Proposed Amendments to the San Diego Wireless Communication Facility Policy and Ordinance Revisions- 2004

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Definition of Wireless Carrier

Problem Statement

The current ordinance appears to only govern carriers licensed by the FCC. There are other unlicensed wireless companies who will be requesting to erect facilities as well and their Wireless Communication Facilities should be governed by the same provisions in the ordinance.

NextG is an example; rights of way locations were sold in May for $100K by the City of San Diego's CIO without due consideration to the locations and without approval by the affected communities. Metrocom apparently also has a deal with the City. We believe there will be more of these coming.

Language

Modify definition 41 to add (ii) & (iii) as new language:

> 41. **Wireless Communication Services** or **WTS** means *(i)* wireless services pursuant to the TCA and licensed by the FCC*, (ii) wireless services not licensed by the FCC that are operated on a commercial basis, and (iii) wireless services operated by a governmental agency,* including but not limited to …….

Modify definition 9 to strike the wording in [[ ]]

> 9. **Carrier, Provider or Wireless Carrier** means a provider of commercial mobile services or any other radio communications services [[that the FCC has licensed]]; including providing wireless services to consumers.

Discussion Points

1. The policy should cover <u>all</u> wireless communications facilities that could have a similar impact on our communities.
2. Changes in FCC policy are making non-licensed services more prevalent and some may require facilities similar to cellular facilities.
3. We believe this was the original intent of the ordinance, but the wording should be modified to reflect this intent.

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Community Plans

Problem Statement

Cellular permit requests are currently made one by one. This process is time consuming. Communities are frustrated because they do not have sufficient overall visibility when approving specific locations; Carriers are frustrated because the process delays coverage improvements. And overall the process becomes adversarial between the community and the Carriers. In addition, the process does not allow for an assessment of the cumulative aesthetic impact to the area and this is unacceptable. Overall Community Area Wireless Plans could save everyone significant time and expenses and result in a more cooperative process.

Language

Add a Definition:

> A **Community Area Wireless Plan** is a document that outlines a plan for Wireless Communication Facilities locations within a particular community, with boundaries being defined as those for the respective community planning group. This plan should identify (a) frequencies and wireless technologies covered, (b) existing facility locations, (c) facility locations currently approved but not operational, and (d) desired locations for new facilities, with a preference for collocation. These Community Area Wireless Plans should be developed by the Wireless Service Providers and the respective community planning group and approved by the Planning Commission.

In Preference 1 Locations add:

> e. Wireless Communication Facility locations that comply with an approved Community Area Wireless Plan.

In addition, reduce the one-time application fee by 50% for locations complying with the Community Area Wireless Plans.

Discussion Points

1. Encourages development of plans that support the wireless services that consumers desire and balances the community impact.
2. Reduces the need for individual site reviews by planning boards and the city, allowing for a more efficient process.
3. Provides an incentive for communities and Wireless Service Providers to work together to identify appropriate Wireless Facility locations.
4. Does not remove any of the current processes that the Wireless Service Providers can follow for Wireless Communication Facility location approvals in the case where there is no existing Community Area Wireless Plan or if they choose to pursue a location not in conformance with the Community Area Wireless Plan.

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Traffic Signal Prioritization

Problem Statement

Carriers want to use traffic lights at intersections and have requested permits for these locations. The City Transportation Department has denied these applications forcing the Carriers to pursue less desirable locations. Recently, the City has indicated that if the carriers agree to adhere to a list of requirements they've created for traffic light installations, the City will allow use of the traffic lights in the future. This policy should be written into the Ordinance, and the requirements attached/referenced.

Language

In Process 2 Locations add:

> Traffic lights and street lights that conform to a reasonable setback (100-200 ft) from residential property lines and installed in accordance with the appropriate installation guidelines.

In Process 4 Locations add:

> Traffic lights and street lights that fail to conform to a reasonable setback (100-200ft) from residential property lines.

Discussion Points

1. This will open up additional less controversial locations in residential neighborhoods for the carriers; they have a preference to use traffic lights whenever possible over street lights near homes.
2. There is community support for use of traffic lights where there are potentially more frequently greater setbacks due to landscaping and an expectation of equipment at the intersection. Intersections often have additional landscaping offering a reasonable setback from the nearest residence.
3. Utilizes existing vertical elements (the traffic poles) that already support multiple visual elements; thus decreasing perceived visual clutter.
4. Allows necessary utility boxes to be clustered with other utility boxes; thus decreasing overall clutter and perceived ground level impact.
5. Maintenance concerns do not seem substantial and an IHSA report outlines proper installation steps indicating there is professional support for using traffic signals as well.

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Setback Provision

Problem Statement

There is no setback provision in the new Ordinance, which means a Street light less than 5 feet from residential property lines are being approved. However, much more stringent requirements are applied if the location is moved a few feet and onto a residential property. This treatment is inconsistent and confusing.

Language

Insert as (j) in Section 141.0420:

> (j) Distance from Residential Dwelling Units. Wireless Communication Facilities whether erected anew, replacing existing facilities or placed on existing right of way structures require a reasonable setback (100-200 ft) from the lot line of any residential dwelling unit. Variances will require a Process 4 Location approval.

In Section H on Right Of Way Installations add:

> Installations on any Right of Way must conform to reasonable setback (100-200ft) from residential property lines.

Discussion Points

1. Many cities (including Del Mar and Encinitas locally) have setback provisions of at least 100-600 feet. (Philadelphia and Denver as much as 500 ft) And the Courts uphold them. There have been no successful challenges of a setback provision in Federal Court and in fact in March of 2004 the 5th Circuit Court of Appeals in US Cellular vs City of Wichita Falls, TX upheld a 300 ft setback provision and the City's denial of a permit on that basis.
2. When the antenna goes in, your property value goes down. Last year The International Assoc of Assessing Officers Summer Assessment Journal (An organization that appraisers belong to for education and guidance) published an article clearly stating that "proximity to a wireless tower needs to be considered as a negative amenity that may reduce residential property valuation."
3. 200 ft allows for a number of intersection locations for carriers in planned communities where lots are small and puts them away from homes at intersections where landscaping often times permits for as much as 200 ft from the nearest home. We should look at our average lot size in San Diego across the communities; it is possible we could select as much as 300-500 ft as other cities have and still permit sufficient locations for the carriers in our communities.

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Parks

Problem Statement

A Process 4 Location approval requirement for parks discourages the Carriers from using them and encourages them to move to potentially less desirable locations. Some park installations could be appropriate, and language is needed that allows Carriers to consider them when such sites do not interfere with the park's primary purpose.

Language

In Process 3 Locations add

d. Parks where an existing vertical element is used or one that integrates with existing elements, where above ground space of less than 25 square feet is required, and where a reasonable setback requirement (100-200 ft) from residential property lines is met.

Discussion Points

1. Need to allow for more sites to prevent sites being forced into less desirable locations.
2. Given limited park facilities these Wireless Communication Facilities should not interfere with the primary purpose of the park.

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