

Brentwood Community Council
149 S. Barrington Ave., Box 194 Los Angeles, CA 90049

October 27, 2009
Councilmember Rosendahl
Public Works Committee Members
Los Angeles City Hall
200 N. Spring Street
Los Angeles, CA 90012

Re: Los Angeles City Council File No. 08-2440

Dear Council Members Rosendahl, Huizar, Alarcon and Smith:

The Brentwood Community Council ("BCC")_[1] (aolb://mail/write/template.htm#_ftn1) voted unanimously at its October 6, 2009, meeting, to urge the City Council to enact a comprehensive new ordinance for the regulation of wireless telecommunications facilities, clearly and unambiguously authorizing local regulation of aesthetics to the full extent of the law, in light of recent judicial determinations clarifying that municipalities have greater legal authority to regulate than had been believed at the time the prior ordinances had been adopted. The BCC further requests that the City Council seek guidance from the City Attorney in crafting the new ordinance and, in the interim, issue a temporary moratorium on all wireless facility installations until the new ordinance is passed.

The City's existing regulations and policies concerning wireless telecommunications facilities were developed in light of the Ninth Circuit's decision in *City of Auburn v. Qwest Corp.*, 260 F.3d 1160, 1175-1176 (9th Cir. 2001), which adopted an overly-restrictive construction of the Telecommunications Act of 1996's preemption of local regulation. The Ninth Circuit, however, recently overruled *Auburn* in *Sprint Telephony PCS, L.P. v. County of San Diego*, 543 F.3d 571, 577-578 (9th Cir. 2008) (en banc). And more recently, the Ninth Circuit rejected another putative restriction on municipal authority by holding that the California Public Utilities Code does not divest municipalities of their constitutional authority to consider aesthetics in deciding whether to grant permit applications. *Sprint PCS Assets, LLC v. City of Palos Verdes Estates*, ___ F.3d ___, 2009 Westlaw 3273935 (9th Cir. 2009).

The need for robust and comprehensive aesthetic regulation to protect and promote the integrity of the City's residential neighborhoods from ever-encroaching wireless telephone facility installations is more pressing than ever. If the City does not act now, before the wireless industry's planned and immanent onslaught of installations, the City will again fall behind the regulatory curve – as has occurred with its attempts to regulate billboards and medical marijuana dispensaries. The City has a very narrow window of opportunity and, unless it acts immediately, it will be too late to gain regulatory control over the proliferation of wireless telephone facilities.

The BCC therefore asks that:

1. The City Attorney be directed to review all applicable regulations, rules, policies and procedures pertaining to the installation of wireless telecommunications facilities in the City of Los Angeles in light of the Ninth Circuit's decisions in *Sprint v. County of San Diego* and *Sprint v. City of Palos Verdes*, with the goal of recommending a comprehensive new ordinance regulating the installation of all wireless telecommunications facilities in the City, authorizing regulation of aesthetics to the full extent of the law.

2. In connection with the above review, the City Attorney also be directed to research the extent of the City's involvement in the Joint Pole Agreement and whether and to what extent it has authority to regulate wireless telecommunications facility installations involving utility poles and replacement poles notwithstanding the Joint Pole Agreement's

provisions.

3. Consistent with the City Attorney's recommendations, the City enact a comprehensive new ordinance with clear and consistent standards and procedures regulating all wireless telecommunications facilities in the City and providing protection to communities and residential neighborhoods to the fullest extent possible under the law.

4. The City impose a moratorium on all wireless Telecommunications facility installations in the City and/or applications for approval of such installations in the City in order to allow time for the City Attorney's review and research and the crafting of a comprehensive new ordinance as set forth above.

Thank you for your consideration.

Sincerely,

Wendy-Sue Rosen
Land Use Committee Chair
Brentwood Community Council

cc: Ted Jordan, Deputy City Attorney
Adam Lid, Legislative Analyst