

DATE ISSUED: June 24, 2004 REPORT NO. 04-114

ATTENTION: Honorable Mayor and City Council
Docket of July 27, 2004

SUBJECT: Draft Wireless Communication Facility Policy and Associated Ordinance
Revisions. Process Five

REFERENCE: Memorandum to the Planning Commission dated January 10, 2003
Planning Commission Report No. P-02-220, dated December 4, 2002
Manager's Report No. 02-224, dated October 3, 2002
Manager's Report No. 02-035, dated February 7, 2002
Manager's Report No. 01-247, dated November 9, 2001
Manager's Report No. 01-196, dated September 17, 2001

SUMMARY

Issues - 1) Should the City Council adopt the attached amended Wireless Communication Facility (WCF) Policy; Council Policy 600-43 (Attachment 1) and the associated revisions to the Land Development Code (Attachments 2)?

Staff's Recommendation -

1. ACKNOWLEDGE, for the record, that the revised Council Policy and proposed amendments to the Land Development Code are exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3); and
2. ADOPT revised Council Policy 600-43, Wireless Communication Facilities, which outlines internal procedures, identifies land use preference categories and provides comprehensive guidelines to reduce visual and land use impacts associated with wireless communication facilities; and

3. ADOPT revisions to the Land Development Code related to wireless communication facilities (Chapters 11-14), which provide comprehensive design requirements, increases the level of review for projects located in sensitive land uses, identifies locational criteria for placement of wireless facilities, and places the burden on the applicant to justify the locational needs for each project.
4. Approve the addition of one Park Designer position to be added to the Fiscal Year 2004 Park and Recreation Department budget (General Fund) that will be fully cost recoverable from processing fees paid by wireless communication facility applicants.

Planning Commission Recommendation - On January 16, 2003, the Planning Commission voted unanimously (6-0, Commissioner Brown absent) to recommend to the City Council, approval of draft Council Policy 600-43 and the associated Land Development Code (LDC) revisions. Additional considerations were included in the motion to approve: 1) Elevate Open Space to a Preference 4 category and a Process Four decision level; 2) Include a stipulation requiring providers to assist in updating facility location maps and ensure they are made available to the public; 3) Revise language related to installations on light standards to include flexibility to place antennas above the light source; and 4) Develop language to permit flexibility in the time limits for temporary wireless facilities (Attachment 3).

Land Use and Housing Committee (LU&H) Recommendation - October 9, 2002, the Land Use and Housing Committee voted 5-0 to: 1) Move City Parks, Multi-Family Residential zones and Single-Family Residential zones to Preference 4 status and make Preference 4 applications subject to a Process Four level of review; 2) Move non-residential use in a Residential zone from Preference 2 to Preference 3; 3) Direct staff to return with a draft which inserts regulatory components of WCF policy into the Municipal Code using the term "shall" and keep policy oriented components in the Council Policy document using the term "should"; and 4) Add clarifications/definitions as appropriate to the policy and Municipal Code for the following terms: "significant gap", "unreasonable discrimination", and "least intrusive method"; 5) Review existing WCF's in City Parks under the new policy prior to the expiration of their contract and before a new agreement is made; 6) Review those WCF's which have been approved but not constructed to insure they were processed in accordance with applicable policy guidelines and initiate corrective action or mitigation in cases where they were not executed properly or are not currently in compliance; 7) That new WCF projects that are scheduled for review follow the new policy guidelines; 8) Amend and add sections pertaining to: Maintenance - All approved and permitted Wireless Communication Facilities shall be maintained in good working order and shall comply with the relevant sections of the Municipal Code pertaining to maintenance; and Abandonment - Wireless carriers shall be responsible for notifying the City when a WCF ceases operation for a period exceeding 180 days at which point the facility shall be considered abandoned. In such an event, the provider must either apply for all permits required at the time of

expiration to reactivate the operation or remove all elements of the facility and restore the site to its original condition (Attachment 6).

Community Planning Group Recommendation - The Community Planner's Committee (CPC) reviewed the draft policy on March 26, 2002 and voted 13-5-2 to: 1) Support the concerns of the community members of the reconstituted Telecommunication Issues Committee (TIC2); 2) Recommend that Land Use and Housing (LU&H) approve a revised "draft" that restricts the placement of wireless communication facilities in Agricultural and Open Space zones, Public Right-of-Way adjacent to residential, Multi-Family and Single-Family Residential zones, premises within the MHPA and Coastal Overlay zones unless the applicant has provided justification clearly indicating that recommended high and limited preference locations were explored in good faith and found unacceptable, that a denial would be a violation of the Telecommunication Act of 1996 (TCA) or other federal, state or local regulation and that the proposed wireless facility constitutes the "least intrusive method" of satisfying the applicant's requirement; and 3) Recommend that LU&H approve a site preference matrix that ensures appropriate accountability to elected representatives by providing for a process three with extraordinary appeal to City Council (a procedure permitted under the old code) in cases of applications for wireless communications facilities within Agricultural and Open Space zones, City Parks and Open Space, Public Right-Of-Way adjacent to residential, Multi-Family and Single-Family Residential zones, premises containing designated historical resources, premises within the MHPA and Coastal Overlay zones (Attachment 4).

Environmental Impact - The revised City Council Policy and proposed amendments to the Land Development Code are exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA guidelines Section 15061 (b)(3).

Fiscal Impact - Project review for compliance with the Wireless Communication Facility Policy and associated regulations is fully cost recoverable through deposit accounts provided by wireless communication facility applicants. With the increase in process levels for wireless communication facilities in residential areas, as recommended in this report, there will be an increased number of discretionary projects requiring staff processing and review. Currently, the majority of projects are processed ministerially, but with the proposed revisions to the decision process levels, many of the projects will be processed at higher decision levels requiring Planning Commission decisions with potential appeals to the City Council.

The Park and Recreation Department has no budgeted positions available to manage the proposed new wireless communications facilities projects and cannot absorb the additional workload with present staff. It is requested that 1.00 cost recoverable Park Designer position and associated non-personnel expense at a cost of \$102,444 be added to the Park and Recreation Department/Park Planning Division's Fiscal Year 2004 Operating Budget in Fund no.100, Department no. 446, Organization no. 2001 (General

Fund) for this purpose. The position would be fully cost recoverable through deposit accounts provided by wireless communication facility applicants.

Code Enforcement Impact - There is a potential for an increased number of code violations due to the proposed ordinance revisions.

Housing Impact Statement – None.

Traffic Impact Statement – None.

Water Quality Impact Statement – None.

BACKGROUND

At the direction of LU&H in September 2001, staff, in coordination with a committee comprised of citizens and industry members, (the Telecommunication Issues Committee [TIC], Attachment 7), set out to prepare a draft Wireless Communication Facility policy. The resulting document was intended to comprehensively address the many issues that surround wireless communication facility installations within the City of San Diego. Over the course of a year, TIC met twelve times and developed a draft policy based on a land use hierarchy. LU&H met four times on the issue and based on recommendations from TIC, directed staff to make several key changes to the draft policy including direction to revise the existing regulations. Recommended revisions included modifying the draft policy to include stricter preference levels for residential zones and city parks, adding definitions related to the Telecommunication Act of 1996, adding language on maintenance and abandonment, revising the LDC sections related to wireless communication facilities to comprehensively address land use and visual impacts and increasing the decision process levels for residential zones and city parks.

On January 16, 2003, the Planning Commission voted unanimously to approve the draft revisions to the Land Development Code, including the higher decision process levels and the amended version of Council Policy 600-43. The following considerations were included in the motion: 1) Elevate Open Space from a Process Three to a Process Four; 2) Include a stipulation requiring providers to assist in updating facility location maps and ensure they are made available to the public; 3) Revise language related to installations on light standards to include flexibility to place antennas above the light source; 4) Develop language to permit flexibility in the time limits for temporary wireless facilities.

The resulting draft policy amends Council Policy 600-43 , which outlines internal procedures, identifies preference categories (where commercial and industrial are a higher preference than residential and park sites) and provides comprehensive guidelines to reduce visual and land use impacts associated with wireless communication facilities. Additionally, throughout the process of updating the Council Policy, staff has received substantial input from stakeholder groups which has lead to the language contained in “Processing of Applications for Wireless Facilities on City Property”, in the draft policy (Attachment 1). In addition to the processing and siting issues, leasing issues including the allocation of revenues generated from telecommunication

sites have been addressed. Revenues consist of market rate rent for use of the property and a one-time site access fee. The proposed fee is \$40,000 for all new leases and will be adjusted upward on an annual basis by the Consumer Price Index. Existing leases where a site access fee has not already been paid will be subject to a \$20,000 fee upon lease renewal. It is proposed that the site access fee be paid either as a one-time lump sum payment or prorated over a period not to exceed thirty-six months. Telecommunication installations within an existing right-of-way are exempt from the site access fee.

To facilitate the anticipated volume of lease activity, staff requests that the City Manager be given the authority to enter into leases for telecommunication sites for a term of up to ten years before Council approval is required. For general fund sites, staff is proposing that all of the site access fees and one-half of the rental revenue be deposited into a special fund used primarily to benefit the property or neighboring community where the site is located. For telecommunication related subleases of City-owned property the City's lessee will be required to pay all of the site access fee and fifty percent of the revenue to the City as a condition of the consent to sublease. Processing fees will also be required to cover the administrative costs associated with the application.

The revised draft regulations provide comprehensive design requirements, higher process levels for sensitive land uses and locational criteria for all wireless facilities. The draft regulations utilize a process-based hierarchy, which encourages providers to go to commercial and industrial zones and right-of-way. The regulations also increase the decision process levels from Hearing Officer to Planning Commission for residential zones, park sites and open space and increases the decision process level from staff decision to Hearing Officer for projects located on non-residential uses within residential zones (Attachment 2). Attachment 8 illustrates the comparison between the current regulations (Section 141.0405) and the proposed regulations (Section 141.0420).

DISCUSSION

Background on Original Staff Recommendation for Residential and Park Sites

Staff modified their original proposal on residential and park sites as discussed below to comport with the LU&H discussion and recommendation.

Prior to the last LU&H meeting on October 9, 2002, staff's proposal, was to retain decision process levels as they are today (residential zones and city parks are a Process Three, Hearing Officer decision, appealable to the Planning Commission and non-residential uses within residential zones are a Process Two, staff decision, appealable to the Planning Commission). The intent was to have the controversial projects decided upon by the Planning Commission and the less controversial projects decided upon by the Hearing Officer. In terms of process, both Hearing Officer and Planning Commission include public notification and public hearings. It was staff's intent to apply the same decision level concept that the LDC was originally based on, which was to keep similar land use decisions at the same level. Using this principle, the decision process level would be determined based on the impact a wireless communication facility has on

a property. Following this logic, the preference categories identified in the draft Council Policy provide a framework for identifying decision process levels in the regulations. Putting the Radio Frequency (RF) issues aside, because these matters are federally regulated, staff believed that wireless communication facilities did not rise to the level of weight and importance with the types of uses identified in the LDC that are Process Five Conditional Use Permit's, such as fairgrounds, airports, sports arenas, etc.

CPC Recommendation Follow-Up

Since CPC adopted their resolution in March of 2002, staff has worked with the CPC representative on TIC, Dick Flanagan, and the other community members, to address as many of their recommendations as legally possible. Their first recommendation is to support the concerns of the community members of TIC. This has been addressed as the draft Policy and regulations are both supported by the community members of TIC. The second recommendation is to restrict wireless communication facilities in sensitive land use areas such as residential, agricultural and open space. Legally, the City is prohibited from restricting facilities anywhere, however the draft Policy identifies these land uses as the lowest priority for siting and the draft regulations require either a Hearing Officer decision (for facilities in Agricultural zones) or a Planning Commission decision for Residential and Open Space zones. Other than the ministerial reviews (facilities proposed in commercial or industrial zones), facilities proposed in zones requiring discretionary review also necessitate justification explaining why a less sensitive site could not be utilized. The third recommendation is to ensure that the City Council has the authority to make decisions on projects proposed in sensitive land use areas by re-instituting the extraordinary appeal process. Rather than re-institute a process that was discontinued with the adoption of the LDC, the draft regulations propose a Process Four (Planning Commission decision, appealable to the City Council) decision for facilities in sensitive land use areas, which accomplishes the desires of the CPC for this matter to be a City Council decision.

Community Members (TIC) and LU&H Consensus

The community members (of TIC) strongly believed that the decision process levels needed to be elevated for facilities in residential zones and city park sites to Process Four (Planning Commission decision, appealable to the City Council) and LU&H agreed with this approach. After LU&H forwarded the Policy to the Planning Commission, staff revised their recommendation to reflect the direction of LU&H as follows:

1. Proposals in City Parks, Residential zones, Open Space zones, properties in the Coastal Overlay zone containing MHPA, and new utility poles in the Public Right-of-Way are elevated (from Hearing Officer) to a Planning Commission decision, appealable to the City Council.
2. Proposals in Agricultural zones, on non-residential uses within residential zones and on existing utility poles with associated above-ground equipment in the Public Right-of-Way are elevated (from a staff decision, appealable to the

Planning Commission) to a Hearing Officer decision, appealable to the Planning Commission.

The impact of this change is that the number of hearings at Planning Commission and ultimately City Council are anticipated to increase to approximately 2-3 per month, as well as, an increase in cost (additional steps in processing) and project schedule time lines (adding 4-8 weeks) for wireless projects.

The draft revised Council Policy on wireless communication facilities and associated amendments to the Land Development Code was developed and modified in coordination with TIC. The resulting documents include revisions made at the direction of LU&H and include Planning Commission recommendations (Attachments 1 and 2).

CONCLUSION

It is anticipated that consumer demand for more extensive commercial and household coverage and increased multimedia applications will continue escalating. In order for the City's Policy and regulations to accommodate these changes, they must continue to evolve to comprehensively address design, land use, and adjacency impacts of these facilities. Staff believes the attached draft Policy and regulations, written in coordination with TIC, reflects the LU&H recommendation, the Planning Commission recommendation and most, but not all, of CPC's recommendations as noted above.

ALTERNATIVES

1. Do not revise Council Policy 600-43 or the proposed regulations and: a) continue to process wireless facilities proposed on non-residential uses within residential zones as Neighborhood Use Permits (NUP), Process Two, staff decision appealable to the Planning Commission and b) process wireless facilities proposed in residential zones and on city park sites as Conditional Use Permits (CUP), Process Three, Hearing Officer decision appealable to the Planning Commission.
2. Accept some, but not all of the Council Policy and ordinance changes. Make modifications according to City Council recommendation.

Respectfully submitted,

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

Approved: George I. Loveland
Assistant City Manager

Christiansen: KLA

Attachments:

1. Draft Council Policy 600-43 (Wireless Communication Facilities)
2. Draft Ordinance Revisions – Strikeout/Underline
3. Planning Commission Minutes January 16, 2003
4. CPC Resolution
5. TIC Community Members Proposal
6. LU&H Minutes October 9, 2002
7. TIC membership
8. Comparison of 141.0405 and 141.0420