

DATE ISSUED: February 7, 2002 REPORT NO. 02-035

ATTENTION: Committee on Land Use and Housing
Agenda of February 13, 2002

SUBJECT: DRAFT WIRELESS COMMUNICATION POLICY

REFERENCE: Manager's Report No. 01-247, dated November 9, 2001
Manager's Report No. 01-196, dated September 17, 2001

SUMMARY

Issue- Should the Committee on Land Use and Housing (LU&H):

- 1) Direct staff to bring a 180-day moratorium for wireless communication facilities applications in residential zones to City Council for adoption?
- 2) Direct staff to continue to work with the Telecommunication Issues Committee (TIC2) to finalize the draft Wireless Communication Facility City Council Policy (Attachment 1) and to return the policy to LU&H?

Manager's Recommendations -

- 1) Direct staff to return in 60 days with information for consideration of the pros and cons of a moratorium.
- 2) Direct staff to work with TIC2 and bring a final Council Policy back to LU&H within 60 days and include a recommendation that the flat fee is deleted and direct the Real Estate Assets Department to negotiate the maximum amount possible through the lease process with equitable distribution of funds as described in the attached policy.

Environmental Impact - Environmental analysis of the proposed Wireless Communication Facility Policy and corresponding changes to the Land Development Code will be performed when the final versions are prepared and brought forward for approval.

Fiscal Impact - Project review for compliance with the Wireless Communication Facility Policy would be fully cost recoverable through deposit accounts provided by telecommunication project applicants.

Housing Affordability Impact - There would be no impact on affordable housing as part of this action.

Code Enforcement Impact - Changes to the policy are not anticipated to have any impact

on Code Enforcement.

BACKGROUND

At the November 14, 2001 LU&H meeting, staff was directed to address several key issues associated with wireless communication facilities within the City of San Diego. Staff was additionally directed to develop a comprehensive wireless communication policy that would guide and address issues related to siting these facilities on both public and private land. In addition, LU&H directed staff to provide input on instituting a moratorium on wireless communication facility applications in residential zones.

During the discussion and review of issues affecting park and residential sites, it was determined that these two components could not be separated from the overall issue of developing a Citywide, comprehensive wireless communications facility policy. Staff has collaborated with the Telecommunication Issues Committee (TIC2) to develop the attached draft policy, which addresses land use prioritization and siting facilities on public property.

During public testimony, an interested citizen, (Fred McManus) suggested to the Committee that staff also analyze the Cape Cod Commission's Siting Criteria for Personal Wireless Service Facilities. Staff has reviewed the text and a copy of that document is attached (Attachment 2).

DISCUSSION

The following analysis provides responses, as well as, clarification to the five main issues identified at the November LU&H meeting. These issues include evaluating a moratorium, working with the TIC2, looking at siting communication facilities on City land, evaluating technical siting issues, and looking at a wireless communications facility Policy.

Moratorium

Staff was directed at the previous LU&H meeting to analyze whether a moratorium on wireless communication facilities should be considered for residentially zoned sites, until such time that a comprehensive policy could be developed.

Staff believes that the current Communication Antenna regulations (Section 141.0405 of the Land Development Code) which were originally approved by the City Council on December 18, 2000 and became effective on August 8, 2001 have not been given sufficient time to perform. These regulations provide public notification and participation on the most controversial sites. Those sites, all within residential zones, require either a Process 2, Neighborhood Use Permit or a Process 3, Conditional Use Permit, both appealable to the Planning Commission.

In addition, staff, with guided assistance from TIC2, has developed a draft policy (Attachment 1) that addresses many of the issues associated with locating wireless communication facilities within residential zones, as well as all zones and land uses within the City. It is anticipated that the public review and hearing process on the policy could begin as soon as March of this year.

Despite the status of the regulations and these policy discussions, if LU&H feels a moratorium were still warranted, staff recommends it be consistent with the City Attorney's Memorandum of Law, dated September 9, 2001:

"...if the City Council were to enact legislation imposing a moratorium, it must be reasonable. Moreover, the City must act during this time to modify its existing land use regulations."

Staff recommends that we provide information on the pros and cons of a moratorium with the final Wireless Communication Facility Policy. This will provide the Committee with all the information they need to make a recommendation to Council on either action at that meeting.

Telecommunication Issues Committee 2 (TIC2)

The original TIC, created in February 2000, reconvened October 29, 2001 at LU&H direction. After the November LU&H meeting, Dick Flanagan and Mac Strobl were both added to complement the existing group. With the exception of the holidays, TIC2 has met on a weekly basis to discuss a multitude of issues including the PAWSE (Public Awareness of Wireless Siting and Education) letter, land use prioritization, park sites and the draft policy. Each of the dedicated members has fully participated in the discussions providing constructive suggestions and practical recommendations.

TIC2 developed a Telecommunication Site Preference Matrix to facilitate creating an understanding of the types of facilities existing in the City and to assist in providing guidance in formulating a comprehensive policy (Attachment 3). The matrix illustrates each of the different application scenarios including zoning and land use and distinguishes past and current processes. Staff, citizen and industry recommendations are also included in the matrix along with the approximate number of facilities in each identified category. The total numbers in each category are representative of the past twelve years of processing wireless communication facilities. The trend over the years has shifted due to such effects as initial network design, consumer demand, and community input. The current expectation is that applications would increase in and adjacent to residential areas and that the demand for additional features and multimedia applications will expand.

As illustrated in the matrix, there was no agreement between the participants in these meetings with regard to residential zones and uses. The citizens want wireless communication facilities in residential and agricultural zones and City open space parks to be a decision process which would guarantee the right of appeal to the City Council (Process 4). The industry agreed with staff's position for recommending a Process 3 for these uses and zones. The industry also agreed with staff's recommendation of a Process 2 decision for non-residential uses within residential zones. Both Process 2 and 3 decisions are appealable to the Planning Commission.

Siting Wireless Communication Facilities on City-Owned Land or Facilities

The Real Estate Assets Department (READ), is the property manager and leasing agent of City-owned land or facilities that include property controlled or used by the Park and Recreation,

Water, Fire, Police and Wastewater Management Departments, among others. READ has a fiduciary duty to maximize the return generated from these assets and assure they are being used for the highest City benefit.

Real Estate Assets administers private development proposals involving City-owned real property from receipt of the application on to final City Council review. This includes monitoring departmental review by the affected controlling city department and through the development review or zoning process. Review by local authorized community groups is required by at least one of these two intermediate review processes. If both approvals are achieved, the assigned property agent will proceed to negotiate a rental agreement that will ultimately be reviewed by the City Council prior to execution.

Rent is determined by an outside independent fee appraisal based on a survey of comparable rents charged for similar facilities in the Southern California marketplace. This method of valuation produces fair and objective pricing based on verifiable data. It also helps to avoid challenges and any appearance of impropriety or favoritism.

Staff recommends elimination of the flat fee with adoption of a policy that directs Real Estate Assets' staff to negotiate the maximum amount possible through the lease process.

Water and Wastewater Management are independent departments that have specific funds in which revenues generated from their properties are deposited in. Police and Fire also benefit from the rent of telecom equipment on their facilities.

The issue of locating wireless communication facilities in the public right-of-way is currently being reviewed by staff. Staff's recommended process in the Telecommunication Site Preference Matrix illustrates that right-of-way sites would be processed according to the adjacent zone. The industry, however, does not agree and at least one company has stated their opposition to processing discretionary permits for these sites. This company has agreed, however, to a ministerial review (Attachment 4). It is anticipated that this issue will be resolved when staff returns with the "final" draft City Council Policy.

Technical Issues related to the siting of Wireless Communications Facilities

At previous Land Use and Housing Committee meetings several issues were raised concerning technical aspects associated with siting Wireless Communications Facilities (WCF's). These include:

RF Radiation Footprint - The standards for measurement of RF Radiation falls under the jurisdiction of the Federal Communications Commission (FCC) and all wireless carriers are required to comply with these standards. A canvas of wireless carriers has found that they are in support of providing the RF Radiation measurement information for WCF's to the City during processing of applications. This information is requested in other municipalities. Request for this information from wireless carriers will be added to the application process by the Development Services Department (DSD).

Technical oversight and evaluation of proposed WCF's - An initial review of technical information submitted by the applicant is reviewed by staff from the Information Technology & Communications Department (IT&C). In-depth technical review of applications is available from consultants. Some of the items that may be considered in this review include:

- RF Radiation studies
- RF Propagation studies
- Inter-modulation studies
- Licensing and frequency issues
- Channel capacity and coverage issues
- Tower loading issues
- Equipment, installation and maintenance issues
- Compliance with FCC rules and regulations

Should the Mayor and Council direct that the City initiate in-depth technical review of proposed WCF's, staff from IT&C would competitively select qualified consultants and the City would contract with several firms for "as needed" consulting services. The contracted consultants would be available as a resource to assist the City with wireless siting issues in general and with specific WCF applications on a case by case basis. The cost of technical consultant services for specific WCF's could range from several hundred to several thousand dollars, depending upon the type and number of issues to be studied. The consultant costs would be added to the application fee currently collected by DSD when processing applications from wireless carriers.

Draft Wireless Communication Facility Policy

The draft policy has been reviewed in house and by TIC2. The next step in the process, assuming endorsement by the Committee, is to polish and refine the language and put the document out for public review and comment. This review would include a presentation to the Community Planning Chairs (CPC) group and the Planning Commission prior to going to City Council.

The development of the draft policy was based on the combination of the Telecommunication Site Preference Matrix, TIC2 discussions and the objectives outlined by LU&H in previous workshops. For clarification purposes, this draft was written by staff and reviewed and modified by TIC2.

The citizen component of TIC2 has drafted their own policy language (Attachment 5) that contrasts with the position of the draft prepared by staff. The citizens believe this proposal will avoid potential lawsuits by requiring compliance with the substantive requirements of the Telecommunication Act of 1996. This proposal would prohibit wireless communication facilities in residential zones, city parks and open space, on designated historical resources and in the Coastal zone and areas in the MHPA, unless the applicant makes a showing that there is a significant gap in the area, and that the proposed wireless communication facility is the least intrusive method of filling that gap and that the area is not served by another provider. It is

likely that the industry would not accept service from one provider in an area as being adequate for all, because it is a competitive service. Coverage by one provider does not provide access to customers of another provider.

CONCLUSION

TIC2 has worked very hard to address the issues originally identified in the first two LU&H meetings and will continue meeting over the course of time with a set schedule (e.g., quarterly, bi-annually, etc.) to address new issues as they arise. It is anticipated that the current disparity in processing recommendations will be resolved through the public review and hearing process. Staff will return in 60 days with a final draft policy and an analysis of the pros and cons for a moratorium.

ALTERNATIVE

1. Direct that staff bring forward a moratorium to City Council for telecommunication facilities in residential zones.
2. Recommend that changes be made to the draft policy and then forwarded to City Council for adoption.

Respectfully submitted,

Tina P. Christiansen, A.I.A.
Development Services Director

Approved: P. Lamont Ewell
Assistant City Manager

CHRISTIANSEN/LYNCH-ASHCRAFT

Attachments: [1. Draft Wireless Communication Facility Policy](#)
[2. Cape Cod Siting Criteria](#)
[3. Telecommunication Site Preference Matrix](#)
[4. AT&T comments on Draft Policy](#)
[5. Citizens Policy Language](#)