



Eric (Roderico) Villanueva <eric.villanueva@lacity.org>

CF 09-2645/PWC Agenda Item #2, 6-15-11/cell towers

3 messages

Chris Spitz <ppfriends3@hotmail.com>

Mon, Jun 13, 2011 at 10:41 AM

To: councilmember.huizar@lacity.org, councilmember.alarcon@lacity.org, councilmember.smith@lacity.org, eric.villanueva@lacity.org

Cc: bill.rosendahl@lacity.org, PPCC <pacpalicc@aol.com>, info@pprainc.org

To the Honorable Councilmembers Jose Huizar, Richard Alarcon and Greig Smith, Members, Los Angeles City Council Public Works Committee, and Mr. Eric Villanueva, Legislative Assistant to the Committee

Re CF 09-2645 – Agenda Item #2, PWC meeting 6/15/11

Dear Committee Members Huizar, Smith and Alarcon and Mr. Villanueva:

The Los Angeles WTF Working Group (Working Group) is a coalition of community leaders who have been extensively involved in the issue of wireless telecommunication facilities (WTF) proliferation and regulation. Members of the Working Group have sought to work reasonably with the City Attorney and other public officials for the purpose of advancing the cause of WTF regulation reform.

The Working Group commends the City Attorney for Report No. R11-0213, dated June 7, 2011, "Developments in the Law Regarding Regulation of the Placement of Cell Towers and Related Equipment" (the C.A. Report). While we continue to request enactment of a comprehensive new ordinance which sets uniform standards for the design and development of WTF on private property as well as in the public right-of-way (PROW), **the Working Group strongly supports the City Attorney's recommendations for changes in the City's PROW regulations**, in particular to: 1) **remove the utility pole/light pole exemption**; 2) **expand the notification requirements**; and 3) **enhance existing aesthetic criteria**.

We also request the following additional changes or new provisions (to the extent not encompassed by the general recommendations in the C.A. Report):

- Expand notification to relevant NCs, CCs and/or HOAs and also via on-site posting of notice (in addition to expanded distance and content requirements);
- Provide for hearings and/or public comment prior to permit issuance;
- Extend appeal rights to all interested persons and/or relevant NCs, CCs and/or HOAs;
- Require evaluation of environmental, aesthetic and public safety impacts (as permitted by federal law);
- Impose meaningful set-backs from dwellings/schools/parks and minimum concentration/distance limits in residential zones;
- Impose clear design/development standards specific to poles and antennas, such as height and other dimensions, color, finish, camouflage, antenna placement, number and size, landscaping, ID and/or accessory equipment requirements;
- Require noise/acoustical and wind load consideration or analysis;
- Require RF emissions analysis or certification;
- Require mapping of existing WTF and/or projection of future needs;
- Discourage residential siting and provide for tiered support structure and/or location preferences;
- Require a justification/prohibition analysis for proposed residential siting and/or deviations from required standards, i.e., showing of a significant coverage gap and lack of feasible alternatives;
- Impose permit duration limits and/or periodic review/monitoring requirements;
- Require applicants to bear costs of analysis and/or monitoring of impacts, coverage, alternative site availability, RF emissions, mapping, independent consultant evaluation and the like.

6/14/2011

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These reasonable provisions for the most part have been adopted by several California cities, including Richmond, San Francisco and Glendale (as referenced in the C.A. Report), without legal challenge. See attached lists of WTF Governance by California Cities, updated as of 6/10/11 (please also note the most recent ordinance enacted on 6/7/11 by the City of Long Beach).

The Working Group urges the Public Works Committee to recommend changes in the City's regulation of PROW WTF as set forth above, in order to "minimize cell tower environmental, aesthetic and public safety impacts" (the C.A. Report, p. 6, fn. 10).

In addition, we request that the Committee recommend enactment of a **temporary moratorium on PROW WTF** while new ordinance provisions are being drafted. Locally-enacted moratoria on new towers for fixed periods of time have long-been approved by the wireless industry by agreement with the FCC (see attached CPUC internal memorandum dated 11/30/09, authorized for public release and previously submitted to the City Attorney). Such moratoria (or holds on applications) during the drafting process have been enacted *without legal challenge* in at least 10 large or nearby California cities, in order to prevent an inevitable onslaught of WTF PROW construction before stricter regulations are in place.

The Working Group reminds the Public Works Committee that in addition to the 3 councils expressly identified in the meeting agenda, 47 other NCs, CCs, HOAs and/or alliances (**50 in total, representing 85 organizations City-wide**) have publicly expressed concerns or submitted letters/motions in CF 09-2645 calling for reform of the City's regulation of WTF, including all members of the Westside Regional Alliance of Councils (see attached list of organizations). Many of these organizations are also calling for enactment of a temporary moratorium.

Members of the Working Group stand ready to continue to work cooperatively and reasonably with the City Attorney and other public officials as this process moves forward. We ask to be included in the drafting process should new regulations be recommended or directed by the Public Works Committee and/or City Council.

We also request that Mr. Villanueva please file this letter and attachments in CF 09-2645.

Thank you for your consideration and attention to this important matter.

Sincerely,

Christina Spitz

Founding Member, Los Angeles WTF Working Group

Other positions (for identification purposes):

Chair, Land Use Committee, Pacific Palisades Community Council

Vice-President, Pacific Palisades Residents Association

Member, Land Use & Planning Committee, Westside Regional Alliance of Councils

Other Working Group members:

Jerry Askew, Granada Hills South NC; Cindy Cleghorn, Sunland-Tujunga NC; Alexander von Wechmar, The Oaks Homeowners Association, Hollywood Hills; Barbara Kohn, Pacific Palisades Residents Association

5 attachments



CPUC01-#406912-v1-Revised_Wireless_Tower_Siting_Authority_Background_11_30_09.DOC
51K





DiscretionaryPermitsPROW.doc
39K

AdministrativepermitsPROW.doc

6/14/2011

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 35K

 **Comparison of WTF Governance by California Cities.doc**
35K

 **Organizations That Have Passed Motions.doc**
34K

Chris Spitz <ppfriends3@hotmail.com>
To: adam.lid@lacity.org, eric.villanueva@lacity.org

Tue, Jun 14, 2011 at 1:13 PM

To Adam Lid and/or Eric Villanueva:

RE CF 09-2645 (agenda item #2, PWC meeting 6-15-11).

Please file the email letter below and the attached documents in the above referenced council file. Thank you.

Sincerely


Christina Spitz
L.A. WTF Working Group


From: ppfriends3@hotmail.com
To: councilmember.huizar@lacity.org; councilmember.alarcon@lacity.org; councilmember.smith@lacity.org; eric.villanueva@lacity.org
CC: bill.rosendahl@lacity.org; pacpalicc@aol.com; info@pprainc.org
Subject: CF 09-2645/PWC Agenda Item #2, 6-15-11/cell towers
Date: Mon, 13 Jun 2011 10:41:13 -0700


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5 attachments

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Adam Lid <adam.lid@lacity.org>
To: "Eric (Roderico) Villanueva" <eric.villanueva@lacity.org>

Tue, Jun 14, 2011 at 1:15 PM

More...

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6/14/2011


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—
Adam R. Lid
Legislative Assistant I
Office of the City Clerk
Council and Public Services


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Wireless Telecommunication Facilities (WTF) Governance by California Cities –
Administrative/Ministerial Permits in the Public Right-of-Way (Residential Districts)¹

1. Large and/or nearby cities with the administrative permitting requirements:

- Glendale (G; Muni. Code §12.08.037)
- Santa Barbara (SB; Muni. Code §28.94.030.DD)
- Torrance (T; Muni. Code §92.39)
- Beverly Hills (BH; Muni. Code §§10-3-4508, 8-7-6)
- West Hollywood (WH; Muni. Code §§11.40.120, 19.36.350)
- Santa Monica (SM; Muni. Code §7.06 -- existing and replacement poles)
- Long Beach (LB; Muni. Code §21.56.010)²

2. Common key provisions:

- Design, installation and/or development standards (e.g., height, scale, color, finish, camouflage, antenna placement/number, landscaping, setbacks, ID and/or accessory equipment requirements)³
- Visual/aesthetic impact and public welfare/safety considerations
- No exemption for pole-mounted or utility pole installations

3. Other provisions of note:

- Notice of installation and/or hearing to nearby/affected property owners/occupants (300 ft./500 ft.) (G, T, BH)
- Expanded notice (e.g., posting on-site; notice to others requesting notice) (G)
- Public comments and/or limited purpose hearings prior to permit issuance (G, SB, T, SM)⁴
- Conditions may be imposed by reviewing authority (G, T, BH, SM)
- Appeals by any interested/aggrieved persons (G, T, BH)
- Tiered location preferences/residential siting discouraged (e.g., commercial districts preferred over residential districts) (G, T, SM)
- Tiered support structure preferences (e.g., co-location, existing poles, streetlights) (T, BH, SM, LB)
- Justification/prohibition analysis and/or hearing (coverage gap, alternative site feasibility, hardship, least intrusive means and/or needs tests) (G, T, BH, SM, LB)
- Concentration/distance limits (SM, LB)
- Noise, acoustical, wind/load consideration/analysis (G, T, BH, LB)
- Additional specific siting requirements: prohibitions against installations in center median and in areas with no overhead utilities (LB); pole height limitation/at or near height of comparable existing infrastructure (T, LB, SM); 100 ft. separation between facility's base and dwelling (SB); potential quarterly construction delay "windows" (WH)
- RF emissions analysis and/or certification of compliance with FCC requirements (G, T, BH, SM, LB)
- Mapping of existing WTF and/or projection of anticipated future needs (G, BH)
- Showing of CPUC issuance of Certificate of Public Convenience & Necessity (public utility status of applicant) (G, WH, LB)
- Permit duration limits and/or periodic review/monitoring (G, BH, LB)
- Procedures for permit revocation/termination and/or facility removal (G, T)

4. Temporary moratorium/hold on applications during drafting process: G, T, SM, LB

5. Legal challenges to listed ordinances: None (as of 6/13/11)

Los Angeles WTF Working Group, 6/13/11

¹Includes cities with specific and/or extensive WTF regulations (does not include counties); sources: communications with city officials/city attorneys/text of ordinances.

²Enacted by LB City Council on 6/7/11 (Ord. No. 11-11-001; LB City Attorney).

³In practice, West Hollywood sets standards/considers impacts on case-by-case basis (staff, WH Planning Dept.)

⁴In practice, Santa Barbara has held public hearings for certain proposed PROW projects (e.g., city-wide microcell network) (staff, SB Architectural Board of Review/SBMC §28.94.030.DD.1.c(5)).

Comparison of WTF Governance by California Cities in the
Public-Right-of-Way (Residential Districts)

15 large and/or nearby cities (other than Los Angeles):

15 of the 15 require or provide for

- regulation of all WTF, including monopoles, antennas and utility pole installations
- design, installation or development standards (e.g., height, scale, color, finish, camouflage, antenna placement/number, landscaping, setbacks, ID and/or accessory equipment requirements)
- visual/aesthetic impact and public welfare/safety analysis/consideration

12 of the 15 require or provide for

- notice to property owners/occupants within a distance of 300/500 ft.
- public comments or hearings prior to permit issuance
- authority to impose conditions prior to permit issuance
- appeals by any interested/aggrieved persons
- RF emissions analysis and/or certification of compliance with FCC requirements

11 of the 15 require or provide for

- a justification/prohibition analysis or hearing for all WTF (e.g., alternative sites, coverage gap)

9 of the 15 require or provide for

- permit duration limits and/or periodic review/monitoring

9 of the 15 imposed

- a **temporary moratorium**/hold on applications during the ordinance drafting process

8 of the 15 require or provide for

- tiered support structure preferences (e.g., co-location, existing poles, streetlights)

7 of the 15 require or provide for

- noise, acoustical, wind/load consideration or analysis
- expanded notice (e.g., on-site posting, notice to any others requesting notice)

6 of the 15 require or provide for

- tiered location preferences or discouragement of residential siting
- concentration/distance limits on residential siting

Los Angeles:

In contrast, Los Angeles **does NOT** require or provide for

- regulation of all WTF, including antennas, pole-mounted and/or utility pole installations¹
- design/development standards and visual impact or public welfare/safety analyses specific to poles/antennas (most standards pertain to *cabinets*, e.g., 5 ½ ft. height limit; cabinet volume/treatment limits)
- hearings or public comment prior to permit issuance
- notice to owners/occupants within a distance of 300/500 ft., on-site posting or other expanded notice
- appeal by any interested persons, i.e., by other than adjoining/abutting owners/occupants
- authority to impose conditions prior to permit issuance
- RF emissions analysis or certification
- a justification/prohibition analysis for poles/antennas sited in or near residential districts
- permit duration limits and/or periodic review/monitoring
- tiered support structure or location preferences or discouragement of residential siting
- noise, acoustical, wind/load consideration or analysis
- concentration/distance limits on residential siting specific to poles/antennas

Los Angeles WTF Working Group, 6/13/11

¹ The City's AGF ordinance on its face regulates cabinets, not poles/antennas; pole-mounted and utility pole installations are *expressly exempt*, but in practice, AGF permits are required for monopoles (height variances routinely granted).

Wireless/Cellular Tower Siting:

****What is the law?***

****What are the federal, state and local responsibilities?***

Summary:

- Under both Federal law and California law, local governments have primary authority to approve tower sites. The CPUC has delegated this primary authority to local jurisdictions.
- The CPUC handles disputes between local government agencies and wireless service providers, but does not handle tower siting complaints of private citizens.
- Private citizens wishing to contest a tower siting should appeal to their local government agencies, which have processes in place to handle such inquiries either within their planning or building code departments, or some other department. *Federal statute also provides that any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with the federal law may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court is required to hear and decide such action on an expedited basis.*
- Federal judicial decisions uphold local jurisdiction in tower siting decisions.

Federal Law:

- Section 332(c)(7) of the federal Communications Act of 1934, as amended, [47 USC 332(c)(7)] preserves state and local authority over zoning and land use decisions for personal wireless service facilities.
- The statute provides that a state or local government may not unreasonably discriminate among providers of functionally equivalent services, and may not regulate in a manner that has the effect of prohibiting the provision of personal wireless services. *The Federal Communications Commission (FCC) has also found that it is a violation of the Communications Act to deny a siting request based on availability of service from another provider.*
- Federal statute also provides that state/local government must act on applications within a reasonable period of time (*see November 2009 FCC decision below*) and must make any denial of an application in writing supported by substantial evidence in a written record.
- The statute preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, assuming that the provider is in compliance with the FCC's RF rules. Any person adversely affected by an act or failure to act by a State or local government that is inconsistent with this federal preemption clause may petition the FCC for relief.
- *In November 2009, the FCC established timeframes for state and local zoning boards to rule on applications for cell-tower sites. The FCC order allows 90 days for ruling on collocations and 150 days for ruling on applications other than collocations. If the state or local government has not acted within these*

timeframes the applicant may seek redress in a court of competent jurisdiction within 30 days of the failure to act.¹

Transition Period for Pending Applications: For applications pending as of November 18, 2009, a “failure to act” will occur 90 days (for collocations) or 150 days (for other applications) after November 18, 2009. However, a party whose application has been pending for the applicable timeframe established by the FCC in this November 2009 ruling may, after providing notice to the relevant State or local government, file suit under Section 332(c)(7)(B)(v) of the Communications Act if the State or local government fails to act within 60 days from the date of such notice. This option does not apply to applications that have been pending for less than 90 or 150 days as of November 18, 2009 -- in these instances the State or local government will have 90 or 150 days from November 18, 2009 before it will be considered to have failed to act.

Incomplete Applications: Reviewing authorities must notify applicants within a reasonable period of time that their applications are incomplete. The FCC found that a review period of 30 days gives State and local governments sufficient time for reviewing applications for completeness, while protecting applicants from a last minute decision that applications should be denied as incomplete. Accordingly, the time it takes for an applicant to respond to a request for additional information will not count toward the 90 or 150 days only if that State or local government notifies the applicant within the first 30 days that its application is incomplete.

- *In the matter of locally enacted moratoria on new towers, in 1998, the Commission's Local and State Government Advisory Committee, the Cellular Telecommunications Industry Association (CTIA), the Personal Communications Industry Association, and the American Mobile Telecommunications Association entered into an agreement addressing issues relating to moratoria on the siting of wireless telecommunications facilities. This agreement sets out recommended guidelines for local governments and carriers to follow in connection with moratoria, and it establishes a non-binding alternative dispute resolution procedure that either carriers or local governments may invoke. The agreements can be found at <http://www.fcc.gov/state/local/agreement.html> , and are explained in two Statements released August 5, 1998: the Kennard Statement and the Fellman Statement. Among other things, the agreement provides:
“If a moratorium is adopted, local governments and affected wireless service providers shall work together to expeditiously and effectively address issues leading to the lifting of the moratorium. Moratoria should be for a fixed (as opposed to open ended) period of time, with a specified termination date. The length of the moratorium should be that which is reasonably necessary for the local government to adequately*

¹ If a local entity has a shorter timeframe within which the local authority must act on an application, that timeframe is still valid.

address the issues described in Guideline A. In many cases, the issues that need to be addressed during a moratorium can be resolved within 180 days. All parties understand that cases may arise where the length of a moratorium may need to be longer than 180 days. Moratoria should not be used to stall or discourage the placement of wireless telecommunications facilities within a community, but should be used in a judicious and constructive manner.”

- Additional information is available at <http://wireless.fcc.gov/siting/>

California: CPUC General Order 159A and Decision 96-05-035:

- The original GO 159 [D.90-03-080 dated March 28, 1990], required cellular carriers to file advice letters and copies of local government permits with the CPUC for each new cell site, and to seek Commission approval to complete its siting process.
- **In 1996, the CPUC adopted General Order 159-A in D. 96-05-035.** The Decision provided that Commission authorization prior to construction would no longer be required. GO 159-A also streamlined the procedure to be utilized by the cellular carriers to notify the Commission of new facilities or significant modifications to existing facilities.
- GO 159-A continues to recognize that primary authority regarding cell siting issues should continue to be deferred to local authorities. GO 159-A affirms that the Commission will continue to defer to local governments in its exercise of its authority to regulate the location and design of cell sites and MTSOs including (a) the issuance of land use approvals; (b) acting as Lead Agency for purpose of satisfying the California Environmental Quality Act (CEQA); (c) the satisfaction of noticing procedures, public comment requirements, if any, for both land use approvals and CEQA procedures.
- The Commission's role continues to be that of the State agency of last resort, intervening only when a utility contends that local actions impede statewide goals.
- The CPUC ruled that individual citizens should not be able to petition for the CPUC to preempt such local jurisdictions; in ceding primary facility review authority to local agencies, the Commission reasoned that only carriers, and not individuals, should be able to appeal a local agency decision to the Commission
- In GO 159-A the CPUC replaced an advice letter filing requirement process with a notification letter process. Under GO 159-A, prior to commencing construction, cellular carriers must send to the Commission's Consumer Protection and Safety Division a notification letter within 15 business days of receipt of all requisite land use approvals or a determination that no land use approval is required (see sample letter GO 159-A, p. 8). Carriers must provide a description of the facility and identify the local permit obtained or state that no land use permit is required.

The carriers no longer need to file with the Commission copies of applications and permits obtained from local authorities. However, such documents must continue to be retained by the carriers and must be available to the Commission upon request. Carriers must provide copies of the notification letter to the city planning director, the city clerk, and the city manager of the affected city, or where no city is involved, a copy of the notification letter must be provided to the county planning director, the clerk of the board of supervisors, and the county executive of the affected county.

- The revisions to GO 159 do not change any local land use or building permit procedures.
- As noted above, in GO 159-A, the Commission continues to delegate its authority to regulate the location and design of cellular facilities to local agencies, **except in those instances when there is a clear conflict with statewide interests**. In those instances, the Commission will review the need to preempt local jurisdiction, allowing local agencies and citizens an opportunity to present their positions. The cellular utility will have the burden of proof to demonstrate that accommodating local agency requirements for any specific site would frustrate the Commission's objectives. If the cellular utility is able to prove this point, the Commission will preempt local jurisdiction pursuant to its authority under Article XII, Section 8 of the California Constitution.
 - ▷ Because statewide telecommunications interests in some infrequent cases may be in conflict with local interests, the Commission continues to reserve jurisdiction to preempt those matters which are inconsistent with the overall statewide communications objectives. The Commission continues to have an interest in assuring that individual local government decisions do not impact uniform state interests, or create unconscionable standards.
- CPUC policy as stated in the decision is to enable adoption of advanced communications technologies.

California: CPUC General Order 95:

- GO95 governs constructions in the "right-of-way."

Federal Court, 8th and 9th District Rulings (2008):

- In "Level 3 Communications LLC v. City of St. Louis, Mo." (Case 08-626) and "Sprint Telephony PCS, L.P., v. San Diego County, Calif., et al." (08-759) both courts left in place rulings by two separate judicial circuits -- the Eighth and the Ninth -- that repudiate the idea that section 253 of the 1996 Act preempts state or local government requirements. The decision may make it more difficult for wireless telecommunications companies to bring facial challenges to local wireless tower moratorium ordinances absent proof of actual prohibitive effect, but leaves intact the ability for wireless telecommunications companies to challenge local zoning decisions on permit applications where the decisions violate federal restrictions.

Communications Division Contacts Regarding This Backgrounder:

Lisa Prigozen 3-1157; Bill Johnston 3-2124; Roxanne Scott 3-5263

**Organizations That Have Passed Motions or Publicly Expressed
Concerns About WTF Regulation in Los Angeles**
(See motions/letters on file in CF 09-2645)

Westside Regional Alliance of Councils
(All members individually passed motions)

Pacific Palisades CC
Brentwood CC
Westside NC
Bel Air-Beverly Crest NC
West Los Angeles NC
Mar Vista CC
Palms NC
Venice NC
Del Rey NC
NC Westchester/Playa del Rey
South Robertson NC
Westwood CC

Additional Neighborhood Councils

Chatsworth NC
Granada Hills North NC
North Hills West NC
Northridge West NC
Granada Hills South NC
West Hills NC
Encino NC
Studio City NC
Sunland Tujunga NC
Northwest San Pedro NC
Coastal San Pedro NC
PICO NC
Mid City West NC
Greater Wilshire NC
Hollywood Hills West NC
Hollywood United NC
Central Hollywood NC
Sherman Oaks NC
Silver Lake NC
Mission Hills NC
Tarzana NC (concerns expressed to the
Board of Public Works)

Federation of Hillside and Canyon Assns.
(35 members; www.hillsidefederation.org)

Additional Associations/Coalitions

The Oaks Homeowners Assn.
Comstock Hills Assn.
Westwood So. of SM Assn.
Marina Peninsula Assn.
Glassell Park Improvement Assn.
San Pedro Peninsula Homeowners United
Del Rey Homeowners & Neighbors Assn.
Old Granada Hills Residents Group
San Fernando Valley Historical Society
Tarzana Property Owners Assn.
Westchester Neighbors Assn.
LaBrea Willoughby Coalition
Brentwood Residents Coalition
L.A. Neighbors Coalition
Pacific Palisades Residents Assn.

Los Angeles WTF Working Group, 6/13/11
ppfriends3@hotmail.com