

DATE ISSUED: October 27, 2005

REPORT NO. 05-218

ATTENTION: Committee on Land Use and Housing
Agenda of November 2, 2005

SUBJECT: Amateur Radio Antenna Regulations

SUMMARY

Issue - Should the Land Use and Housing Committee direct staff to develop regulations to control the height and placement of amateur radio antennas in the City?

Manager's Recommendation - Direct staff to work with the City Attorney's Office to develop draft regulations to control the height and placement of amateur radio antennas that also reasonably accommodates amateur radio service communications.

Fiscal Impact – Work on preparing updates to the Land Development Code is funded as an overhead expense in the Development Services Department's budget and is currently staffed with two full-time Senior Planner positions.

BACKGROUND

Through the adoption process of the Land Development Code (LDC) in January 2000, the City amended regulations for communication antennas to more comprehensively regulate these types of facilities Citywide and to respond to the rapid changes occurring in the telecommunications industry. As part of the public process that preceded adoption of the LDC, concern was raised by the North Shores Amateur Radio Club that both the existing and proposed regulations violated the Federal Communications Commission's (FCC) PRB-1 decision regarding local regulation of antenna installations for amateur radio operations. As part of the public hearing process and in a separate written opinion (Attachment 1), the City Attorney's office opined that the City's regulations could not supersede the Federal preemption of local regulation. No changes were directed to the regulations as part of the LDC process.

On January 26, 2000, the Committee on Land Use and Housing heard proposed changes to the

communication antenna regulations and directed further modifications be made to them as part of the second update to the LDC. The changes that were made (Attachment No. 2) included the addition of a specific provision that stated “Amateur (HAM) radio facilities or temporary telecommunication facilities necessitated by natural or man-made disasters are not regulated as communication antennas.” These revised regulations became effective August 8, 2001.

As a result of past City Attorney opinions, City staff have approved several amateur radio installations that did not comply with the height restrictions of the base zone based on the height preemption by Federal Law. As part of staff review for a recent building permit that was issued that allowed installation of an 85 foot high antenna, the City Manager and the City Attorney’s office were again questioned about this preemption and asked to bring a discussion about this subject to the Land Use and Housing Committee (LU&H).

Following are the highlights the City Manager’s research and recommendation on the City’s ability to regulate these types of facilities. The City Attorney has been asked to provide a separate response.

DISCUSSION

Included with the City Attorney’s Memorandum (Attachment No. 1) is a 1985 FCC opinion that notes “state and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted.” The opinion goes on further, “antenna height restrictions directly affect the effectiveness of amateur communications.” However, the FCC concludes the opinion with “local regulations which involve placement, screening, or height of regulations based on health, safety or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority’s legitimate purpose.”

Staff believes that this opinion precludes the City from limiting antennas in any zone or location to a fixed height with no criteria, permit, or processing option to request taller antennas. While the City’s current regulations provides no clear regulation of amateur antenna height or placement, staff does believe that the City would be allowed to add additional regulations that establish under what circumstances the City would allow an antenna to be higher than limits established by the Municipal Code.

To further support this position, staff explored the regulations of several California jurisdictions that regulate amateur radio antennas (Attachment No. 3). All of these jurisdictions have height limits for antennas ranging from 25 feet (Burlingame, CA) up to 75 feet (Newport Beach, CA). Many provide location restrictions precluding their placement in front yards and in required yard setbacks. Others require placement on the site to be in the location least visible to the public and nearby residences. Most of these regulations allow antennas through a ministerial (building permit process) if they comply with the height and location restrictions. All but one allow deviations to their regulations though a discretionary permit process such as a Conditional Use Permit (CUP). Staff, therefore, believes the City could also adopt regulations that follow a similar scheme.

Under the City's Municipal Code, there are currently three vehicles that can be used to request deviations from height limits, a Variance, a Planned Development Permit, and a Site Development Permit.

The purpose of a Variance is to provide relief for cases in which, because of special circumstances applicable to the property including size, shape, topography, location, or surroundings, the strict application of the development regulations would deprive the property of privileges enjoyed by other property in the vicinity and under the same land use designation and zone. Because of this, a Variance would not be the appropriate approval process to request an antenna that exceeds the height limit because the findings to support the Variance could not be made.

The purpose of the Planned Development Permit (PDP) is to establish a review process for development that allows an applicant to request greater flexibility from the strict application of the regulations than would be allowed through a Variance process. The PDP is used to encourage imaginative and innovative planning and to assure that the development achieves the purpose and intent of the applicable land use plan. The PDP was also established to create development that would be preferable to what would be achieved by strict conformance with the regulations. While this permit does specifically allow for requests to exceed height limits, the specific findings that would need to be made would not be applicable to antennas and would be difficult for decision makers to justify.

The purpose of the Site Development Permit is to establish a review process for proposed development that, because of its site, location, size, or some other characteristic, may have significant impacts on resources or on the surrounding area, even if developed in conformance with all regulations. The intent of these procedures is to apply site-specific conditions as necessary to assure that the development does not adversely affect the applicable land use plan and to help ensure that all regulations are met. Site Development Permits can currently be used to grant height deviations but only for projects that provide affordable housing.

Staff believes that a similar height deviation like that allowed for affordable housing projects could be added to the Site Development Permit process. The purpose of the permit and the analysis that goes along with it are consistent with this approval process. To trigger the permit, amateur radio antennas could be added to each base zone as a limited use. This would direct applicants to development regulations in Chapter 14 of the LDC that establish antenna height requirements, placement criteria, and would identify that deviations may be requested via the Site Development Permit. This would be consistent with how other similar types of development are regulated by the LDC.

CONCLUSION

Staff recommends that LU&H direct staff to prepare draft regulations that allow antennas as a

limited use if they comply with specific limitations on height, placement, operation, and proximity to adjacent structures. These regulations would require a Site Development Permit (Process 3 Decision level) when an applicant requested a deviation from these regulations. Specific findings that substantiated the need to deviate for the purpose of promoting amateur radio communication would also be developed. Staff believes that this type of regulatory scheme would be consistent with the FCC opinion and would not preclude amateur radio communication in the City.

Respectfully submitted,

Gary Halbert
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Approved: Ellen Oppenheim
Deputy City Manager

HALBERT/kgb

Attachments:

1. [January 7, 1994 City Attorney Memorandum](#)
2. [Current LDC Communication Antenna Regulations](#)
3. [Analysis of Antenna Regulations in other California Jurisdictions](#)