

Westwood South of Santa Monica Blvd
Homeowner's Association
Incorporated November 8, 1971
P. O. Box 64213
Los Angeles, CA 90064-0213

November 14, 2009

Chairman Jose Huizar
Committee Members Greig Smith and
Richard Alarcon
LA City Council Public Works Committee
Los Angeles City Hall
200 N. Spring Street
Los Angeles, CA 90012

VIA EMAIL ATTN: Adam Lid, Legislative Asst. adam.lid@lacity.com

Re: Los Angeles City Council File No. 09-2645

Dear Council Members Huizar, Alarcon and Smith:

At its November 2, 2009 meeting, the Westwood South of Santa Monica Blvd. Homeowners Association (WSSM) discussed the issues surrounding current regulation of wireless telecommunications facilities. We write to urge the City Council to enact a comprehensive new ordinance for the regulation of these 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. WSSM 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.

WSSM therefore asks that:

1. The City Attorney continue to review the City's current regulatory scheme and report to the City council on what new tools are available to regulate wireless telecommunications facilities in light of recent judicial determinations clarifying the City's ability to regulate such facilities on aesthetic grounds, as directed by the motion introduced by Councilmember Rosendahl on October 27, 2009 (Council File No. 09-2645).
2. In connection with the above review, the City Attorney continue 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. The City immediately establish a task force composed of appropriate city departments, including but not limited to Dept. of Water and Power, Planning, Building and Safety, Public Works and the CAO; representatives of Neighborhood Councils and other community organizations and stakeholder groups such as the Sierra club, to assist in the development of a City policy on the siting of telecommunications facilities.
4. With the City Attorney's guidance and consistent with his recommendations, the City enact a comprehensive new ordinance with clear and consistent standards and procedures regulating all wireless telecommunications facilities in the City, authorizing regulation of aesthetics and providing protection to communities and residential neighborhoods to the full extent possible of the law.
5. The City immediately 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,



Barbara Broide, President

cc: Paul Koretz, CD 5
PLUM Committee Chair Ed Reyes
PLUM Committee Members Dennis Zine, Jose Huizar
PLUM Committee Legislative Asst. Patrice Lattimore via email
Council President Eric Garcetti
Councilmembers Tom LaBonge, Tony Cardenas, Bernard Parks, Jan Perry, Herb Wesson,
Janice Hahn