

Pacific Palisades Residents Association  
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Re: Council File No. 09-2645

Dear Mr. Jordan:

In connection with your ongoing investigation of the City's cell tower regulations and practices, PPRA wishes to bring to your attention the following:

We have recently learned that DWP replaced an old, short support or "guy" pole (which previously supported only overhead lines or wires), located in a parkway in a residential neighborhood at the corner of Earlmart and Cheviot Dr. in Cheviot Hills, with a taller, 60 ft. high, new pole supporting T-Mobile cell antennae and related equipment. DWP has confirmed that it (not T-Mobile) installed the new pole, and the pole bears an ID tag with the insignia "M" (for DWP). As with similar installations, there was no notice to residents or regulation of the pole's placement, appearance or construction. Photographs of both the old support pole and the new "cell tower" pole are attached (please note that the photos are of the same corner; a new home has replaced the home shown in the "before" photo).

We believe and understand that the new DWP pole was primarily intended for cell antennae purposes and was installed by DWP at the request of and/or by arrangement or agreement with T-Mobile. Such active participation by DWP in a cell site installation represents a significant departure from other "replacement pole cell sites" which we have seen throughout the City (including in Pacific Palisades, the Marina, Tarzana and North Hills). In these installations, to our knowledge old poles were actually replaced with new poles by the cell providers themselves (as opposed to DWP); we were led to believe that DWP's involvement (in contrast with the Cheviot installation) was either minimal or non-existent.

It is reasonable to conclude that the Cheviot cell tower is not the only such installation in the City in which DWP has actively participated. We are currently investigating a developing DWP replacement pole situation in a residential neighborhood of Pacific Palisades to ascertain whether the new DWP pole (50-60 ft. high, more than twice the height of the old pole) is similarly intended for cell antennae purposes or is being erected at the request of or by arrangement with a cell provider.

The Cheviot installation has come to the attention of the Glendale community, where a new draft cell tower ordinance is currently in the second round of public comments. See: <http://sunroomdesk.com/2010/01/19/no-advance-notification-la-homeowners-finding-cell-towers-next-to-them-almost-overnight/>

We are particularly troubled by these recent developments in Los Angeles because DWP officials had previously stated, both in private conversations with us and publicly at the December LANCC meeting, that DWP supposedly shares residents' concerns about the many replacement pole cell site installations that are ongoing in residential neighborhoods throughout the City.

We are also concerned because DWP is continuing to take the position that cell providers are entitled to place their poles wherever they wish in public rights of way, including in proximity to existing DWP poles. Presumably, DWP will argue that these replacement poles are basically fungible with the old poles that they replace, and that cell providers could otherwise simply go out and install a new pole right next to the old pole (as DWP officials stated at their LANCC presentation). The DWP report on the Joint Pole Agreement (JPA), forwarded to the City Council and other officials on December 23, 2009, in connection with Councilmember Hahn's motion in CF 09-2795, states:

"The SPCJPA does not require any member to own, sell, purchase, and occupy any particular pole or poles jointly with any other member. Members may set their own poles in proximity to other members' poles if they choose."

PPRA agrees with the first sentence above. As to the second sentence, to the extent DWP is positing that cell providers/JPA members supposedly have free reign to operate in public rights of way, we reiterate the points previously outlined in our Summary dated 1/06/10: there is nothing in the JPA which regulates or deals with the placement of poles by members (let alone gives members unfettered rights in this regard); members are required to abide by all local regulations; although "utility poles" (as defined in the AGF ordinance) are currently exempt from local regulation, the City does have the power to regulate their placement and construction and even, under recent case law, to deny permits for cell site installations in public rights of way on the basis of aesthetics (subject to Telecom Act restrictions).

We also emphasize:

In order to fit within the current AGF ordinance utility pole exemption, any pole installation by a cell provider would have to support overhead lines or wires (i.e., it could not be a free-standing pole; otherwise, BOE would at least require an AGF permit application). A cell provider wishing to erect a pole without regulation in close proximity to a support pole (i.e., one that already holds up existing wires or lines) would presumably encounter some difficulty in meeting the basic AGF exemption requirement (at least without improperly boot-legging wires or lines onto its new pole -- which some Tarzana residents claim has already occurred).

Common sense and logic suggest that a new 60 ft. pole supporting cell antennae and equipment (for all intents and purposes a cell tower) is a very different animal from an old, short support pole. In fact, the Coastal Commission implicitly recognizes this material distinction by requiring Coastal permits for new replacement pole cell site installations located within the Coastal zone; the Commission has imposed this requirement on similar installations (either erected or proposed) in the Marina and Pacific Palisades. DWP maintains that it is one and the same as the City for the purpose of utility pole installations. Assuming that is the case, the City is not only sanctioning but actively participating in the installation of cell towers in close proximity to homes, without notice to residents or any regulation whatsoever (including, as previously discussed in our Summary, wind-resistance or other safety analyses). We reiterate that these practices are inconsistent with the City's duty to protect the public safety and welfare. It is unfortunate that no action has yet been taken on motions, first submitted by PPRA last July, then by Pacific Palisades Community Council and still later by many neighborhood councils and other groups, requesting that a temporary moratorium be imposed on cell site installations.

In the meantime, PPRA has requested that staff of Councilmembers Rosendahl, Koretz and Hahn (representing districts where such installations have been ongoing) urge DWP to refrain from participating in any further replacement pole cell site installations, at least until such time as your report is completed and the Council has taken action on the various cell tower regulation motions brought over the past several months by Councilmembers and community organizations. To the extent you have the authority or ability to do so, we ask that you make the same request of DWP.

Thank you again for your consideration of this important issue.

Sincerely,

Christina Spitz  
Vice-President  
Pacific Palisades Residents Association



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