

DATE ISSUED:September 17, 2001

REPORT NO. 01-196

ATTENTION:Land Use and Housing Committee
Agenda of September 19, 2001

SUBJECT: Wireless Communication Workshop

SUMMARY

THIS IS AN INFORMATION ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE COMMITTEE OR THE CITY COUNCIL.

BACKGROUND

The revised Communication Antenna regulations (Section 141.0405) of the San Diego Municipal Code recently became effective on August 8, 2001. The regulations evolved over many years through research, public input and development of policy. Telecommunication projects currently are at the forefront of controversy for several reasons, the primary one being the perceived health risks associated with radio frequency (RF) radiation. Although the City is prohibited by the Telecommunications Act of 1996 from making decisions on projects based on the RF radiation, it is the goal of the regulations to provide public notification for those projects that are located adjacent to or in residential areas. It is recommended that the newly effective regulations be given a six-month trial in order to allow staff and the public time to examine if the regulations are accomplishing the goal of public notification and community participation. In March 2002, a report will be presented to the Land Use and Housing Committee providing an analysis on the effectiveness of the ordinance.

This memorandum provides background information on the two areas of concern relating to telecommunication facilities: History, which includes discussion on regulations as well as the Federal limitations placed on the City in terms of regulating the facilities and Process. The RF safety information is included as an attachment to this memorandum (Attachment 1) and is discussed briefly beginning on page 3 under the heading "Telecommunications Act of 1996."

HISTORY

The City of San Diego has processed more than 1,100 applications for wireless communication facilities since 1984. Until 1994, there were only two cellular companies operating within San Diego. In those ten years, less than 200 sites were processed through the City. Over the years, the increase in popularity of mobile phones and wireless data transmission, the availability of increased spectrum band width, and the Telecommunications Act of 1996, have all contributed to the controversy today.

There are currently five major carriers processing applications for sites and though most of the network infrastructure for these companies have been laid, the high demand by consumers for more dependable service has the carriers attempting to fill the gaps in their networks. An inherent characteristic of these cellular/PCS (Personal Communication Services) networks are that they utilize a low-power transmitting technology. As more subscribers are added and channels are reused at closer intervals to increase the subscriber capacity, more transmitting facilities are needed. PCS networks operate in the 2 GHz band versus cellular networks operating in the 800 MHz band. As the frequency rises, more sites are needed by PCS carriers to cover the same area that can be covered by fewer 800 MHz sites for cellular carriers.

Previous Municipal Code- In use until December 31, 1999

Originally, all wireless communication facilities were processed as Planning Commission Conditional Use Permit's (CUP) in accordance with San Diego Municipal Code (SDMC) Section 101.0510, which identified:

“Major stationary facilities for the aerial transmission or relay of electromagnetic communication signals, including, but not limited to, ...cellular mobile telephone transmitting facilities.”

This code section implied that there were also “minor” wireless communication facilities, therefore, staff began differentiating between “major” and “minor” facilities based on physical and locational characteristics. An administrative review process (Determination 15¹) was established to process “minor” facilities. It permitted roof- and facade-mounted antennas in commercial and industrial zones. Monopoles, steel lattice towers and any type of application in single-family residential zones were required to process a CUP. This procedure was sufficient at the time to meet the needs of the two providers.

Pacific Bell Mobile Services - December 1995-March 1996

In 1995, Pacific Bell Mobile Services (PBMS) entered the San Diego market, submitting a large number of applications at one time in preparation to meet the needs of the Republican National Convention, which was scheduled for June, 1996 at the Convention Center. The flood of applications prompted staff to batch the CUP's for “major” facilities in an effort to facilitate processing. The Planning Commission and the City Council hearings on the batched applications elicited a significant amount of public input, including the highly contentious issue of public health and safety as a consequence of potential interference affiliated with the technology used by PBMS. In addition to approving PBMS' thirteen CUP's, the City Council directed staff to address the land use and visual issues associated with the proliferation of telecommunication facilities throughout the City.

Telecommunications Act of 1996 - Signed into legislation February 8, 1996

At the same time PBMS was going through the public hearing process, a revision to the Communications Act of 1934 was being discussed in the United States Congress. On February 8, 1996, the Telecommunications Act of 1996 (the Act) was signed in to law by President Clinton. The Act was written to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and to encourage rapid deployment of new telecommunication technology.

The Act has imposed certain restrictions upon local governments regarding their ability to regulate telecommunication facilities. However, the Act does not completely preempt the City’s ability to exercise control over zoning decisions. Nothing in the Act limits or affects the City of San Diego’s authority to regulate the placement, construction or modification of personal wireless service facilities. However, in exercising land use control, local jurisdictions must maintain consistency with the Act. Therefore, local land use decisions may not unreasonably discriminate among providers of personal wireless services nor prohibit or have the effect of prohibiting the provision of personal wireless services. Moreover, such decisions may not be based on the environmental effects of RF emissions to the extent that such facilities comply with the Federal Communication Commission’s regulations concerning such emissions.

City Council Policy 600-43 - Adopted March 4, 1997, in effect until December 31, 1999

Prior to developing a policy addressing the issues identified by the City Council, staff held several individual and group meetings with the telecommunication providers, met with Community Planning Chairpersons, participated in a telecommunication conference and attended several Community Planning Group meetings. The predominant issues received from both community group members and the telecommunication industry were:

- Visual Impacts
- Land Use Conflicts
- Process

To address potential visual impacts, staff developed the policy to strongly encourage providers to architecturally integrate facilities into the environment as a means to render the antennas virtually invisible to the general public. Land use conflicts were primarily identified, by the Community Planning Chairs, as the intrusion of telecommunication facilities into single-family residential zones. The policy addressed this concern by prohibiting “minor” facilities on single-family developed lots or residentially zoned undeveloped lots. Process was an issue identified by both the providers and staff pertaining to timelines and consistency. The Policy was written to impart providers with the option to accelerate the review process by proposing architecturally integrated facilities in order to meet the purpose and intent of the policy to reduce visual impacts (Attachment 2). It also established specific criteria that would provide staff with consistency in review of the applications.

Council Resolution R291658 and City Council Policy 700-06 (Amended May 24, 1999) and Subsequent Park and Recreation Action - - Currently in Effect

With an official procedure now in place for the entitlement process, the demand to provide

service in residential areas compelled providers to search for new locations in and around residential areas for the placement of their facilities. Council passed a resolution which directed staff on how to distribute revenues. Council Policy 700-06, Encroachments On City Property, was amended to clarify the required process for placement of telecommunication facilities in park and open space land (Attachment 6). The amendment included adding guidelines for the design, environmental protection, siting criteria and an approval process to evaluate proposals and facilitate community input on proposed facilities. These revisions were required under the direction of the City Attorney to insure that projects would not violate the provisions of City Charter 55, which includes the issue of interference with the usability, recreational or natural character of the parkland or open space.

Shortly after the adoption of Council Policy 700-06, it became apparent some measure of consistency was required when dealing with contract negotiations for telecommunication facilities on city owned land. Therefore the Park and Recreation Board adopted Telecommunication Facility Guidelines on January 10, 2001. (This is a City Council appointed board.) Essentially, these guidelines seek to maintain equity between the providers and the park sites, streamline the process and, establish design criteria and limit additional considerations (Attachment 7). Total annual revenues from all telecommunication facilities on City-owned property for FY 2001 were \$963,222, of which \$204,868 were from City-owned parks and open space. On City parks and open space there are currently 12 existing telecom facilities, 5 that have been approved and are under construction and 23 in the design phase which have not been approved.

San Diego Land Development Code (LDC) - Effective January 1, 2000

Section 141.0405 codified City Council Policy 600-43 with format revisions to coincide with the LDC format. A noticeable change from the policy was the reduction in the process level from four (4)² Planning Commission to three (3)³ Hearing Officer for applications proposed on single-family uses or on vacant single-family zones. The regulations affirmed process one (1)⁴ for applications proposing integrated facilities in multi-family zones and proposals on non-residential uses in single-family zones.

Land Use & Housing Committee - January 26, 2000

Controversy related to sites in the Peninsula and Navajo Communities prompted the City Council to direct staff to form a committee consisting of the industry and members of the public to review and discuss penetration into residential areas and limiting the number of facilities per site. Staff requested one representative be appointed by City Council District 2, City Council District 7 and a member of the Community Planning Chairs, as well as, three representatives from the industry. Initially, the desires of the two groups were distinctly antithetical, but eventually over a period of eight months a compromise was developed that satisfied both the industry and the public group. These compromises resulted in revised regulations that were codified as part of the Land Development Code Update process.

San Diego Land Development Code Update - Approved by City Council December 12, 2000 and again June 26, 2001

The significant changes to the regulations included moving all residential (without regard to differentiating between multi- and single-family) to a process three (3) Conditional Use Permit

(CUP) and requiring a process two (2) Neighborhood Use Permit (NUP)⁵ for proposals on non-residential sites in residential zones. The primary goal of the citizens group was to insure that notification to adjacent owners and tenants for projects in all residential zones would occur consistently.

Another related addition to the ordinance is to require the carriers to provide evidence for approved facilities that the cumulative field measurements of radio frequency power densities are below the Federal standards. The community representatives knew that this information could not be used by the City to base any decisions, however, they believed that including this language would disclose RF information to interested parties. General information regarding safety issues associated with these facilities has been included in this report by the City's Information Technology and Communications Department (Attachment 1).

The proposed revisions were analyzed and reviewed by Community Planning Chairs, Land Use and Housing Committee, and the Planning Commission. The City Council finally approved the ordinance revisions through the Land Development Code Update process on December 12, 2000. The California Coastal Commission approved the revisions as "diminimus", in March of 2001. However, the Communication Antenna regulations would not be effective until the adoption of the full Land Development Code Update package, which ultimately went back to City Council and was approved on June 26, 2001. The regulations recently became effective on August 8, 2001.

PROCESS

During the past eighteen months, it has become clear that the fundamental concern of communities is public notification. The recent revisions to the Communication Antenna regulations included significant increases to the public notification process and includes all residential zones, as well as non-residential sites within residential zones.

The San Diego Municipal Code regulates the placement of all telecommunication facilities within the City. Generally, any proposals in residential zones that are developed with residential uses requires a Conditional Use Permit (CUP) Process 3 appealable to the Planning Commission. Any proposals in residential zones with non-residential uses require an NUP Process 2 appealable to the Planning Commission. Proposals in other zones that meet the criteria of minor telecommunication facilities remain a Process 1 staff level decision. The key was to revise the regulations to require public notification in residential areas. Staff believes the recently adopted revisions to the ordinance will accomplish that.

Proposals on City-owned property begin with the Real Estate Assets Department (READ) for the site leasing process and proceed depending on which department controls the property (Attachment 3). The Water and Park and Recreation Departments have established processes for locating telecommunication sites on their property (Attachment 4 and 5). Park and Recreation utilizes Council Policy 700-06, which outlines the policy for encroachments on City property (Attachment 6). It includes a 4 tier review process, which includes an initial notification to properties within 300-feet of the park site and notification to the Community Groups. Water Department and non-park property proposals go before the Community Planning Group for recommendation including community input. Once the project has approvals from the controlling department, the applicant proceeds to Development Services for land use review and approval. On public property containing public facilities, a telecommunication project would

generally be processed as a Neighborhood Use Permit, Process 2, which includes public notification and community planning group review. The READ process must be near completion before the carrier submits their application to Development Services. Upon approval by Development Services, the lease process would continue until the lease is executed and the carrier would then be permitted to obtain building permits.

CONCLUSION

Over the years, the review and processing of telecommunication facilities has increased both in scrutiny and level of processing. It is the intent of staff to continue researching the issues and communicating with the industry, the public and other jurisdictions in order to anticipate and address any issues that may arise with the onslaught of new technology. The City of San Diego has always been at the forefront of dealing with land use issues associated with wireless technology and the Ordinance has been used as a model for other jurisdictions throughout the nation.

As discussed previously, staff recommends that the Ordinance be given a six month trial period so that staff and the public can analyze if the goal of public notification and community participation is being achieved.

Respectfully submitted,

.....
Tina P. Christiansen, A.I.A.... Approved: George I. Loveland
Development Services Director Senior Deputy City Manager

LYNCH-ASHCRAFT/KLA

Note: The attachments are not available in electronic format. A copy is available for review in the Office of the City Clerk.

- Attachments:
1. Safety Information provided by Information Technology and Communications Department.
 2. Council Policy 600-43 Telecommunication Antenna Policy.
 3. Telecommunication Site Leasing Process.
 4. Antenna Project Procedure for Projects Within a Park or Open Space.
 5. Water Department Antenna Application and Installation Process.
 6. Council Resolution 291658, Managers Report 99-73, and Council Policy 700-06 Encroachments on City Property.
 7. Park and Recreation Board Report, Item No. 101.