been posted.

iv. *VZW Comment - Definition of Adjacent Property Owner.* The proposed amendment does not define the term "adjacent property owner." Verizon Wireless respectfully requests City Council adopt the definition that currently is used in the notification process. Adjacent property owners are defined as all properties directly adjacent the path of the above-ground construction work being performed in the public way or directly impacted by the route of the work to the location of the proposed small wireless facility (e.g. the homes affected by boring and directly around the site construction).

This is the correct scope of which property owners should be notified as it aligns with the City's goal of notifying the property owners who may be directly impacted by the above ground work and are directly adjacent to where the above ground work will be performed. The Utah state statute already provides wireless providers with the right to deploy small wireless facilities within the public way. If the application complies with state law and the City's code, the City shall approve the application. No factual basis is given to expand the scope of adjacent property owners to properties within a certain radius or blocks of the proposed facility, and adds an impermissible regulatory burden when the current process is working well and fairly for all concerned.

v. *VZW Comment - Purpose of Construction.* Verizon Wireless respectfully requests that City Council clarify the purpose of the notice and what is to be included in the description of the "purpose of construction". Currently, Verizon Wireless's door hangers include a description of the work and where it will be performed. This notice correctly and already aligns with the

City's goal to provide notice to property owners that construction is commencing and the application complies with local, state, and federal requirements.

- vi. *VZW Comment - Above-Ground Work in Public Way.* Verizon Wireless respectfully requests City Council clarify the definition of “above ground work” and whether it includes work such as excavation to run conduit or lay fiber. Verizon Wireless proposes that notification be provided if the primary purpose of the work to be performed in the public way is above-ground work such as constructing a wireless facility. If the primary purpose is to run conduit underground, then, the applicant is not required to provide notice of work in the public way. Currently, an adjacent property owner likely receives two notifications – one for above-ground wireless work and one for fiber work – and these notices may occur at different times. This may cause confusion for the property owners regarding what work is being performed and by which entity.

**b. Section 14.32.030(A)(14)**

- i. *Proposed Language in Ordinance:* Any other information that may be reasonably be required by the City Engineer.
- ii. *VZW Comment.* This provision is significantly overbroad and allows for substantial amount of discretion on the part of the City Engineer as there are no limitations on “other information” that could be required. The current application process already requires all of the information needed under Section 14.32.035(A), and this provision was reviewed when the City Council enacted the provision, so no new regulation is needed. Further, the term “reasonably” is subject to varying interpretations. Verizon Wireless respectfully requests City Council remove this provision or provide more specificity as to what type of “other information” the City Engineer may request. One potential alternative may be “Any other technological, engineering, or construction information that may be reasonably required by the City Engineer subject to the requirements under federal, state, and local law.”

**c. Section 14.32.035(A)(8)**

- i. *Proposed Language in Ordinance:* Evidence that the applicant has provided required notice to adjacent property owners.

- ii. *VZW Comment.* Verizon Wireless respectfully requests City Council adopt its proposal set forth in Section 2.a.iii above as to what is sufficient evidence for the applicant to submit to show it provided the required notice.

### **3. City Staff Report – Policy Questions**

In the City Staff Report regarding the proposed amendments to Sections 14.32.030 and 14.32.035, the City Staff includes six policy questions for City Council to consider. Verizon Wireless provides its comments and guidance on those policy questions that are appropriate for the City Council's consideration based upon its experience with the current notice it provides in Salt Lake City as well as its experience with notice requirements in other jurisdictions through the west region.

1. For the properties that would be included in the notification, the Council may wish to consider expanding the requirement beyond the proposal of adjacent property owners.

For the reasons set forth in Section 2.a.iv above, Verizon Wireless respectfully requests City Council focus the notification to the adjacent property owners. As noted in the City Staff's report, the purpose of the notification is to ensure that adjacent property owners whose properties are adjacent to the above groundwork receive notice that will be performed in the public way and where the work is being performed. Focusing the notification to only adjacent property owners accomplishes the City's objective and would be compliant with state and federal law in responding to those comments and denying permits.

2. If the Council has questions about the timing of when the notice must be given to when the permit is granted, the Council may wish to ask the administration to explain the process for when the notice must be given before receiving the permit for construction.

For the reasons set forth above in Section 2.a.ii, Verizon Wireless respectfully requests City Council require a notice template to be submitted with the permit application and the actual notice be provided after the permit is issued and 48-72 hours before the work commences in the public way. This also aligns with the City's goal to provide timely notice to property owners when work in the public way may occur that is adjacent to their property.

6. The Council may wish to ask about options to address issues when the noticing requirements are not followed.

Verizon Wireless proposes that if there is an issue when the notice requirements are not followed, the City provide the applicant with notice and either require the applicant to resubmit the notice template or provide the applicant with the contact information of any individuals or entities who did not receive the requisite notice and the applicant will be required to contact that individual or entity within 24 hours.

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Again, Verizon Wireless appreciates the opportunity to comment on Salt Lake City's proposed amendments regarding notice requirements for work in the public way. Verizon Wireless wishes to work with Salt Lake City to enact regulations that which conform to state and federal law, are reasonable for implementation, and which are fair to all stakeholders. Verizon Wireless believes that such results can be accomplished. Verizon Wireless representatives will be in attendance at the City Council meeting on Tuesday, January 19 and available to answer any questions you may have. We would appreciate the opportunity to talk to you with you and discuss these matters. Thank you.

Sincerely,



Melissa K. Reagan

Encl.

cc: Ms. Kimberly Chytraus (via email)