

December 4, 1995  
REPORT TO THE COMMITTEE ON PUBLIC  
SAFETY AND NEIGHBORHOOD SERVICES

AGENDA ITEM 3: INSTALLATION AND REMOVAL OF PAY TELEPHONES

BACKGROUND

The Committee continued subject item on November 1, 1995, for a period of thirty (30) days. This item is scheduled to be heard on December 6, 1995.

Staff from the City Attorney and Police Department were directed to meet with pay telephone industry representatives during the interim period "to try to work out any differences." An initial meeting scheduled for November 17, 1995, was continued until November 21, 1995. Present at the meeting held on November 21, 1995, were the Committee Consultant and representatives from the Police Department, City Attorney's Office, and the San Diego Payphone Association. Mr. Robert P. Otilie, attorney at law, also appeared on behalf of the San Diego Payphone Association.

ACTION TAKEN

As a result of positive discussions, several agreed-to revisions, subject to Committee approval, were made to the draft ordinance considered by the Committee at its November 1, 1995, meeting. Attached is a copy of the revised draft ordinance highlighting and incorporating those changes concurred in by staff and industry representatives. Provisions discussed were the Chief of Police's Standard of Review, Criminal Penalties provisions, broadening of the ordinance to include "Redevelopment Study Areas" and other minor language changes. A discussion of the main topics discussed follows.

STANDARD OF REVIEW

The industry expressed concern that the Chief of Police had total discretion to grant, deny, or condition applications for pay telephone installations and that such wide discretion should be subject to a standard. To meet this concern, a standard was added to Section 54.0505 which allows the Chief of Police to conditionally approve or deny an application by finding that the proposed installation is in an impacted area and has the potential to create "objectionable conditions that constitute a nuisance" as defined in Section 54.0502. (This definition also appears in Business and Professions Code section 24200 stating grounds that constitute a basis for the suspension or revocation of alcoholic beverage licenses.)

The potential objectionable conditions include disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking, or excessive noise.

#### CRIMINAL PENALTIES PROVISIONS

Agreement was not reached on the criminal penalty provisions contained in Section 54.0503 and 54.0504. Industry representatives urged that the criminal penalties be removed from the ordinance.

The criminal penalty provisions express the present law contained in the San Diego Municipal Code, section 12.0201 which provides in pertinent part as follows:

It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Code. A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Code shall constitute a misdemeanor; except that notwithstanding any other provision of this Code, any such violation constituting a misdemeanor under this Code may, in the discretion of the City Attorney, be charged and prosecuted as an infraction; and, with the further exception that any violation of the provisions relating to parking, operation of bicycles, operation of motor vehicles, and use of freeways, highways and streets by animals, bicycles, motor vehicles or pedestrians shall constitute an infraction.

The criminal provisions in the attached draft ordinance are consistent with the San Diego Municipal Code and their retention is recommended.

#### BROADER DEFINITION OF "REDEVELOPMENT PROJECT AREA"

The Committee directed that language be added to the ordinance that utilizes the broadest definition of "Redevelopment Area."

"Redevelopment Study Area," as defined in Section 54.0502, was added to comply with the Committee's direction. Industry representatives have not concurred in this addition.

#### RECOMMENDATIONS

1. It is recommended that the Committee consider for approval attached revised draft copy 3 of the pay telephone ordinance. The pay telephone industry has been provided with draft copy 3 and a draft copy of this report.

2. In the event the Committee decides to eliminate some or all of the criminal sanctions, this office will prepare the appropriate modifications. Changes can be made by interlineation at the Committee

meeting and later incorporated in the final draft.

Respectfully submitted,

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City Attorney

JMB:jp:520.1(043.1)

Attachment

RC-95-35