



Adam Lid <adam.lid@lacity.org>

FW: CF 09-2645/Pole Regulation

1 message

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

Fri, Apr 23, 2010 at 11:40 AM

CF 09-2645

Dear Mr. Lid,

Please file one additional message below (originally sent on 2/9) in CF 09-2645. Thank you.

Chris Spitz
PPRA

From: ppfriends3@hotmail.com
To: ted.jordan@lacity.org
CC: adam.lid@lacity.org; councilman.rosendahl@lacity.org; janice.hahn@lacity.org;
councilmember.garcetti@lacity.org; paul.koretz@lacity.org; councilmember.huizar@lacity.org;
councilmember.smith@lacity.org; councilmember.alarcon@lacity.org; councilmember.labonge@lacity.org;
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paul.backstrom@lacity.org; barbara@kohn.com; info@pprainc.org
Subject: CF 09-2645/Pole Regulation
Date: Tue, 9 Feb 2010 11:22:01 -0800

Pacific Palisades Residents Association

P.O. Box 617
Pacific Palisades, CA 90272

Re: CF No. 09-2645/Pole Regulation

Dear Mr. Jordan and city officials:

PPRA respectfully requests that you consider the following additional information in regard to pole installation/wireless regulation issues.

1. Pole-Mounted Facilities

- Collocation

We assume that the city attorney's report in CF 09-2645 will address the applicability of Government Code section 65850.6 to the city's current regulations and practices in regard to wireless facilities. This statute prohibits the city from requiring discretionary collocation permits for wireless facilities "that are collocated on existing wireless facilities that have received a discretionary permit [after a public hearing] and undergone environmental [CEQA] review." Coastal Commission North Coast District staff report (11/20/09), <http://documents.coastal.ca.gov/reports/2009/12/Th18c-12-2009.pdf>. See also Davis Wright Tremaine advisory (10/12/06), <http://www.dwt.com/LearningCenter/Advisories?find=118013>.

In PPRA's view, consistent with section 65850.6 the city of Los Angeles should not facilitate collocations on private property or in PROWs (particularly in residential areas and locations near schools and parks) unless and until the existing/initial installations (or collocation base stations) first receive discretionary permits after public hearings and adequate design, aesthetic and environmental (CEQA) reviews.

- **Safety**

As we have noted, PPRA is concerned with issues of fires and other safety hazards associated with overloading of utility poles. Hillside communities such as the city of Malibu have already experienced serious fires believed to be the result of equipment overload on poles -- a matter currently under review by the Public Utilities Commission. Safety hazards associated with pole-mounted equipment were also the subject of the recent Verizon FIOS box controversy before the Board of Public Works.

We urge that the issue of the city's authority to regulate pole-mounted wireless facilities to protect the public safety and welfare be addressed in the city attorney's report.

2. Utility Pole Definition/Exclusion

The AGF ordinance defines an excluded utility pole as a pole supporting *overhead* lines or wires; we are told that this definition is applied to exclude a pole supporting only one overhead wire which terminates at that pole. On the other hand, the *same type of structure* (a wooden pole often referred to in the common vernacular as a "utility pole") is not exempt (and is deemed a monopole subject to permitting by BOE under the AGF ordinance) if it supports lines which run underground and are carried in conduits *vertically* along the side of the pole rather than attached horizontally.

This is a distinction without a difference and appears to be a case of the city simply accepting without questioning LADWP's historic practices and treatment of poles. We assume that the city attorney's report will address the merits of this distinction (or lack thereof).

3. Revision of Regulations

PPRA submits that the city's current regulations can and should be comprehensively revised to provide that all wireless telecommunication facilities in PROWs and on private property (including new and replacement pole installations in PROWs, with or without overhead wires, and "collocation base stations"), be appropriately regulated under permitting processes that include provisions to encourage siting in "preferred" zones (i.e., industrial, commercial) and to discourage siting in or near "non-preferred" zones or areas (i.e., residential, specific plan, historic preservation overlay, scenic highways, open space, schools and public parks, etc.) -- with the following required, at a minimum, for proposed installations in or near "non-preferred" zones or areas:

- sufficient notice,
- a public hearing before permit issuance or denial,
- clear definitions of the various types of wireless facilities involved and standards for height, dimensions, appearance, landscaping, screening and set-backs specifically related to each facility,
- consideration of community input,
- consideration of siting alternatives,
- application of "significant gap in coverage" and "least intrusive means" tests (as required under cases interpreting Telecom Act provisions), and
- adequate design, aesthetic, environmental and safety reviews.

Revised regulations should also require reporting by wireless providers and updated mapping of the locations of all wireless telecommunications facilities in the city; periodic independent testing and reporting of RF emissions levels of all such facilities (with costs borne by wireless providers) to ensure compliance with FCC standards; and wireless providers' payment of adequate fees to the city for the installation and continuing use of such facilities in PROWs.

We hope and trust that the city attorney's report will support PPRA's position on the need for revision of the current regulations, as set forth above. PPRA continues to urge city officials to take necessary action as soon as possible to comprehensively revise local regulation of wireless facilities in Los Angeles.

Sincerely,

Christina Spitz
Vice-President
Pacific Palisades Residents Association

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Adam Lid <adam.lid@lacity.org>

FW: CF 09-2645/AGF ordinance, pole regulation

1 message

Chris Spitz <ppfriends3@hotmail.com>

Fri, Apr 23, 2010 at 11:21 AM

To: adam.lid@lacity.org

Re CF 09-2645

Dear Mr. Lid:

Please file the following **two** messages and attachments in CF 09-2645.Thank you,
Chris Spitz
PPRA

From: ppfriends3@hotmail.comTo: ted.jordan@lacity.org; adam.lid@lacity.org; councilman.rosendahl@lacity.org; janice.hahn@lacity.org; councilmember.garcetti@lacity.org; paul.koretz@lacity.org; councilmember.huizar@lacity.org; councilmember.smith@lacity.org; councilmember.alarcon@lacity.org; councilmember.labonge@lacity.org; ctrutanich@lacity.org; cynthia.ruiz@lacity.org; paula.daniels@lacity.org; julie.gutman@lacity.org; andrea.alarcon@lacity.org; valerie.shaw@lacity.org; david.berger@lacity.org; jane.usher@lacity.org; norman.kulla@lacity.org; whitney.blumenfeld@lacity.org; jessyca.avalos@lacity.org; frank.hong@lacity.org; chris.koontz@lacity.org; jay.greenstein@lacity.org; kelli.bernard@lacity.org; renee.weitzer@lacity.org; shawn.bayliss@lacity.org; erik.sanjurjo@lacity.org; tara.devine@lacity.org; faisal.alserri@lacity.org; sarah.brennan@lacity.org; marisa.alcaraz@lacity.org; phyllis.winger@lacity.org; hannah.lee@lacity.org; paul.backstrom@lacity.org; jennifer.badger@lacity.orgCC: info@pprainc.org; barbara@kohn.com

Subject: CF 09-2645/Glendale WTF ordinance

Date: Wed, 14 Apr 2010 11:39:35 -0700

Pacific Palisades Residents AssociationP.O. Box 617
Pacific Palisades, CA 90272**Re: CF 09-2645/Glendale WTF ordinance**

To interested City officials:

Please be advised that Glendale City Council last night approved that city's new comprehensive wireless telecommunications facilities ordinance (including to our knowledge the recommended addendum providing for certain hearings for PROW installations in residential areas). For further information contact city attorney/public works counsel Christina Sansone, csansone@ci.glendale.ca.us.

PPRA will in due course forward an outline detailing specific provisions which we believe can and/or should be adopted by the City of Los Angeles. We note at this time that the Glendale ordinance was drafted with input from telecom law experts/consultants, industry representatives, residents groups and other members of the public; it appears to include expanded regulation of all wireless facilities in the PROW (including facilities on utility poles -- notable because Glendale is also a member of the JPA); and, we are informed, it is up to date with the most recent court decisions interpreting relevant state and federal laws.

In the meantime, PROW installations of unregulated cell sites in residential neighborhoods in Los Angeles are

continuing unabated. One recent example is a T-Mobile plan in the Ridgewood-Wilton Place neighborhood (east of Hancock Park) to erect a replacement pole with antennas (twice as high as the existing support pole) in the PROW, only a few feet from a residence in the *Wilton Historic District* -- a federally designated historic area which is listed in the National Register of Historic Places. Under current, inadequate Los Angeles law and/or policy, City officials deem this installation to be exempt from any local regulation.

We -- along with the many other organizations who have expressed concerns and/or passed motions (see **current** list attached) -- continue to urge the City Attorney and City Council to take action on this important matter so that much-needed regulatory reform can be achieved as soon as possible.

Sincerely,

Christina Spitz
Vice-President, PPRA

From: ppfriends3@hotmail.com
To: ted.jordan@lacity.org
CC: adam.lid@lacity.org; councilman.rosendahl@lacity.org; janice.hahn@lacity.org; councilmember.garcetti@lacity.org; paul.koretz@lacity.org; councilmember.huizar@lacity.org; councilmember.smith@lacity.org; councilmember.alarcon@lacity.org; councilmember.labonge@lacity.org; ctrutanich@lacity.org; cynthia.ruiz@lacity.org; paula.daniels@lacity.org; julie.gutman@lacity.org; andrea.alarcon@lacity.org; valerie.shaw@lacity.org; david.berger@lacity.org; jane.usher@lacity.org; norman.kulla@lacity.org; whitney.blumenfeld@lacity.org; jessyca.avalos@lacity.org; frank.hong@lacity.org; chris.koontz@lacity.org; jay.greenstein@lacity.org; kelli.bernard@lacity.org; renee.weitzer@lacity.org; shawn.bayliss@lacity.org; erik.sanjurjo@lacity.org; tara.devine@lacity.org; faisal.alserrri@lacity.org; sarah.brennan@lacity.org; marisa.alcaraz@lacity.org; phyllis.winger@lacity.org; hannah.lee@lacity.org; paul.backstrom@lacity.org; barbara@kohn.com; info@pprainc.org
Subject: CF 09-2645/AGF ordinance, pole regulation
Date: Mon, 22 Mar 2010 10:47:59 -0700

Pacific Palisades Residents Association

P.O. Box 617
Pacific Palisades, CA 90272

Re: Council File No. 09-2645/AGF ordinance, pole regulation

Dear Mr. Jordan:

In regard to your ongoing investigation of the City's wireless facility regulations and policies, PPRA calls your attention to the following:

Information Technology and General Services Committee Report adopted May 28, 2002 (ITGSC Report)

As you know, PPRA has argued in previous submissions that because the AGF ordinance specifically regulates only above-ground *cabinets* (not poles), there is currently no effective or meaningful regulation of freestanding poles or "monopoles" in the public right of way (PROW) in Los Angeles. The attached Report -- recently obtained by PPRA from City records maintained in connection with CF 99-1593 (the council file pertaining to enactment of the current AGF ordinance) -- clearly demonstrates that the AGF ordinance was an outgrowth of then-developing policy in regard to *telecommunications cabinets* (also known as AGFs) in the public right of way (see pp. 2-3 of the ITGSC Report). Consistent with policy under development at the time, the resulting AGF ordinance only addresses the installation of *cabinets* (AGF's), not other structures such as monopoles.

Moreover, while the ITGSC Report recommended that City departments be directed to review existing policies

for "other facilities in the public right-of-way" and to recommend appropriate changes "necessary to comply with the intent of the new AGFSP" (pp. 1 and 4; emphasis added), no changes were made in the final AGF ordinance to include standards related to monopoles or any facilities other than cabinets. Clearly, the legislative history demonstrates that the only structures intended to be covered under the AGF ordinance were cabinets.

This intent is confirmed in a letter from Verizon dated April 30, 2009, written in response to the City's concerns about low-mounted Verizon FIOS boxes on utility poles (a matter which was before the Board of Public Works last fall): http://www.ghsnc.org/pole-mounted_fios/20090821_ag_br_st_ce_1_tr2.pdf. The letter relates the apparent understanding of all parties (wireless providers and City officials alike) that the AGF ordinance was intended to regulate *cabinets* mounted on concrete pads (i.e., "pedestal-type installations"), with pole installations exempt and/or presumed to be subject to other regulations or authority.

These documents shed light on what PPRA maintains is a continuing problem with application of the AGF ordinance: it was not intended to cover monopoles and doesn't cover monopoles. While we appreciate that monopoles are not regarded as "exempt" structures, and there is at least *some* attempt at regulation (particularly as wireless providers are increasingly seeking to install monopoles in the PROW), PPRA is nonetheless concerned that BOE *routinely* grants permission or is told that it must grant permission for monopoles under the AGF ordinance (again, which has no standards for any structures other than cabinets).

BOE policy re approval of AGF permit applications for monopoles

A review of available reports in Board of Public Works archives reveals that AGF permit applications for monopole cell-site installations typically include *pro forma* requests for variances from the 5 1/2 ft. height restriction (applicable to AGF cabinets). Monopoles are thus shoe-horned into an ordinance that was never intended to accommodate or address such structures. Assuming the applicant meets all technical requirements of the application process, BOE as a general rule simply grants requested variances and approves permit applications for monopoles in the PROW.

Currently, there are six proposed monopole installations in the PROW in residential areas of Pacific Palisades, with AGF applications/permits pending. Permits have so far been granted for at least three of the six, and residents have filed appeals. At a "pre-hearing" on March 8 before Cmmr. Alarcon (for a Verizon monopole in a residential neighborhood along Sunset Blvd., a designated scenic highway in a Community Plan-protected area with underground utilities), Jeff LaDou stated that BOE has been instructed "by the City Attorney" that the agency *must* grant AGF permit requests for monopoles -- again assuming technical application requirements of the statute are met.

At the same time, if residents appeal the initial BOE decision, there are virtually no standards available to Board of Public Works Commissioners for meaningful review of such decisions in regard to *monopoles*, other than the Board's broad authority to regulate structures in the PROW under section 580 of the City Charter, *or*, as Jack Allen argues in his 11/17/09 report (on file in CF 09-2645), possible application of CUP provisions and standards applicable to monopoles and antennas on private property, pursuant to LAMC section 12.21.A.20.

The lack of meaningful regulation of monopoles in the PROW -- in addition to the non-existent regulation of replacement pole cell site installations, as we have previously addressed in detail -- is in PPRA's view an untenable situation which should be rectified at the earliest opportunity, given the explosion of antennas and towers in Los Angeles' residential areas within the past year -- a development that will only continue as wireless providers act to meet "mushrooming demand from powerful new wireless devices like iPhone and Google's Droid . . ." (*NY Times* Week in Review Editorial, p. 9, "A Plan for Broadband," 3/21/10).

In an effort to address this growing problem constructively, for the past eight months PPRA has been periodically forwarding relevant information and suggestions for regulatory reform to you and other City officials. We have had minimal feedback and are frankly concerned that it has been over a year since Councilman Rosendahl's original motion calling for investigation of the city's regulations and almost five months since his updated motion in CF 09-2645 -- with no follow-up by anyone in City government (to our knowledge). Meanwhile, 35 neighborhood councils and other organizations (including all eleven members of the Westside Regional Alliance of Councils) have now passed resolutions or submitted letters expressing their concerns and/or requesting reform of the City's cell tower regulations.

Again, we respectfully urge that these serious problems with Los Angeles' regulations be addressed in the report being prepared pursuant to Councilman Rosendahl's motion, which we hope and trust will be completed as soon as possible. Thank you for your consideration and attention to this important matter.

Sincerely,

Christina Spitz
Vice-President
Pacific Palisades Residents Association

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2 attachments

 **CF 99-1593 report.pdf**
611K

 **list of cell tower motions-organizations.doc**
35K

The following organizations have passed motions or formally expressed concerns to the city re cell tower proliferation/regulation in Los Angeles (as of 4/14/10):

Westside Regional Alliance of Councils

(12 current member councils, each individually also passed a motion*)

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 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

Tarzana NC (letter expressing concern)

Sunland Tujunga NC

Northwest San Pedro NC

Coastal San Pedro NC

PICO NC

Greater Wilshire NC

Hollywood Hills West NC

Hollywood United NC

Central Hollywood NC

Silver Lake NC

Federation of Hillside and Canyon Assns.

(representing 35 member associations;
see, www.hillsidefederation.org)

Additional Associations

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.

Pacific Palisades Residents Assn. (PPRA)

-- Barbara Kohn, President, PPRA

Christina Spitz, V.P., PPRA

info@pprainc.org

NOTE: The above represents a combined total of **75 organizations** representing over 1 million Angelenos.

CITY OF LOS ANGELES

CALIFORNIA



JAMES K. HAHN
MAYOR

J. MICHAEL CAREY
City Clerk

FRANK T. MARTINEZ
Executive Officer

When making inquiries
relative to this matter
refer to File No.

99-1593

Office of the
CITY CLERK
Council and Public Services
Room 395, City Hall
Los Angeles, CA 90012
Council File Information - (213) 978-1043
General Information - (213) 978-1133
Fax: (213) 978-1040

HELEN GINSBURG
Chief, Council and Public Services Division

PLACE IN FILES

JUN 04 2002

DEPUTY

May 29, 2002

Bureau of Engineering
Department of Water and Power
Department of Transportation
Board of Public Works
Honorable James Hahn, Mayor

Information Technology Agency
City Attorney
City Administrative Officer
Chief Legislative Analyst

RE: ABOVE GROUND FACILITIES SPECIFICATIONS AND PROCEDURES POLICY (AGFSP),
WHICH WILL GOVERN THE APPROVAL PROCESS FOR THE INSTALLATION OF ABOVE
GROUND FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

At the meeting of the Council held May 28, 2002, the following action was
taken:

Attached report adopted..... X
Attached motion (-) adopted.....
Attached resolution (-) adopted.....
Mayor concurred.....
FORTHWITH..... X
Ordinance adopted.....
Ordinance number.....
Effective date.....
Publication date.....
Mayor approved.....
Mayor vetoed.....
Mayor failed to act - deemed approved.....
Motion adopted to approve attached report recommendation(s)....
Motion adopted to approve communication recommendation(s).....

J. Michael Carey

City Clerk
crm
steno\991593

Ch 6/4/02

Handwritten initials



TO THE COUNCIL OF THE
CITY OF LOS ANGELES

Your

INFORMATION TECHNOLOGY AND
GENERAL SERVICES

Committee

reports as follows:

Public Comments: Yes No
XXX —

INFORMATION TECHNOLOGY AND GENERAL SERVICES COMMITTEE REPORT relative to the Above Ground Facilities Specifications and Procedures (AGFSP) policy, which will govern the approval process for the installation of above ground facilities in the public rights-of-way.

Recommendations for Council action:

1. ADOPT the Chief Legislative Analyst (CLA) report recommendations dated May 23, 2002, relative to the AGFSP, attached to the Council file.
2. INSTRUCT the Bureau of Engineering to immediately lift the moratorium on utility and excavation permits enacted under Council file 99-0300 and fully implement the provisions of the AGFSP.
3. REQUEST the City Attorney to prepare and present an Ordinance within 90 days to codify the provisions of the AGFSP into the Los Angeles Municipal Code.
4. INSTRUCT the Bureau of Engineering to coordinate with the Information Technology Agency to post this AGFSP on the City's homepage.
5. DIRECT City Departments, including the Department of Transportation and the Department of Water and Power, to review their existing policies for other facilities in the public right-of-way and recommend any appropriate changes necessary to comply with the intent of the new AGFSP.

Fiscal Impact Statement: None submitted by the CLA. The City Administrative Officer (CAO) reports that inasmuch as staff and funding for the implementation of this policy have been provided in the 2001-02 Budget, there is no additional impact to the General Fund. Revenues from the permits and fines are projected to cover the costs of the positions granted to implement the policy.

SUMMARY

On May 22, 2002, the Information Technology and General Services (ITGS) Committee considered a CLA report relative to the Bureau of Engineering's, Above Ground Facilities Specifications and Procedures (AGFSP) policy, which will govern the approval process for the installation of above ground facilities in the public rights-of-way. At the Committee's request the following background information has been included prior to reporting on the May 22 meeting.

In April 1999, the Telecommunications Task Force submitted a report to the ITGS Committee that raised issues concerning the above ground telecommunications cabinet policy being developed by the Bureau of Engineering to establish policy, specifications and procedures governing the installation of AGF's in the public right-of-way. The purpose of this effort is to mitigate adverse impacts to the public welfare caused by AGF installations and to establish an AGF approval process. The initial AGF report did not address facilities located on power poles and street lights.

On February 23, 1999, the City Council adopted a Motion (Council file 99-0300), which instructed the City Engineer to temporarily suspend the approval of permits for AGFs and instructed the Department of Water and Power (DWP) not to approve pole-mounted facilities for 180 days unless certain exemption and emergency conditions existed. The Motion further instructed that ordinances be drafted to strengthen the review and regulation of AGFs. The conditions of this Motion were subsequently extended by Council until a new policy could be adopted.

The first draft report was released to AGF Stakeholders on December 17, 1999. Stakeholders included wireline and wireless telecommunication interests, power utilities, water utilities, gas utilities, cable television interests, and homeowner associations. Seventeen workshops, with approximately 25 stakeholders participating in each, were conducted in January 2000. Their input, where appropriate, was incorporated into a second draft report.

On May 31, 2000, the Board of Public Works (BPW) held a public hearing on the second draft report resulting in additional revisions and staff meetings with Department of Transportation (DOT) and DWP to discuss mitigation measures. On May 29, 2001, the adopted a final AGF report and forwarded it to the Mayor's Office. The Mayor's Office requested a CAO report, which was completed on September 25, 2001.

On March 4, 2002, a meeting was held between the Mayor's Office staff, Councilmember Miscikowski, her staff, and BOE staff to

discuss the AGF policy and its affect on telecommunications companies. Several concerns were addressed.

The ITGS Committee considered the AGF policy at its April 24, and May 8, 2002, meetings. Extensive public comment was considered at each, resulting in additional revisions. The CLA was instructed to incorporate the appropriate changes requested and insure consistency with the original intent to balance the needs of all stakeholders.

On May 22, 2002, the ITGS Committee considered the CLA report which made the following changes to the AGF policy based on appropriate changes requested at the previous meeting:

- below grade requirement does not apply to electric meters.
- companies with non-compliant structures have 10 days to comply, but the BOE may grant more time when the corrections are more complex.
- if an AGF has to be relocated for street widening or a driveway, the owner of the AGF must pay unless the improvement is required as a condition of a permit issued to a developer.
- all street lights and utility poles, fire hydrants, traffic control boxes, and air/vacuum valves are exempt from this policy, including the pedestrian passage requirement.
- all required pedestrian passage retrofits must be completed within 5 years. Each company must do 20% (of original amount) per year, or 60 boxes.
- the BPW will establish a registration fee to implement the mapping of existing and future AGFs.

The CLA recommended that given the significant differences between the CLA's new version of the AGF policy and that adopted by the BPW, the ITGS Committee adopt the CLA's version in lieu of the BPW version. The CLA also recommended lifting one half of the moratorium that was implemented by Council action February 23, 1999, on Council file 99-0300, namely the provision applicable to utility permits. The CLA added that a new draft Ordinance is also necessary given the above changes.

The City Attorney reported that the new policy was on good legal ground to go forward.

Public Comment was then considered based on the CLA's new AGF version. The CLA noted that topography and other physical restrictions on underground cabinet placement can be incorporated into a financial analysis. For example, on a steep hill the business could make a case that the cost was prohibitive and obtain an exemption. With regard to the electric meters, the CLA specifically intended that the exemption apply solely in restricted

areas, so the current language should be retained. With regard to the "last resort" language (Section II (C) (6)), the CLA indicated that was a policy decision for the Committee/ Council to act on. With regard to requesting a time frame from the BOE in responding to the various components of the policy, the CLA indicated that such a request could be incorporated once the BOE implemented the new policy.

The Chair then recommended that the following revisions be incorporated into a final revision of the CLA's AGF report:

- CLA to work with the BOE to establish specific timelines for BOE permit review and incorporate those changes into the AGFSP prior to this matter coming before Council.
- delete the "last resort" language, inasmuch as there is sufficient accountability built into the policy.
- reduce the number of AGF retrofits to be 30 per year, instead of 60.
- direct City Departments, including the DOT and the DWP, to review their existing policies for other facilities in the public right-of-way and recommend any appropriate changes necessary to comply with the intent of the new AGFSP.

The ITGS Committee concurred with the CLA recommendations as amended and forwarded the matter to Council for its consideration.

Respectfully submitted,

INFORMATION TECHNOLOGY AND GENERAL SERVICES COMMITTEE

Mark Lindsey Thomas
Chair

Report
ADOPTED

MAY 28 2002

**LOS ANGELES CITY COUNCIL
FORTHWITH**

CAL
5/24/02
#991593

COUNCIL VOTE

May 28, 2002 12:34:42 PM, #16

ITEM NO. (6)

Voting on Item(s): 6

Roll Call

BERNSON	Absent
GALANTER	Absent
GARCETTI	Absent
GREUEL	Absent
HAHN	Yes
HOLDEN	Yes
LABONGE	Yes
MISCIKOWSKI	Yes
PACHECO	Absent
PERRY	Yes
REYES	Yes
RIDLEY-THOMAS	Yes
WEISS	Yes
ZINE	Yes
*PADILLA	Yes

Present: 10, Yes: 10 No: 0



Adam Lid <adam.lid@lacity.org>

FW: CF 09-2645

1 message

Chris Spitz <ppfriends3@hotmail.com>

Fri, Apr 23, 2010 at 11:27 AM

To: adam.lid@lacity.org

Re CF 09-2645

Dear Mr. Lid:

Please file the following **two** email messages (originally sent 4/1 and 4/5) and attachment in **CF 09-2645**.

Thank you again

Sincerely,
Christina SpitzFrom: ppfriends3@hotmail.comTo: ted.jordan@lacity.org; adam.lid@lacity.org; councilman.rosendahl@lacity.org; janice.hahn@lacity.org; councilmember.garcetti@lacity.org; paul.koretz@lacity.org; councilmember.huizar@lacity.org; councilmember.smith@lacity.org; councilmember.alarcon@lacity.org; councilmember.labonge@lacity.org; ctrutanich@lacity.org; cynthia.ruiz@lacity.org; paula.daniels@lacity.org; julie.gutman@lacity.org; andrea.alarcon@lacity.org; valerie.shaw@lacity.org; david.berger@lacity.org; jane.usher@lacity.org; norman.kulla@lacity.org; whitney.blumenfeld@lacity.org; jessyca.avalos@lacity.org; frank.hong@lacity.org; chris.koontz@lacity.org; jay.greenstein@lacity.org; kelli.bernard@lacity.org; renee.weitzer@lacity.org; shawn.bayliss@lacity.org; erik.sanjurjo@lacity.org; tara.devine@lacity.org; faisal.alserri@lacity.org; sarah.brennan@lacity.org; marisa.alcaraz@lacity.org; phyllis.winger@lacity.org; hannah.lee@lacity.org; paul.backstrom@lacity.org; jennifer.badger@lacity.orgCC: info@pprainc.org; barbara@kohn.com

Subject: CF 09-2645/regulation, safety concerns

Date: Mon, 5 Apr 2010 12:09:53 -0700

Pacific Palisades Residents Association

P.O. Box 617

Pacific Palisades, CA 90272

Re CF 09-2645/regulation, safety concerns

Dear Mr. Jordan, Honorable Councilmembers, Board of Public Works Members and other City officials:

Sunday's earthquake near Mexicali -- at 7.2 stronger in magnitude than the Haiti earthquake, but weaker than "the big one" predicted for Los Angeles -- caused utility poles supporting heavy equipment to fall across roads and onto structures. http://abclocal.go.com/kabc/gallery?section=weather/earthquake_center&id=7367332&photo=12.

The recent Chilean earthquake (at 8.8 closer to the magnitude expected for Los Angeles) also caused utility poles to snap and fall. <http://www.globalpost.com/dispatch/chile/100228/chile-earthquake-damage?page=0,0>

While such accidents obviously cannot be prevented in every case of extreme natural disaster, PPRA submits that it is the City's obligation *at a minimum* to enact responsible regulation and to require appropriate environmental and safety reviews in order to safeguard against this scenario -- rules and regimens that to our

knowledge are not presently in place in Los Angeles in regard to cell site installations in the public right of way (PROW).

As you know, utility poles supporting wireless antennas and related heavy equipment, often *3 times the size of poles previously in place*, are being erected at a rapid pace without regulation or any safety or environmental reviews in Los Angeles' residential areas. Sixty foot high cell towers loaded with equipment are installed to replace 20 foot high poles that previously supported only one or two wires -- many by telecom providers, others by LADWP itself -- *within a few feet from homes*, without notice to residents, without installation permits or even excavation permits, and without arguably required CEQA reviews. As we previously advised in our Summary dated 1/6/10 (filed in CF 09-2645), LADWP has publicly stated that cell site poles as high as 110 feet have actually been installed without safety analyses, and no one in the City seems to have an accurate record of the number or location of all such facilities.

The City of Los Angeles should follow the lead of cities such as Glendale and San Francisco and take immediate action to revise its current wireless facility regulations in order to protect residents, particularly with respect to PROW cell site installations. **Again, we urge that the city attorney's report pursuant to Councilman Rosendahl's motion be completed as soon as possible and that the Public Works Committee take up this important matter without further delay.**

Sincerely,

Christina Spitz
Vice-President, PPRA

From: ppfriends3@hotmail.com
 To: ted.jordan@lacity.org
 CC: adam.lid@lacity.org; councilman.rosendahl@lacity.org; janice.hahn@lacity.org;
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 Subject: CF 09-2645/Proposed Ordinances, Legal Discussion
 Date: Thu, 1 Apr 2010 15:15:36 -0700

Pacific Palisades Residents Association

P.O. Box 617
Pacific Palisades, CA 90272

Re: CF 09-2645/Glendale & SF Proposed Ordinances, Legal Discussion

Dear Mr. Jordan:

Please note the following:

- Press release re City of Glendale upcoming action (4/6/10) on proposed revised wireless facility ordinance: http://www.ci.glendale.ca.us/pdf/WirelessTelecomMtg_040610.pdf
- City of Glendale Planning Commission Staff Report (1/20/10), by Christina Sansone, Public Works General Counsel, re revised wireless facility ordinance (**Sansone Glendale Report**): http://www.ci.glendale.ca.us/government/packets/PC_020310/PGP-2010-001_PZON-2010-001.pdf

- Proposed revised Glendale wireless facility ordinance (regulating private property installations and installations in PROWs): <http://www.ci.glendale.ca.us/pdf/WirelessTelecommunicationsFacilitiesOrdinance040610.pdf>
- Draft of proposed revised San Francisco ordinance (**Draft SF Ordinance**) regulating wireless facility installations in PROWs (still in drafting stage; completion and vote anticipated in late April): *see attached document.*

Both of these proposed ordinances have provisions and features which PPRA supports. However, without commenting on specific provisions of either proposed ordinance at this time, *we call your attention in particular to the summary and discussion of relevant law contained in the **Sansone Glendale Report** as well as in the preface to the **Draft SF Ordinance**.*

We also note that last night, the Westside Regional Alliance of Councils (WRAC) voted unanimously in favor of a motion calling for a comprehensive new ordinance regulating all wireless facilities in Los Angeles.

Sincerely,

Christina Spitz
Vice-President, PPRA

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 **SF ROW Legislation.3.19.10 update.DOC**

196K

FILE NO.

ORDINANCE NO.

1 [Personal Wireless Service Facility Site Permits.]

2
3 **Ordinance amending the San Francisco Public Works Code by adding Article 25,**
4 **Sections 1500 through 1526, to establish new requirements for Personal Wireless**
5 **Service Facility Site Permits and to increase certain fees for obtaining such permits,**
6 **amending the San Francisco Administrative Code by amending Chapter 11, Article 1,**
7 **Section 11.9 to eliminate obsolete provisions related to such permits, making the**
8 **provisions of the ordinance retroactive, and making environmental findings.**

9 NOTE: Additions are single-underline italics Times New Roman;
10 deletions are ~~strike through italics Times New Roman~~.
11 Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

12 Be it ordained by the People of the City and County of San Francisco:

13 Section 1. Findings.

14 (a) Background

15 (1) Growing demand for wireless telecommunications services has resulted in
16 increasing requests from the wireless industry to place wireless antennas and other
17 equipment on utility and street light poles in the public-rights of way.

18 (2) Federal law limits the authority of local governments to enact laws that prohibit
19 or have the effect of prohibiting the provision of telecommunications service. At the same
20 time, federal law allows local governments to regulate the use of the public rights-of-way to
21 provide telecommunications service.

22 (3) The permissible boundaries of local government regulation under federal law
23 have been the subject of considerable litigation. In 2008, the United States Court of Appeals
24 for the Ninth Circuit interpreted a key provision of federal law to allow local governments to
25 regulate the placement of wireless facilities in the public rights-of-way based on, among other

1 factors, aesthetic impacts, provided that such regulation does not have the effect of
2 prohibiting the provision of telecommunications service.

3 (4) Federal law also limits the authority of local governments to regulate wireless
4 facilities based on the environmental effects of radio frequency emissions. Local
5 governments may only ensure that such wireless facilities comply with the regulations of the
6 Federal Communications Commission (“FCC”) regarding radio frequency emissions.

7 (5) Under state law, “telephone corporations” have a right to use the public
8 rights-of-way to install and maintain “telephone lines” and related facilities required to provide
9 telephone service. Local governments, however, may enact laws that limit the intrusive
10 effect of these lines and facilities.

11 (6) As of the date of this Ordinance, state law is unresolved as to: (a) whether the
12 rights of “telephone corporations” to install and maintain “telephone lines” in the public
13 rights-of-way apply to companies that install and maintain wireless facilities; and (b) whether
14 and to what extent local governments may regulate the installation and maintenance of
15 “telephone lines” in the public rights-of-way based on aesthetic impacts. While a state court
16 has yet to decide these issues, in 2009 the United States Court of Appeals for the Ninth
17 Circuit interpreted state law to authorize local governments to consider aesthetics in deciding
18 whether to permit the installation of wireless facilities in the public rights-of-way.

19 (7) The City has been regulating the installation of wireless facilities in the public
20 rights-of-way since 2007. At that time, the Board of Supervisors (the “Board”) adopted
21 Ordinance No. 214-07 to amend Chapter 11, Article 1, Section 11.9(b) of the San Francisco
22 Administrative Code to require a telecommunications carrier seeking to install a personal
23 wireless service facility in the public rights-of-way to obtain a personal wireless service
24 facilities site permit from the Department of Public Works (the “Department”).

25

1 (b) The Need to Regulate the Size and Appearance of Wireless Facilities

2 (1) Surrounded by water on three sides, San Francisco is widely recognized to be
3 one of the world's most beautiful cities. Scenic vistas and views throughout San Francisco of
4 both natural settings and human-made structures contribute to its great beauty.

5 (2) The City's beauty is vital to the City's tourist industry and is an important reason
6 for businesses to locate in the City and for residents to live here. Beautiful views enhance
7 property values and increase the City's tax base. The City's economy, as well as the health
8 and well-being of all who visit, work or live in the City, depends in part on maintaining the
9 City's beauty.

10 (3) The types of wireless antennas and other associated equipment that
11 telecommunications providers install in the public rights-of-way can vary considerably in size
12 and appearance. The City needs to regulate the size and appearance of such facilities in
13 order to prevent telecommunications providers from installing wireless antennas and
14 associated equipment in the City's public rights-of-way either in manners or in locations that
15 will diminish the City's beauty.

16 Section 2. The San Francisco Public Works Code is hereby amended to add Article
17 25, to read as follows:

18
19 **ART. 25 PERSONAL WIRELESS SERVICE FACILITIES.**

20
21 **SEC. 1500. PERSONAL WIRELESS SERVICE FACILITY SITE PERMIT.**

22 (a) Personal Wireless Service Facility Site Permit Required. The Department shall require
23 any Person seeking to construct, install, or maintain a Personal Wireless Service Facility in the Public
24 Rights-of-Way to obtain a Personal Wireless Service Facility Site Permit.

25 (b) Minimum Permit Requirements.

1 (1) The Department shall not issue a Personal Wireless Service Facility Site Permit if the
2 Application for a Personal Wireless Service Facility Site Permit does not comply with all of the
3 requirements of this Article 25.

4 (2) The Department shall require an Applicant for a Personal Wireless Service Facility
5 Site Permit to demonstrate to the satisfaction of the Department that:

6 (A) The Department has issued the Applicant a Utility Conditions Permit as required by
7 San Francisco Administrative Code Section 11.9;

8 (B) The pole owner has authorized the Applicant to use or replace the Utility or Street
9 Light Pole identified in the Application; and

10 (C) The Applicant has obtained any approvals that may be required under the California
11 Environmental Quality Act (California Public Resources Code Section 21000 et seq.) to construct,
12 install, and maintain the proposed Personal Wireless Service Facility.

13 (c) The Department shall not issue a Personal Wireless Service Facility Site Permit if the
14 Applicant seeks to:

15 (1) Install a new Utility or Street Light Pole on a Public Right-of-Way where there
16 presently are no overhead utility facilities; or

17 (2) Add a Personal Wireless Service Facility on a Utility or Street Light Pole for which a
18 Personal Wireless Service Facility Site Permit has already been approved.

19 (d) Permit Conditions. The Department may include in a Personal Wireless Service
20 Facility Site Permit such conditions, in addition to those already set forth in this Article 25 and other
21 Applicable Law, as may be required to govern the construction, installation, or maintenance of
22 Personal Wireless Service Facilities in the Public Rights-of-Way, and to protect and benefit the public
23 health, safety, welfare, and convenience. Such conditions may also govern the installation and use of
24 equipment that is not located on a Utility or Street Light Pole, but that is necessary for the use of a
25 permitted Personal Wireless Service Facility.

1 (e) Other Provisions Inapplicable. Notwithstanding the requirements of San Francisco
2 Business and Tax Code Sections 5, 6, and 26(a), the provisions of this Article 25 shall govern all
3 actions taken by the City with respect to the approval or denial of an Application for a Personal
4 Wireless Service Site Facility Site Permit under this Article 25.

5
6 **SEC. 1501. DEPARTMENT ORDERS AND REGULATIONS.**

7 The Department may adopt such orders or regulations as it deems necessary to implement the
8 requirements of this Article 25, or to otherwise preserve and maintain the public health, safety,
9 welfare, and convenience, as are consistent with this requirements of this Article25 and Applicable
10 Law.

11
12 **SEC. 1502. DEFINITIONS.**

13 For purposes of this Article 25, the following terms, phrases, words, abbreviations, their
14 derivations, and other similar terms, when capitalized, shall have the meanings given herein. When
15 not inconsistent with the context, words used in the present tense include the future tense; words in the
16 plural number include the singular number; and words in the singular number include the plural
17 number.

18 (a) “Adjacent” means:

19 (1) On the same side of the street and in front of the building or the next building on either
20 side, when used in connection with a national historic landmark, California landmark, San Francisco
21 landmark, structure of merit, architecturally significant building, or locally significant building; and

22 (2) In front of and on the same side of the street, when used in connection with a City park
23 or open space.

24 (b) “Applicable Law” means all applicable federal, state, and City laws, ordinances,
25 codes, rules, regulations and orders, as the same may be amended or adopted from time to time.

- 1 (c) “Applicant” means any Person submitting an Application for a Personal Wireless
2 Service Facility Site Permit under this Article 25.
- 3 (d) “Application” means an application for a Personal Wireless Service Facility Site
4 Permit under this Article 25.
- 5 (e) “City” means the City and County of San Francisco.
- 6 (f) “Conditions” means any additional requirements that a City department reviewing an
7 Application for a Personal Wireless Service Facility Site Permit has determined are necessary for the
8 Application to meet those requirements of this Article 25 that are within that department’s purview.
- 9 (g) “Department” means the Department of Public Works.
- 10 (h) “Director” means the Director of Public Works.
- 11 (i) “FCC” means the Federal Communications Commission.
- 12 (j) “Park Protected Location” means a proposed location for a Personal Wireless Service
13 Facility in the Public Rights-of-Way that is Adjacent to a City park or open space.
- 14 (k) “Park Protected Location Compatibility Standard” means whether a Personal Wireless
15 Service Facility that is proposed to be located in a Park Protected Location would significantly impair
16 the views of a City park or open space or significantly degrade the aesthetic or natural attributes that
17 define the City park or open space.
- 18 (l) “Permittee” means a Person issued a Personal Wireless Service Facility Site Permit.
- 19 (m) “Person” means any individual, group, company, partnership, association, joint stock
20 company, trust, corporation, society, syndicate, club, business, or governmental entity. “Person” shall
21 not include the City.
- 22 (n) “Personal Wireless Service” means commercial mobile services provided under a
23 license issued by the FCC.
- 24 (o) “Personal Wireless Service Facility” or “Facility” means antennas and related
25 facilities used to provide or facilitate the provision of Personal Wireless Service.

1 (p) “Personal Wireless Service Facility Site Permit” or “Permit” means a permit issued
2 by the Department pursuant to this Article 25 authorizing a Permittee to construct, install, and
3 maintain a Personal Wireless Service Facility.

4 (q) “Planning Protected Location” means any of the following proposed locations for a
5 Personal Wireless Service Facility:

6 (1) On an historic, historically or architecturally significant, decorative, or specially
7 designed Street Light Pole located in the Public Rights-of-Way;

8 (2) On a Utility or Street Light Pole that is on a Public Right-of-Way that is within a
9 national historic landmark district, listed or eligible national register historic district, listed or eligible
10 California register historic district, San Francisco landmark district, local historic or conservation
11 district, or locally significant district, as more specifically described and cataloged in materials
12 prepared and maintained by the Planning Department;

13 (3) On a Utility or Street Light Pole that is on a Public Right-of-Way that is Adjacent to a
14 national historic landmark, California landmark, San Francisco landmark, structure of merit,
15 architecturally significant building, or locally significant building, as more specifically described
16 and cataloged in materials prepared and maintained by the Planning Department;

17 (4) On a Utility or Street Light Pole that is on a Public Right-of-Way that the San
18 Francisco General Plan has designated as being most significant to City pattern, defining City form,
19 or having an important street view for orientation;

20 (5) On a Utility or Street Light Pole that is on a Public Right-of-Way that the San
21 Francisco General Plan has designated as having views that are rated “excellent” or “good”; or

22 (6) On a Utility or Street Light Pole that is on a Public Right-of-Way that is within a
23 Residential or Neighborhood Commercial zoning district under the San Francisco Planning Code.

24 (r) “Planning Protected Location Compatibility Standard” means whether the Applicant
25 for a Personal Wireless Service Facility Site Permit demonstrates that a proposed Personal

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1 Wireless Service Facility would be compatible with any of the Planning Protected Locations as
2 follows:

3 (1) For a historic, historically or architecturally significant, decorative, or specially
4 designed Street Light Pole, the applicable standard is whether a proposed Personal Wireless Service
5 Facility would significantly degrade the aesthetic attributes that distinguish the Street Light Pole as
6 historic, historically significant, architecturally significant, decorative, or specially designed.

7 (2) For a Public Right-of-Way that is within a national historic landmark district, listed or
8 eligible national register historic district, listed or eligible California register historic district, San
9 Francisco landmark district, local historic or conservation district, or locally significant district, the
10 applicable standard is whether a proposed Personal Wireless Service Facility would significantly
11 degrade the aesthetic attributes that were the basis for the special designation of the district.

12 (3) For a Utility or Street Light Pole that is Adjacent to a national historic landmark,
13 California landmark, San Francisco landmark, structure of merit, architecturally significant building,
14 or locally significant building, the applicable standard is whether a proposed Personal Wireless
15 Service Facility would significantly degrade the aesthetic attributes that were the basis for the special
16 designation of the building.

17 (4) For a Public Right-of-Way that the San Francisco General Plan has designated as
18 being most significant to City pattern, defining City form, or having an important street view for
19 orientation, the applicable standard is whether a proposed Personal Wireless Service Facility would
20 significantly degrade the aesthetic attributes that were the basis for the designation of the street for
21 special protection under the General Plan.

22 (5) For a Public Right-of-Way that the San Francisco General Plan has designated as
23 having views that are rated "excellent" or "good," the applicable standard is whether a proposed
24 Personal Wireless Service Facility would significantly impair the views of any of the important
25

1 buildings, landmarks, open spaces, or parks that were the basis for the designation of the street as a
2 view street.

3 (6) For a Public Right-of-Way that is in a Residential or Neighborhood Commercial
4 zoning district, the applicable standard is whether a proposed Personal Wireless Service Facility
5 would significantly detract from the character of the neighborhood.

6 (s) “Public Health Compliance Standard” means whether: (i) any potential human
7 exposure to radio frequency emissions from a proposed Personal Wireless Service Facility described
8 in an Application is within the FCC guidelines; and (ii) noise at any time of the day or night from
9 the proposed Personal Wireless Service Facility described in an Application is not greater
10 than forty-five (45) dBA as measured at a distance three (3) feet from any residential building
11 facade.

12 (t) “Public Rights-of-Way” means the area in, on, upon, above, beneath, within, along,
13 across, under, and over the public streets, sidewalks, roads, lanes, courts, ways, alleys, spaces, and
14 boulevards within the geographic area of the City in which the City now or hereafter holds any
15 property interest, which is dedicated to public use and which, consistent with the purposes for which it
16 was dedicated, may be used for the purpose of installing and maintaining Personal Wireless Service
17 Facilities to provide Personal Wireless Service to customers.

18 (u) “Street Light Pole” means a pole used solely for street lighting and which is located in
19 the Public Rights-of-Way.

20 (v) “Tier III-A Compatibility Standard” means a Planning Protected Location
21 Compatibility Standard by which the Planning Department shall make a compatibility determination
22 based on an analysis of the additional impact, if any, that a proposed Tier III-A Facility would have
23 on the character of the neighborhood, as compared to the impact a Tier I Facility or a Tier II Facility
24 would have at the same location.

1 (w) “Tier III-B Compatibility Standard” means a Planning Protected Location
2 Compatibility Standard by which the Planning Department shall make a compatibility determination
3 based on an analysis of the additional impact, if any, that a proposed Tier III-B Facility would have
4 on a Planning Protected Location, as compared to the impact a Tier I Facility or a Tier II Facility
5 would have at the same location.

6 (x) “Tier III-C Compatibility Standard” means a Park Protected Location Compatibility
7 Standard by which the Recreation and Park Department shall make a compatibility determination
8 based on an analysis of the additional impact, if any, that a Proposed Tier III-C Facility would have
9 on a Park Protected Location, as compared to the impact a Tier I Facility or Tier II Facility would
10 have at the same location.

11 (y) “Tier II-B Compatibility Standard” means a Planning Protected Location
12 Compatibility Standard by which the Planning Department shall make a compatibility determination
13 based on an analysis of the additional impact, if any, that a proposed Tier II-B Facility would have on
14 a Planning Protected Location, as compared to the impact a Tier I Facility would have at the same
15 location.

16 (z) “Tier II-C Compatibility Standard” means a Park Protected Location Compatibility
17 Standard by which the Recreation and Park Department shall make a compatibility determination
18 based on an analysis of the additional impact, if any, that a Proposed Tier II-C Facility would have on
19 a Park Protected Location, as compared to the impact a Tier I Facility would have at the same
20 location.

21 (aa) “Tier I Criteria” is the criteria for the equipment allowed to be used with a Tier I
22 Personal Wireless Service Facility, as set forth in Section 1503(a) below.

23 (bb) “Tier II Criteria” is the criteria for the equipment allowed to be used with a Tier II
24 Personal Wireless Service Facility, as set forth in Section 1503(b) below.

25

- 1 (cc) “Tier I Facility” is a Personal Wireless Service Facility that complies with the Tier I
2 Criteria.
- 3 (dd) “Tier III Facility” is a Personal Wireless Service Facility that does not meet the Tier I
4 or Tier II Criteria.
- 5 (ee) “Tier II Facility” is a Personal Wireless Service Facility that complies with the Tier II
6 Criteria.
- 7 (ff) “Tier I Facility Permit” is a Permit to install a Tier I Facility.
- 8 (gg) “Tier III Facility Permit” is a Permit to install a Tier III Facility.
- 9 (hh) “Tier II Facility Permit” is a Permit to install a Tier II Facility.
- 10 (ii) “Tier III Necessity Standard” means whether a Tier II Facility is insufficient to meet
11 the Applicant’s service needs because the Applicant has demonstrated one of the following:
- 12 (1) Approval of the Application for a Tier III Facility Permit would reduce the number of
13 Personal Wireless Service Facilities that the Applicant would otherwise need to install in the vicinity
14 of the proposed Tier III Facility; or
- 15 (2) Any other showing related to the Applicant’s service needs that the Department may
16 allow by order or regulation.
- 17 (jj) “Tier II Necessity Standard” means whether a Tier I Facility is insufficient to meet the
18 Applicant’s service needs because the Applicant has demonstrated one of the following:
- 19 (1) Approval of the Application for a Tier II Facility Permit would reduce the number of
20 Personal Wireless Service Facilities that the Applicant would otherwise need to install in the vicinity
21 of the proposed Tier II Facility; or
- 22 (2) Any other showing related to the Applicant’s service needs that the Department may
23 allow by order or regulation.
- 24 (kk) “Unprotected Location” means a proposed location for a Personal Wireless Service
25 Facility that is neither a Planning Protected Location nor a Park Protected Location.

1 (ll) “Utility Pole” means a power pole, telephone pole, or other similar pole located
2 within the Public Rights-of-Way.

3
4 **SEC. 1503. TYPES OF PERSONAL WIRELESS SERVICES FACILITIES.**

5 (a) Tier I Facility. The Department shall not approve an Application for a Tier I Facility
6 Permit unless the Application complies with the following Tier I Criteria:

7 (1) Antenna. A Tier I Facility may add no more than three (3) antennas to a Utility or
8 Street Light Pole. Each antenna shall be cylindrical in shape and shall be no more than three (3) feet
9 high and two (2) inches in diameter. If Applicable Law, or generally applicable written rules of the
10 pole owner, require a supporting element for the antenna such as a cross-arm or pole top extension,
11 such supporting element shall be no larger, longer, or bulkier than is necessary to comply with
12 Applicable Law or such generally applicable written rules.

13 (2) Equipment Enclosures. A Tier I Facility may add no more than two (2) equipment
14 enclosures, as follows:

15 (A) A primary equipment enclosure to be installed on the same Utility or Street Light Pole
16 as the antenna(s), which shall be no larger than three (3) cubic feet in volume with a width not
17 exceeding twelve (12) inches and a depth not exceeding ten (10) inches. An electricity meter and a
18 cut-off switch may be located outside of the primary equipment enclosure. The Department may, by
19 order, allow a larger primary equipment enclosure if the Applicant demonstrates that the enclosure
20 will contain an electricity meter and cut-off switch, provided that the width of the enclosure does not
21 exceed twelve (12) inches and the depth does not exceed ten (10) inches; and

22 (B) A secondary equipment enclosure to be installed on a Utility or Street Light Pole that is
23 near the Utility or Street Light Pole to be used for the antenna(s) and primary equipment enclosure,
24 which shall be no larger than three (3) cubic feet in volume with a width not exceeding twelve (12)
25 inches and a depth not exceeding ten (10) inches.

1 (b) Tier II Facility. The Department shall not approve an Application for a Tier II Facility
2 Permit unless the Application complies with the following Tier II Criteria:

3 (1) Antennas. A Tier II Facility may add one (1) or more antennas to a Utility or Street
4 Light Pole provided that the antennas would fit completely within one (1) of the following enclosure
5 sizes. The use of an antenna enclosure is not required to qualify as a Tier II Facility.

6 (A) For an installation on top of a Utility or Street Light Pole, the antenna or antenna
7 enclosure shall:

8 (i) Be cylindrical in shape;

9 (ii) Not exceed three (3) feet in height; and

10 (iii) Not exceed the diameter of the top of the pole; or

11 (B) For an installation on the side of a Utility or Street Light Pole, the size of the antenna
12 or antenna enclosure shall:

13 (i) Not exceed three (3) feet in height; and

14 (ii) In the case of a cylindrical antenna or antenna enclosure, not exceed eighteen (18)
15 inches in diameter; or

16 (iii) In the case of a rectangular antenna or antenna enclosure, not exceed eighteen (18)
17 inches in width or depth.

18 (2) Supporting Elements. If Applicable Law, or generally applicable written rules of the
19 pole owner, require a supporting element for any antenna or antenna enclosure such as a cross-arm
20 or pole top extension, such supporting element shall be no larger, longer, or bulkier than is necessary
21 to comply with Applicable Law or such generally applicable written rules.

22 (3) Equipment Enclosures. A Tier II Facility may add no more than two (2) equipment
23 enclosures, as follows:

24 (A) A primary equipment enclosure to be installed on the same Utility or Street Light Pole
25 as the antenna(s) or antenna enclosure, which shall be no larger than three and one-half (3.5) cubic

1 feet in volume, with a width not exceeding twelve (12) inches and a depth not exceeding ten (10)
2 inches. An electricity meter and a cut-off switch may be located outside of the primary equipment
3 enclosure. The Department may, by order, allow a larger primary equipment enclosure if the
4 Applicant demonstrates that the enclosure will contain an electricity meter and cut-off switch,
5 provided that the width of the enclosure does not exceed twelve (12) inches and the depth does not
6 exceed ten (10) inches; and

7 (B) A secondary equipment enclosure to be installed on a Utility or Street Light Pole that
8 is near the Utility or Street Light Pole to be used for the antenna(s) and primary equipment enclosure,
9 which shall be no larger than three and one-half (3.5) cubic feet in volume with a width not exceeding
10 twelve (12) inches and a depth not exceeding ten (10) inches.

11 (4) Location.

12 (A) A Tier II Facility shall be designated a Tier II-A Facility if the proposed location for
13 the facility is in an Unprotected Location.

14 (B) A Tier II Facility shall be designated a Tier II-B Facility if the proposed location for
15 the facility is in a Planning Protected Location.

16 (C) A Tier II Facility shall be designated a Tier II-C Facility if the proposed location for
17 the facility is in a Park Protected Location.

18 (c) Tier III Facility. The Department shall not place any limitations on the antennas or
19 other equipment that may be contained in an Application for a Tier III Facility Permit.

20 (1) Tier III-A. A Tier III Facility shall be designated a Tier III-A Facility if the proposed
21 location for the facility is in an Unprotected Location.

22 (2) Tier III-B. A Tier III Facility shall be designated a Tier III-B Facility if the proposed
23 location for the facility is in a Planning Protected Location.

24 (3) Tier III-C. A Tier III-C Facility shall be designated a Tier III-C Facility if the
25 proposed location for the facility is in a Park Protected Location.

1 **SEC. 1504. INITIAL REVIEWS OF APPLICATIONS.**

2 (a) Completeness Review.

3 (1) Initial Determination. Following receipt of an Application for a Personal Wireless
4 Service Facility Site Permit, the Department shall make an initial determination whether the
5 Application is complete.

6 (2) Notice of Completeness Determination. The Department shall promptly notify an
7 Applicant for a Personal Wireless Service Facility whether the Application is complete.

8 (b) Tier Review.

9 (1) Initial Determination. Following a Department determination that an Application for
10 a Personal Wireless Service Facility Site Permit is complete as required by Section 1504(a) above, the
11 Department shall make an initial determination whether the Application is for a Tier I, Tier II, or Tier
12 III Facility Permit and whether, because of the proposed location for the Personal Wireless Service
13 Facility, the Department must refer the Application to the Planning Department or the Recreation and
14 Park Department (or both if required).

15 (2) Notice of Tier Determination. The Department shall promptly notify an Applicant for a
16 Personal Wireless Service Facility of the Department's determination concerning whether the
17 Application is for a Tier I, Tier II, or Tier III Facility Permit and whether the Planning Department
18 and/or Recreation and Park Department must also review the Application.

19
20 **SEC. 1505. CONDITIONS OF APPROVAL.**

21 (a) Conditions of Approval. Any City department reviewing an Application for a Personal
22 Wireless Service Facility Site Permit, as required by this Article 25, may add Conditions to its
23 approval, tentative approval, or determination.

1 **(b) Conditions in Writing.** *Any Conditions that a City department includes in its approval,*
2 *tentative approval, or determination with respect to an Application for a Personal Wireless Service*
3 *Facility Site Permit shall be in writing.*

4 **(c) Notice of Conditions.** *The Department shall promptly notify the Applicant of any such*
5 *Conditions and shall give the Applicant a reasonable time to accept or reject the Conditions.*

6 **(d) Acceptance of Conditions Required.** *The Department shall not approve an Application*
7 *for a Personal Wireless Service Facility Site Permit unless the Applicant accepts all of the Conditions*
8 *added to an approval, tentative approval, or determination by any City department that reviewed the*
9 *Application.*

10
11 **SEC. 1506. DEPARTMENT OF PUBLIC HEALTH REVIEW.**

12 **(a) Department of Public Health Referral.** *The Department shall refer every Application*
13 *for a Personal Wireless Service Facility Site Permit to the Department of Public Health for review of*
14 *the proposed Personal Wireless Service Facility under the Public Health Compliance Standard.*

15 **(b) Department of Public Health Determination.** *The Department of Public Health shall*
16 *make a determination whether the Application satisfies the Public Health Compliance Standard. The*
17 *determination of the Department of Public Health shall be in writing and shall set forth the reasons*
18 *therefore. The Department of Public Health shall transmit its determination to the Department within*
19 *ten (10) business days of receipt of the Application from the Department. With the concurrence of the*
20 *Applicant, the Department of Public Health may extend this review period beyond ten (10) business*
21 *days.*

22 **(c) Affirmative Determination Required.** *The Department shall not approve an Application*
23 *for a Personal Wireless Service Facility Site Permit unless the Department of Public Health makes a*
24 *determination that the Application satisfies the Public Health Compliance Standard.*

1 **SEC. 1507. DEPARTMENT REVIEW OF A WIRELESS FACILITY PERMIT APPLICATION.**

2 (a) Tier I Facility Permit. The Department shall review an Application for a Tier I Facility
3 Permit to determine whether the Application:

4 (1) Satisfies the Tier I Criteria; and

5 (2) Receives an affirmative determination from the Department of Public Health under the
6 Public Health Compliance Standard.

7 (b) Tier II-A Facility Permit. The Department shall review an Application for a Tier II-A
8 Facility Permit to determine whether the Application:

9 (1) Satisfies the Tier II Criteria;

10 (2) Satisfies the Tier II Necessity Standard; and

11 (3) Receives an affirmative determination from the Department of Public Health under the
12 Public Health Compliance Standard.

13 (c) Tier II-B or Tier II-C Facility Permit. The Department shall review an Application for
14 a Tier II-B or Tier II-C Facility Permit to determine whether the Application:

15 (1) Satisfies the Tier II Criteria;

16 (2) Satisfies the Tier II Necessity Standard;

17 (3) Receives an affirmative determination from the Department of Public Health under the
18 Public Health Compliance Standard; and

19 (4) Receives an affirmative determination from the Planning Department or the Recreation
20 and Park Department (or both if required) under the applicable Tier II-B or Tier II-C Compatibility
21 Standard.

22 (d) Tier III Facility Permit. The Department shall review an Application for a Tier III
23 Facility Permit to determine whether the Application:

24 (1) Satisfies the Tier III Necessity Standard;

1 (2) Receives an affirmative determination from the Department of Public Health under the
2 Public Health Compliance Standard; and

3 (3) Receives an affirmative determination from the Planning Department or the Recreation
4 and Park Department (or both if required) under the applicable Tier III-A, Tier III-B, or Tier III-C
5 Compatibility Standard.

6
7 **SEC. 1508. PLANNING DEPARTMENT REVIEW OF A TIER II-B, TIER III-A, OR TIER**
8 **III-B FACILITY PERMIT APPLICATION.**

9 (a) Referral to Planning Department. If the Department determines that an Application for
10 a Tier II-B, Tier III-A, or Tier III-B Facility Permit meets the applicable Tier II or Tier III Necessity
11 Standard, the Department shall refer the Application to the Planning Department for a review of
12 review of the proposed Personal Wireless Service Facility under the applicable Tier II-B, Tier III-A,
13 or Tier III-B Compatibility Standard.

14 (b) Planning Department determination. The Planning Department shall make a
15 determination whether an Application for a Tier II-B, Tier III-A, or Tier III-B Facility Permit satisfies
16 the applicable Tier II-B, Tier III-A, or Tier III-B Compatibility Standard. The Planning Department's
17 determination shall be in writing and shall set forth the reasons therefore. The Planning Department
18 shall transmit its determination to the Department within twenty (20) business days of receipt of the
19 Application from the Department. With the concurrence of the Applicant, the Planning Department
20 may extend this review period beyond twenty (20) business days.

21 (c) Affirmative Determination Required. The Department shall not approve an Application
22 for a Personal Wireless Service Facility Site Permit unless the Planning Department makes a
23 determination that the Application satisfies the applicable Tier II-B, Tier III-A, or Tier III-B
24 Compatibility Standard.

1 **SEC. 1509. RECREATION AND PARK DEPARTMENT REVIEW OF A TIER II-C OR**
2 **TIER III-C FACILITY PERMIT APPLICATION.**

3 (a) Referral to Recreation and Park Department. If the Department determines that an
4 Application for a Tier II-C or Tier III-C Facility Permit meets the applicable Tier II or Tier III
5 Necessity Standard, the Department shall refer the Application to the Recreation and Park
6 Department for a review of the proposed Personal Wireless Service Facility under the applicable Tier
7 II-C or Tier III-C Compatibility Standard.

8 (b) Recreation and Park Department Determination. The Recreation and Park
9 Department shall make a determination whether an Application for a Tier II-C or Tier III-C Facility
10 Permit satisfies the applicable Tier II-C or Tier III-C Compatibility Standard. The Recreation and
11 Park Department's determination shall be in writing and shall set forth the reasons therefore. The
12 Recreation and Park Department shall transmit its determination to the Department within twenty (20)
13 business days of receipt of the Application from the Department. With the concurrence of the
14 Applicant, the Recreation and Park Department may extend this review period beyond twenty (20)
15 business days.

16 (c) Affirmative Determination Required. The Department shall not approve an Application
17 for a Personal Wireless Service Facility Site Permit unless the Recreation and Park Department
18 makes a determination that the Application satisfies the applicable Tier II-C or Tier III-C
19 Compatibility Standard.

20
21 **SEC. 1510. DEPARTMENT DETERMINATION.**

22 (a) Determination in Writing.

23 (1) Tentative Approval. A Department tentative approval of an Application for a Tier III
24 Facility Permit shall be in writing and shall set forth the reasons therefore. If a Department tentative
25 approval contains any Conditions, the Conditions shall also be in writing.

1 (2) Final Determination. A Department final determination to approve or deny an
2 Application for a Personal Wireless Service Facility Site Permit shall be in writing and shall set forth
3 the reasons therefore. If a Department final determination to approve an Application contains any
4 Conditions, the Conditions shall also be in writing.

5 (b) Tier I or Tier II-A Facility Permit.

6 (1) Denial. The Department shall issue a final determination denying an Application for a
7 Tier I or Tier II-A Facility Permit within three (3) business days of any of the following events:

8 (A) The Department making a determination that the Application does not meet the Tier I
9 or Tier II Criteria, as applicable;

10 (B) The Department's receipt of a determination from the Department of Public Health that
11 the Application does not meet the Public Health Compliance Standard; or

12 (C) If the Department or the Department of Public Health adds any Conditions to its
13 approval of the Application, the Department's receipt of a notice from the Applicant that it rejects any
14 of those Conditions.

15 (2) Approval without Conditions. If neither the Department nor the Department of Public
16 Health adds any Conditions to its approval of an Application for a Tier I or Tier II-A Facility Permit,
17 the Department shall issue a final determination approving the Application within three (3) business
18 days of the occurrence of the last of the following events:

19 (A) The Department making a determination that the Application meets the Tier I or Tier II
20 Criteria, as applicable; or

21 (B) The Department's receipt of a determination from the Department of Public Health that
22 the Application meets the Public Health Compliance Standard.

23 (3) Approval with Conditions. If the Department or the Department of Public Health adds
24 any Conditions to its approval of an Application for a Tier I or Tier II-A Facility Permit, the
25

1 Department shall issue a final determination approving the Application within three (3) business days
2 of the occurrence of the last of the following events:

3 (A) The Department making a determination that the Application meets the Tier I or Tier II
4 Criteria, as applicable;

5 (B) The Department's receipt of a determination from the Department of Public Health that
6 the Application meets the Public Health Compliance Standard; or

7 (C) The Department's receipt of a notice from the Applicant that it accepts all of those
8 Conditions.

9 (c) Tier II-B or Tier II-C Facility Permit.

10 (1) Denial. The Department shall issue a final determination denying an Application for a
11 Tier II-B or Tier II-C Facility Permit within three (3) business days of any of the following events:

12 (A) The Department making a determination that the Application does not meet the Tier II
13 Criteria or Tier II Necessity Standard;

14 (B) The Department's receipt of a determination from the Department of Public Health that
15 the Application does not meet the Public Health Compliance Standard;

16 (C) The Department's receipt of a determination from the Planning Department or the
17 Recreation and Park Department that the Application does not meet the applicable Compatibility
18 Standard; or

19 (D) If any City department that reviewed the Application adds any Conditions to its
20 approval of the Application, the Department's receipt of a notice from the Applicant that it rejects any
21 of those Conditions.

22 (2) Approval without Conditions. If no City department reviewing an Application for a
23 Tier II-B or Tier II-C Facility Permit adds any Conditions to its approval of the Application, the
24 Department shall issue a final determination approving the Application within three (3) business days
25 of the occurrence of the last of the following events:

- 1 (A) The Department making a determination that the Application meets the Tier II Criteria
2 and Tier II Necessity Standard;
- 3 (B) The Department's receipt of a determination from the Department of Public Health that
4 the Application meets the Public Health Compliance Standard; or
- 5 (C) The Department's receipt of a determination from the Planning Department or the
6 Recreation and Park Department (or both if required) that the Application meets the applicable
7 Compatibility Standard.
- 8 (3) Approval with Conditions. If any City department reviewing an Application for a Tier
9 II-B or Tier II-C Facility Permit adds any Conditions to its approval of the Application, the
10 Department shall issue a final determination approving the Application within three (3) business days
11 of the occurrence of the last of the following events:
- 12 (A) The Department making a determination that the Application meets the Tier II Criteria
13 and Tier II Necessity Standard;
- 14 (B) The Department's receipt of a determination from the Department of Public Health that
15 the Application meets the Public Health Compliance Standard;
- 16 (C) The Department's receipt of a determination from the Planning Department or the
17 Recreation and Park Department (or both if required) that the Application meets the applicable
18 Compatibility Standard; or
- 19 (D) The Department's receipt of a notice from the Applicant that it accepts all of those
20 Conditions.
- 21 (d) Tier III Facility Permit.
- 22 (1) Denial. The Department shall issue a final determination denying an Application for a
23 Tier III Facility Permit within three (3) business days of any of the following events:
- 24 (A) The Department making a determination that the Application does not meet the Tier III
25 Necessity Standard;

1 (B) The Department's receipt of a determination from the Department of Public Health that
2 the Application does not meet the Public Health Compliance Standard;

3 (C) The Department's receipt of a determination from the Planning Department or the
4 Recreation and Park Department (or both if required) that the Application does not meet the
5 applicable Compatibility Standard; or

6 (D) If any City department reviewing the Application adds any Conditions to its approval of
7 the Application, the Department's receipt of a notice from the Applicant that it rejects any of those
8 Conditions.

9 (2) Approval without Conditions.

10 (A) If no City department reviewing an Application for a Tier III Facility Permit adds any
11 Conditions to its approval of the Application, the Department shall issue a tentative approval of an
12 Application for a Tier III Facility Permit without Conditions within three (3) business days of the
13 occurrence of the last of the following events:

14 (i) The Department making a determination that the Application meets the Tier III
15 Necessity Standard;

16 (ii) The Department's receipt of a determination from the Department of Public Health that
17 the Application meets the Public Health Compliance Standard; and

18 (iii) The Department's receipt of a determination from the Planning Department or the
19 Recreation and Park Department (or both if required) that the Application meets the applicable
20 Compatibility Standard.

21 (B) Following the Department's tentative approval of an Application for a Tier III Facility
22 Permit without any Conditions, the Department shall issue a final determination as follows:

23 (i) The Department shall require the Applicant to give notice of the tentative approval as
24 required by Section 1511 below; and

25

1 (ii) If no protest is timely submitted, the Department shall issue a final determination
2 approving the Application within a reasonable time after the time to file a protest has expired; or

3 (iii) If a protest is timely submitted, the Department shall issue a final determination
4 approving or denying the Application within a reasonable time after the Director issues a decision
5 under Section 1512(g) below.

6 (3) Approval with Conditions.

7 (A) If any City department reviewing an Application for a Tier III Facility Permit adds any
8 Conditions to its approval of the Application, the Department shall issue a tentative approval of the
9 Application with Conditions within three (3) business days of the occurrence of the last of the
10 following events:

11 (i) The Department making a determination that the Application meets the Tier III
12 Necessity Standard;

13 (ii) The Department's receipt of a determination from the Department of Public Health
14 that the Application meets the Public Health Compliance Standard;

15 (iii) The Department's receipt of a determination from the Planning Department or the
16 Recreation and Park Department (or both if required) that the Application meets the applicable
17 Compatibility Standard; or

18 (iv) The Department's receipt of a notice from the Applicant that it accepts all of those
19 Conditions.

20 (B) Following the Department's tentative approval of an Application for a Tier III Facility
21 Permit with Conditions, the Department shall issue a final determination as follows:

22 (i) The Department shall require the Applicant to give notice of the tentative approval as
23 required by Section 1511 below; and

24 (ii) If no protest is timely submitted, the Department shall issue a final determination
25 approving the Application within a reasonable time after the time to file a protest has expired; or

1 (iii) If a protest is timely submitted, the Department shall issue a final determination
2 approving or denying the Application within a reasonable time after the Director issues a decision
3 under Section 1512(g) below.

4
5 **SEC. 1511. PUBLIC NOTICE FOLLOWING TENTATIVE APPROVAL OF A TIER III**
6 **FACILITY PERMIT APPLICATION.**

7 (a) Public Notice Required. The Department shall require an Applicant for a Tier III
8 Facility Permit to notify the public of a tentative approval of the Application under Sections
9 1510(d)(2) or 1510(d)(3) above, and to provide the Department with evidence, as the Department may
10 require, of compliance with this requirement.

11 (b) Types of Notice Required.

12 (1) Notice by Mail. The Applicant shall mail a copy of the notice to:

13 (A) Any Person owning property or residing within one hundred and fifty (150) feet of the
14 proposed location of the Tier III Facility; and

15 (B) Any neighborhood association identified by the Planning Department for any
16 neighborhood within three hundred (300) feet of the proposed Tier III Facility.

17 (2) Notice by Posting. The Applicant shall post a copy of the notice in conspicuous places
18 throughout the block face where the proposed Tier III Facility is to be located.

19 (c) Contents of Notice. The notice shall contain such information as the Department
20 reasonably requires in order to inform the general public as to the nature of the Application for a Tier
21 III Facility Permit. At a minimum, the notice shall:

22 (1) Provide a description and a photo-simulation of the proposed Tier III Facility;

23 (2) Summarize the determinations of any City departments that were necessary for the
24 tentative approval of the Application;

1 (3) Identify any Conditions added by any City departments that have been accepted by the
2 Applicant and are now part of the Application;

3 (4) State that any Person seeking to protest the Application must submit a protest to the
4 Department within twenty (20) days of the date the notice was mailed and posted;

5 (5) Describe the procedure for submitting a timely protest;

6 (6) Specify the applicable grounds for protesting the Application under this Article 25; and

7 (7) Explain how any interested Person may obtain additional information and documents
8 related to the Application.

9
10 **SEC. 1512. PROTEST OF A TIER III FACILITY PERMIT.**

11 (a) Protest Allowed. Any Person may protest a tentative approval of an Application for a
12 Tier III Facility Permit. A protest must be in writing and must be submitted to the Department within
13 twenty (20) days of the date the notice was mailed and posted as required under Section 1511 above.

14 (b) Hearing Required. If a protest is timely submitted, the Department shall hold a
15 hearing. The Department shall set a date for the hearing that is at least fifteen (15) days, but no more
16 than forty-five (45) days, after the Department's receipt of the protest, unless the Applicant and any
17 Person submitting a protest agree to a later hearing date.

18 (c) Notice of Hearing Date. The Department shall send written notice to any Person
19 submitting a protest and to the Applicant of the date the Department has set for the hearing at least
20 seven (7) days before the date set for the hearing. The Department shall follow its regular procedures
21 for notifying the general public of the date set for the hearing.

22 (d) Hearing Officer. The Department shall appoint an impartial hearing officer to conduct
23 a public hearing on a protest.

24 (e) Hearing Record. The hearing record shall include:

25 (1) The Department's tentative approval of the Application;

1 (2) Any written determination from the Department, the Planning Department, the
2 Recreation and Park Department, and the Department of Public Health (as applicable);

3 (3) Any further written evidence from any City departments submitted either prior to or
4 during the hearing;

5 (4) Any written submissions from the Applicant, any Person submitting a protest, or any
6 other interested Person submitted either prior to or during the hearing; and

7 (5) Any oral testimony from any City departments, the Applicant, any Person submitting a
8 protest, or any interested Person taken during the hearing.

9 (f) Hearing Officer's Report. The hearing officer shall issue a written report and
10 recommendation within ten (10) days of the close of evidence. The hearing officer shall include in the
11 report a summary of the evidence and a recommendation to the Director to either grant or deny the
12 protest of an Application.

13 (g) Director's Decision. The Director shall issue a written decision adopting, modifying,
14 or rejecting the hearing officer's written report and recommendation within seven (7) days of receipt
15 of the report.

16 (h) Grounds for Granting a Protest. The Director may grant a protest of a tentative
17 approval of Application for a Tier III Facility Permit only if the Director finds that the evidence at the
18 hearing supports any one of the following findings:

19 (1) The Department of Public Health incorrectly determined that the Application meets the
20 Public Health Compliance Standard;

21 (2) The Department incorrectly determined that the Application meets the Tier III
22 Necessity Standard;

23 (3) In the case of an Application for a Tier III-A or Tier III-B Facility Permit, the Planning
24 Department incorrectly determined that the Application meets the Tier III-A or Tier III-B
25 Compatibility Standard, as applicable; or

1 (4) In the case of an Application for a Tier III-C Facility Permit, the Recreation and Park
2 Department incorrectly determined that the Application meets the Tier III-C Compatibility Standard.

3
4 **SEC. 1513. NOTICE OF FINAL DETERMINATION.**

5 (a) Approval.

6 (1) Notice by Mail.

7 (A) The Department shall promptly mail a notice of final determination to approve an
8 Application for a Personal Wireless Service Facility Site Permit to both the Applicant and to any
9 neighborhood association identified by the Planning Department for any neighborhood within three
10 hundred (300) feet of the proposed Personal Wireless Service Facility.

11 (B) If a hearing was held on an Application for a Tier III Facility Permit, the Department
12 shall promptly mail a notice of final determination to approve an Application for a Personal Wireless
13 Service Facility Site Permit to any Person who either filed a protest, submitted evidence, or appeared
14 at the hearing, and whose name and address are known to the Department.

15 (2) Notice by Posting. The Department shall require an Applicant for a Personal Wireless
16 Service Facility Site Permit to promptly post notice of a Department final determination to approve an
17 Application for a Personal Wireless Service Facility Site Permit in conspicuous places throughout the
18 block face where the proposed Personal Wireless Service Facility is to be located and to provide the
19 Department with evidence, as the Department may require, of compliance with this requirement.

20 (3) Contents of Notice. A notice of final determination to approve an Application for a
21 Personal Wireless Service Facility Site Permit shall at a minimum:

22 (A) Provide a description and a photo-simulation of the proposed Tier III Facility;

23 (B) Summarize the determinations of the City departments that were necessary for the
24 approval of the Application, including any Conditions added by any City departments that were
25 accepted by the Applicant;

1 (C) State that any Person may file an appeal of the approval of the Application with the
2 Board of Appeals within fifteen (15) days after the date that all notices required by Section 1513(a)
3 above have been provided;

4 (D) Describe the procedure for submitting a timely appeal;

5 (E) Specify the applicable grounds for appealing the approval of the Application under this
6 Article 25; and

7 (F) Explain how any interested Person may obtain additional information and documents
8 related to the Application.

9 (b) Denial.

10 (1) Notice by Mail. The Department shall promptly mail a notice of final determination to
11 deny an Application for a Personal Wireless Service Facility Site Permit to the Applicant.

12 (2) Contents of Notice. A notice of final determination to deny an Application for a
13 Personal Wireless Service Facility Site Permit shall at a minimum:

14 (A) Summarize the determinations of any City departments that were necessary for the
15 denial of the Application, including any Conditions added by any City departments that were rejected
16 by the Applicant.

17 (B) State that the Applicant may file an appeal of the denial of the Application with the
18 Board of Appeals within fifteen (15) days of the Department's mailing of the notice.

19 (C) Describe the procedure for submitting a timely appeal; and

20 (D) Specify the applicable grounds for appealing the denial of the Application under this
21 Article 25.

22
23 **SEC. 1514. APPEALS.**

24 Any Person may appeal a final determination to approve or deny an Application for a Personal
25 Wireless Service Facility Site Permit to the Board of Appeals. Upon such appeal, the Board of

1 Appeals shall determine whether the final determination was correct under the provisions of this
2 Article 25.

3
4 **SEC. 1515. NOTICE OF COMPLETION AND INSPECTION.**

5 (a) Notice of Completion. A Permittee shall notify the Department immediately upon
6 completion of the installation of a Personal Wireless Service Facility. The notice of completion must
7 include a written statement confirming that the potential human exposure to radio frequency emissions
8 from the installed Personal Wireless Service Facility complies with FCC guidelines.

9 (b) Inspection.

10 (1) Required After Installation. The Department shall inspect a Personal Wireless Service
11 Facility installed in the Public Rights-of-Way within a reasonable time after a Permittee provides the
12 Department with a notice of completion required under Section 1515(a) above. The Department shall
13 determine during the inspection whether:

14 (A) The installation is in accordance with the requirements of the Personal Wireless
15 Service Facility Site Permit; and

16 (B) The potential human exposure to radio frequency emissions from the installed Personal
17 Wireless Service Facility is within FCC guidelines.

18 (2) Subsequent Inspection. If at any time the Department has a valid reason to believe that
19 potential human exposure to radio frequency emissions from a permitted and installed Personal
20 Wireless Service Facility exceeds FCC guidelines, the Department shall require the Permittee to
21 provide additional proof of compliance with FCC guidelines. The Department may also request that
22 the Department of Public Health inspect the facility.

23
24
25

1 **SEC. 1516. COMPLIANCE.**

2 (a) Compliance Required. Any Personal Wireless Service Facility installed in the Public
3 Rights-of-Way pursuant to a Personal Wireless Service Facility Permit issued under this Article 25
4 must comply with the terms and conditions of the Permit and this Article 25.

5 (b) Notice of Deficiency.

6 (1) If the Department determines, after an inspection required under Section 1515(b)
7 above or at any other time, that a Personal Wireless Service Facility is not in compliance with the
8 Personal Wireless Service Facility Site Permit or this Article 25, the Department shall issue a notice
9 of deficiency and require the Permittee to take corrective action to bring the Personal Wireless
10 Service Facility into compliance.

11 (2) If the Department determines, after an inspection required under 1515(b) above or at
12 any other time, that potential human exposure to radio frequency emissions from a permitted Personal
13 Wireless Service Facility exceeds FCC guidelines, the Department shall issue a notice of deficiency
14 and require the Permittee to take corrective action to bring the Personal Wireless Service Facility into
15 compliance with FCC guidelines.

16 (3) If the Department determines, after an inspection required under 1515(b) above
17 or at any other time, that noise from a permitted Personal Wireless Service Facility at any
18 time of the day or night exceeds forty-five (45) dBA as measured at a distance three (3) feet
19 from any residential building facade, the Department shall issue a notice of deficiency and
20 require the Permittee to take corrective action to bring the Personal Wireless Service Facility
21 into compliance with the noise limit.

22 (c) Department Remedies. If a Permittee fails to take ~~remedial~~ corrective action with
23 respect to a Personal Wireless Service Facility within a reasonable time after receiving a notice of
24 deficiency the Department shall:

1 (1) Take all reasonable, necessary, and appropriate action to remedy a Permittee's non-
2 compliance; or

3 (2) Require a Permittee to remove the non-compliant Personal Wireless Service Facility
4 from the Public Rights-of-Way; and

5 (3) Charge to a Permittee the reasonable costs that the City has actually incurred
6 including, but not limited to, administrative costs.

7
8 **SEC. 1517. ABANDONMENT.**

9 (a) Permittee Must Maintain Facilities. Any Personal Wireless Service Facility installed in
10 the Public Rights-of-Way pursuant to a Personal Wireless Service Facility Permit issued under this
11 Article 25 must be properly maintained and used to provide Personal Wireless Services.

12 (b) Notice of Abandonment. A Permittee shall notify the Department, or the Department
13 may determine and notify a Permittee, that a Personal Wireless Service Facility installed in the Public
14 Rights-of-Way has been abandoned either because it has not been properly maintained or because it is
15 no longer being used to provide Personal Wireless Services. In such event, a Permittee shall promptly
16 remove the abandoned Personal Wireless Service Facility as required by the Department and at
17 Permittee's expense.

18 (c) Remedy for Non-Compliance. If a Permittee fails to remove an abandoned Personal
19 Wireless Service Facility within a reasonable period of time after receiving a notice of abandonment,
20 the Department shall take all reasonable, necessary, and appropriate action to remedy the Permittee's
21 failure to comply with the notice (including removing the Personal Wireless Service Facility) and may
22 charge to the Permittee the reasonable costs the City has actually incurred including, but not limited
23 to, administrative costs.

1 **SEC. 1518. TERM OF PERMIT.**

2 Personal Wireless Service Facility Site Permit shall have a term of ~~ten (10)~~ two (2) years.
3 The term shall commence upon the completion of the inspection required under Section 1515(b)(1)
4 above.

5
6 **SEC. 1519. RENEWAL.**

7 (a) Renewal Permitted. At the end of the term set forth in Section 1518 above, the
8 Department may renew a Personal Wireless Service Facility Site Permit for the identical Personal
9 Wireless Service Facility at the same permitted location for ~~one (1)~~ four (4) additional two (2)-year
10 terms of ~~ten (10)~~ years.

11 (b) Renewal Application Required. A Permittee seeking to renew a Personal Wireless
12 Service Facility Site Permit must file a renewal Application with the Department prior to the end of
13 the existing term.

14 (c) Approval of Renewal Application. The Department shall approve a renewal
15 Application using the existing equipment at the ~~same permitted~~ location unless, since the
16 commencement of the Permit term as set forth in Section 1518 above, ~~provided that there~~
17 have been ~~no~~ changes to: (i) Applicable Law that would ~~allow~~ authorize the Department to deny a
18 new Application for a Personal Wireless Service Facility Site Permit for the identical Personal
19 Wireless Service Facility at the permitted location; or (ii) readily available technology for Personal
20 Wireless Services Facilities that would make it feasible for the Applicant for a renewal Permit
21 to replace the existing equipment with more advanced and/or less visually obtrusive
22 equipment.

23 (d) Referral to Other Departments. The Department shall refer a renewal Application to
24 other City departments for review before approving or denying the Application under the following
25 circumstances.

1 (1) Department of Public Health. If Applicable Law with respect to human exposure to
2 radio frequency emissions has changed since the date of the approval of the original Application for a
3 Personal Wireless Service Facility Site Permit, the Department shall refer the renewal Application to
4 the Department of Public Health for further review. The Department may not renew the Permit unless
5 the Department of Public Health makes a determination that the Application satisfies the Public
6 Health Compliance Standard and/or other Applicable Law related to human exposure to radio
7 frequency emissions.

8 (2) Planning and Recreation and Park Departments. If a renewal Application is for a
9 Personal Wireless Service Facility that is in a location that was not a Planning Protected Location or
10 Park Protected Location on the date of the approval of the original Application for a Personal
11 Wireless Service Facility Site Permit, the Department shall determine whether changes to Applicable
12 Law since that date have made the location a Planning Protected Location or a Park Protected
13 Location. If so, the Department shall refer the renewal Application to the appropriate City
14 department for review under any standards that did not apply to the original Application. The
15 Department may not renew the Permit unless the Planning Department and/or Recreation and Park
16 Department make a determination that the Application satisfies such newly applicable standards.

17 (e) Applicability of Other Provisions. All the other provisions of this Article 25 related to
18 approval of an Application for a Personal Wireless Service Facility Site Permit shall apply following
19 the Department's approval of a renewal Application. These provisions shall include, but are not
20 limited to, Notice of Final Determination (Section 1513 above), Appeals (Section 1514 above), and
21 Notice of Completion and Inspection (Section 1515 above).

22
23 **SEC. 1520. REPLACEMENT AND MODIFICATION.**

24 (a) Replacement of Equipment. During the term of a Personal Wireless Service Facility
25 Site Permit, a Permittee may replace equipment that is part of a permitted Personal Wireless Service

1 Facility; provided that the replacement equipment would be of substantially the same size,
2 appearance, and power as the previously permitted equipment. The Permittee shall notify the
3 Department prior to replacing any permitted equipment. The Permittee shall not install the proposed
4 replacement equipment unless and until the Department notifies Permittee in writing that the
5 Department has determined that the proposed replacement equipment complies with the requirements
6 of this Section.

7 (b) Modification of Permit. A Permittee may file an Application with the Department to
8 modify a Personal Wireless Service Facility Site Permit to replace any equipment that is part of a
9 permitted Personal Wireless Service Facility if the proposed replacement equipment would not be of
10 substantially the same size, appearance, and power as the previously permitted equipment. The
11 Department shall not approve an Application to modify a Permit unless the Application complies with
12 all of the requirements of this Article 25.

13
14 **SEC. 1521. DEPOSIT.**

15 Each Permittee shall submit and maintain with the Department a bond, cash deposit, or other
16 security acceptable to the Department securing the faithful performance of the obligations of the
17 Permittee and its agent under any Personal Wireless Service Facility Site Permits issued under this
18 Article 25. The deposit shall be in the sum of twenty-five thousand dollars (\$25,000) in favor of the
19 “Department of Public Works, City and County of San Francisco.” If, in accordance with this Article
20 25, the Director deducts any amounts from such a deposit, the Permittee must restore the full amount
21 of the deposit prior to the Department’s issuance of a subsequent Permit. The Department shall
22 return the deposit to the Permittee should Permittee cease to operate any Personal Wireless Service
23 Facilities in the Public Rights-of-Way.

1 **SEC. 1522. LIABILITY.**

2 As a condition of a Personal Wireless Service Site Facility Site Permit, each Permittee agrees
3 on its behalf and on behalf of any agents, successors, or assigns to be wholly responsible for the
4 construction, installation, and maintenance of any permitted Personal Wireless Service Facility. Each
5 Permittee and its agents are jointly and severally liable for all consequences of such construction,
6 installation, and maintenance of a Personal Wireless Service Facility. The issuance of any Personal
7 Wireless Service Facility Site Permit, inspection, repair suggestion, approval, or acquiescence of any
8 person affiliated with the City shall not excuse any Permittee or its agents from such responsibility or
9 liability.

10
11 **SEC. 1523. INDEMNIFICATION AND DEFENSE OF CITY.**

12 (a) Indemnification of City. As a condition of a Personal Wireless Service Site Facility Site
13 Permit, each Permittee agrees on its behalf and on behalf of its agents, successors, or assigns, to
14 indemnify, defend, protect, and hold harmless the City from and against any and all claims of any kind
15 allegedly arising directly or indirectly from the following.

16 (1) Any act, omission, or negligence of a Permittee or its any agents, successors, or assigns
17 while engaged in the construction, installation, or maintenance of any Personal Wireless Service
18 Facility authorized by a Personal Wireless Service Facility Site Permit, or while in or about the Public
19 Rights-of-Way that are subject to the Permit, for any reason connected in any way whatsoever with the
20 performance of the work authorized by the Permit, or allegedly resulting directly or indirectly from
21 the construction, installation, or maintenance of any Personal Wireless Service Facility authorized
22 under the Permit;

23 (2) Any accident, damage, death, or injury to any of a Permittee's contractors or
24 subcontractors, or any officers, agents, or employees of either of them, while engaged in the
25 performance of the construction, installation, or maintenance of any Personal Wireless Service

1 Facility authorized by a Personal Wireless Service Facility Site Permit, or while in or about the Public
2 Rights-of-Way that are subject to the Permit, for any reason connected with the performance of the
3 work authorized by the Permit, including from exposure to radio frequency emissions;

4 (3) Any accident, damage, death, or injury to any Person or accident, damage, or injury to
5 any real or personal property in, upon, or in any way allegedly connected with the construction,
6 installation, or maintenance of any Personal Wireless Service Facility authorized by a Personal
7 Wireless Service Facility Site Permit, or while in or about the Public Rights-of-Way that are subject to
8 the Permit, from any causes or claims arising at any time, including any causes or claims arising from
9 exposure to radio frequency emissions; and

10 (4) Any release or discharge, or threatened release or discharge, of any hazardous
11 material caused or allowed by a Permittee or its agents about, in, on, or under the Public
12 Rights-of-Way.

13 (b) Defense of the City. Each Permittee agrees that, upon the request of the City, the
14 Permittee, at no cost or expense to the City, shall indemnify, defend, and hold harmless the City
15 against any claims as set forth in Sections 1523(a) above, regardless of the alleged negligence of City
16 or any other party, except only for claims resulting directly from the sole negligence or willful
17 misconduct of the City. Each Permittee specifically acknowledges and agrees that it has an immediate
18 and independent obligation to defend the City from any claims that actually or potentially fall within
19 the indemnity provision, even if the allegations are or may be groundless, false, or fraudulent, which
20 obligation arises at the time such claim is tendered to the Permittee or its agent by the City and
21 continues at all times thereafter. Each Permittee further agrees that the City shall have a cause of
22 action for indemnity against the Permittee for any costs the City may be required to pay as a result of
23 defending or satisfying any claims that arise from or in connection with a Personal Wireless Service
24 Facility Site Permit, except only for claims resulting directly from the sole negligence or willful
25 misconduct of the City. Each Permittee further agrees that the indemnification obligations assumed

1 under a Personal Wireless Service Facility Site Permit shall survive expiration of the Permit or
2 completion of installation of any Personal Wireless Service Facility authorized by the Permit.

3 (c) Additional Requirements. The Department may specify in a Personal Wireless Service
4 Facility Site Permit such additional indemnification requirements as are necessary to protect the City
5 from risks of liability associated with the Permittee's construction, installation, and maintenance of a
6 Personal Wireless Service Facility.

7
8 **SEC. 1524. INSURANCE.**

9 (a) Minimum Coverages. The Department shall require that each Permittee maintain in
10 full force and effect, throughout the term of a Personal Wireless Service Facility Site Permit, an
11 insurance policy or policies issued by an insurance company or companies satisfactory to the City's
12 Risk Manager. Such policy or policies shall, at a minimum, afford insurance covering all of the
13 Permittee's operations, vehicles, and employees, as follows:

14 (1) Workers' compensation, in statutory amounts, with employers' liability limits not less
15 than one million dollars (\$1,000,000) each accident, injury, or illness.

16 (2) Commercial general liability insurance with limits not less than one million dollars
17 (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including
18 contractual liability, personal injury, products and completed operations.

19 (3) Commercial automobile liability insurance with limits not less than one million dollars
20 (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including
21 owned, non-owned and hired auto coverage, as applicable.

22 (4) Contractors' pollution liability insurance, on an occurrence form, with limits not less
23 than one million dollars (\$1,000,000) each occurrence combined single limit for bodily injury and
24 property damage and any deductible not to exceed twenty five thousand dollars (\$25,000) each
25 occurrence.

1 **(b) Other Insurance Requirements.**

2 **(1) Said policy or policies shall include the City and its officers and employees jointly and**
3 **severally as additional insureds, shall apply as primary insurance, shall stipulate that no other**
4 **insurance effected by the City will be called on to contribute to a loss covered thereunder, and shall**
5 **provide for severability of interests.**

6 **(2) Said policy or policies shall provide that an act or omission of one insured, which**
7 **would void or otherwise reduce coverage, shall not reduce or void the coverage as to any other**
8 **insured. Said policy or policies shall afford full coverage for any claims based on acts, omissions,**
9 **injury, or damage which occurred or arose, or the onset of which occurred or arose, in whole or in**
10 **part, during the policy period.**

11 **(3) Said policy or policies shall be endorsed to provide thirty (30) days advance written**
12 **notice of cancellation or any material change to the Department.**

13 **(4) Should any of the required insurance be provided under a claims-made form, a**
14 **Permittee shall maintain such coverage continuously throughout the term of a Personal Wireless**
15 **Service Facility Site Permit, and, without lapse, for a period of three (3) years beyond the expiration**
16 **or termination of the Permit, to the effect that, should occurrences during the term of the Permit give**
17 **rise to claims made after expiration or termination of the Permit, such claims shall be covered by such**
18 **claims-made policies.**

19 **(5) Should any of the required insurance be provided under a form of coverage that**
20 **includes a general annual aggregate limit or provides that claims investigation or legal defense costs**
21 **be included in such general annual aggregate limit, such general aggregate limit shall be double the**
22 **occurrence or claims limits specified in Section 1524(a) above.**

23 **(c) Indemnity Obligation. Such insurance shall in no way relieve or decrease a**
24 **Permittee's or its agent's obligation to indemnify the City under Section 1523 above.**

25 **(d) Proof of Insurance.**

1 Before the Department will issue a Personal Wireless Service Facility Site Permit, a Permittee
2 shall furnish to the Department certificates of insurance and additional insured policy endorsements
3 with insurers that are authorized to do business in the State of California and that are satisfactory to
4 the City evidencing all coverages set forth in Section 1524(a) above.

5 (e) Self-Insurance.

6 Where a Permittee is self-insured, and such insurance is no less broad and affords no less
7 protection to the City than the requirements specified in Section 1524(a) above, the Department, in
8 consultation with the City's Risk Manager, may accept such insurance as satisfying the requirements
9 of Section 1524(a) above. Evidence of such self-insurance shall be provided in the manner required
10 by the City's Risk Manager.

11
12 **SEC. 1525. FEES AND COSTS.**

13 (a) Application Fees. City departments shall impose fees for review of an Application for a
14 Personal Wireless Service Facility Site Permit. The purpose of these fees is to enable City
15 departments to recover their costs related to reviewing an Application for a Personal Wireless Service
16 Facility Site Permit.

17 (1) Department Application Fee. Each Applicant for a Personal Wireless Service Facility
18 Site Permit shall pay to the Department a non-refundable Application fee of one hundred dollars
19 (\$100.00) for each Personal Wireless Service Facility proposed in the Application.

20 (2) Other City Department Application Fees. Where, as required under this Article 25, the
21 Department has referred an Application for a Personal Wireless Service Facility Site Permit to the
22 Planning Department, the Recreation and Park Department, or the Department of Public Health, an
23 Applicant shall pay the following additional fees for each Personal Wireless Service Facility
24 contained in an Application for a Personal Wireless Service Facility Site Permit.

1 (A) A Planning Department non-refundable Application fee of one hundred ninety dollars
2 (\$190.00) plus time and materials for any review that takes more than thirty (30) minutes.

3 (B) A Recreation and Park Department non-refundable Application fee of one hundred
4 twenty-five dollars (\$125.00) plus time and materials for any review that takes more than thirty (30)
5 minutes.

6 (C) A Department of Public Health non-refundable Application fee of one hundred sixty-
7 seven dollars (\$167.00) plus time and materials for any review that takes more than sixty (60) minutes.

8 (b) Inspection Fees. The Department and the Department of Public Health shall impose
9 fees for the inspection of a permitted Personal Wireless Service Facility. The purpose of these fees is
10 to enable these City departments to recover their costs related to inspecting a permitted and installed
11 Personal Wireless Service Facility.

12 (1) Department Inspection Fee. Each Permittee shall pay the Department a non-
13 refundable time and materials inspection fee not to exceed one hundred fifty dollars (\$150.00) to
14 inspect a permitted Personal Wireless Service Facility as required under Section 1515(b) above.

15 (2) Department of Public Health Inspection Fee. Each Permittee shall pay the Department
16 of Public Health a non-refundable time and materials inspection fee to inspect a permitted Personal
17 Wireless Service Facility where such inspection is required or requested under Section 1515(b) above.

18 (c) Adjustment of Fees for CPI. Beginning with fiscal year 2011-2012, the fees established
19 herein may be adjusted each year, without further action by the Board of Supervisors, to reflect
20 changes in the relevant Consumer Price Index ("CPI") (as determined by the Controller). No later
21 than April 15th of each year, the Director shall submit the current fee schedule to the Controller, who
22 shall apply the CPI adjustment to produce a new fee schedule for the following year. No later than
23 May 15th of each year, the Controller shall file a report with the Board of Supervisors reporting the
24 new fee and certifying that the fees produce sufficient revenue to support the costs of providing the

1 services for which the Permit fee is charged, and that the fees do not produce revenue that exceeds the
2 costs of providing the services for which each Permit fee is charged.

3 (d) Discretion to Require Additional Fees. In instances where the review of an Application
4 for a Personal Wireless Service Facility Site Permit is or will be unusually costly to the Department or
5 to other City departments, the Director, in his or her discretion, may, after consulting with other
6 applicable City departments, agencies, boards, or commissions, require an Applicant for a Personal
7 Wireless Service Facility Site Permit to pay a sum in excess of the amounts charged pursuant to this
8 Section 1525. This additional sum shall be sufficient to recover actual costs incurred by the
9 Department and/or other City departments, agencies, boards, or commissions, in connection with an
10 Application for a Personal Wireless Service Facility Site Permit and shall be charged on a time and
11 materials basis. Whenever additional fees are charged, the Director, upon request, shall provide in
12 writing the basis for the additional fees and an estimate of the additional fees.

13 (e) Deposit of Fees. All fees paid to the Department for Personal Wireless Service Facility
14 Site Permits shall be deposited in the Public Works Excavation Fund established by San Francisco
15 Administrative Code Section 10.100-230. All other fees shall go directly to the appropriate City
16 department.

17 (f) Reimbursement of City Costs. A City department may determine that it requires the
18 services of a technical expert in order to evaluate an Application for a Personal Wireless Service
19 Facility. In such case, the Department shall not approve the Application unless the Applicant agrees
20 to reimburse the applicable City department for the reasonable costs incurred by that department for
21 the services of a technical expert.

22
23 **SEC. 1526. SEVERABILITY.**

24 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Article 25
25 or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of

1 competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining
2 portions of this Article 25 or any part thereof. The Board of Supervisors hereby declares that it would
3 have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof,
4 irrespective of the fact that any one or more sections, subsections, subdivision paragraphs, sentences,
5 clauses, or phrases be declared unconstitutional, invalid or ineffective.
6

7 Section 3. The San Francisco Administrative Code is hereby amended to read as
8 follows:

9 Sec. 11.9 UTILITY CONDITIONS PERMIT, ~~PERSONAL WIRELESS SERVICE~~
10 ~~FACILITIES SITE PERMIT.~~

11 ~~(a) Utility Conditions Permit.~~

12 ~~(a)~~ Required for Providers of Telecommunications Service, State Video Service
13 and Personal Wireless Service. The Department of Public Works shall require a Person to
14 obtain a Utility Conditions Permit prior to the construction, installation, or maintenance of
15 Facilities in the Public Rights-of-Way that will be used to provide Telecommunications
16 Service, State Video Service or Personal Wireless Service. UCPs shall be issued by the
17 Department of Public Works in a manner consistent with Applicable Law to Persons who are
18 willing to comply with the City's requirements regarding the physical use and occupation of
19 the Public Rights-of-Way and who have: (A) authority to occupy the Public Rights-of-Way
20 pursuant to California Public Utilities Code Section 7901; (B) authority to occupy the Public
21 Rights-of-Way pursuant to California Public Utilities Code Section 5885; or (C) a license to
22 provide Personal Wireless Service issued under federal law. Persons intending to construct,
23 install, or maintain Facilities to provide Telecommunications Services, State Video Service or
24 Personal Wireless Service shall prove their legal right to occupy and use the Public Rights-
25 of-Way by providing the Department of Public Works a copy of their current: (a) certificate of

1 public convenience and necessity issued by the CPUC (which shall expressly state the
2 Person's authority to provide facilities-based Telecommunications Service); (b) State Video
3 Service Franchise issued by the CPUC; or (c) license to provide Personal Wireless Service
4 issued by the FCC.; The Department of Public Works shall include in a UCP such conditions,
5 in addition to those already set forth in Applicable Law, as may be required to govern the
6 Permittee's construction, installation, or maintenance of Facilities in the Public Rights-of-Way
7 to protect and benefit the public health, safety and welfare. The terms and conditions of a
8 UCP shall be limited to those areas consistent with the City's authority under Applicable Law.
9 A UCP shall have a term of no longer than two (2) years and may be renewed in accordance
10 with requirements established by the Department in the UCP. A UCP shall provide that the
11 Permittee is not entitled to construct, install, or maintain Personal Wireless Service Facilities
12 in the Public Rights-of-Way without obtaining a Personal Wireless Service ~~Facilities~~ Facility
13 Site Permit under ~~Section 11.9(b) below~~ Article 25 of the San Francisco Public Works Code.

14 ~~(2)~~ (b) UCP ~~Fee~~. Any Person required to obtain or renew a UCP shall pay to the
15 Department of Public Works a non-refundable application fee of two thousand dollars
16 (\$2,000.00) to compensate the City for all costs (including the City Attorney's costs) related
17 to: (A) establishing the Person's authority to occupy the Public Rights-of-Way; (B)
18 establishing the terms on which Persons may occupy the Public Rights-of-Way; and (C)
19 granting, monitoring, enforcing, renewing, revising or revoking UCPs. These fees shall be
20 deposited in the Public Works Excavation Fund established by Section 10.100-230 of the
21 San Francisco Administrative Code.

22 ~~(b) Personal Wireless Service Facilities Site Permit.~~

23 ~~(1) Required for Personal Wireless Service Facilities. The Department of Public Works shall~~
24 ~~require a Permittee to obtain a Personal Wireless Service Facilities Site Permit to install, construct,~~
25 ~~and maintain Personal Wireless Service Facilities in the Public Rights of Way. The Department of~~

1 ~~Public Works shall include in a Personal Wireless Service Facilities Site Permit such conditions, in~~
2 ~~addition to those already set forth in Applicable Law, as may be required to govern the construction,~~
3 ~~installation, or maintenance of Personal Wireless Service Facilities in the Public Rights of Way to~~
4 ~~protect and benefit the public health, safety and welfare. The terms and conditions of a Personal~~
5 ~~Wireless Service Facilities Site Permit shall be limited to those areas consistent with the City's~~
6 ~~authority under Applicable Law. A Personal Wireless Service Facilities Permit shall have a term of no~~
7 ~~longer than two (2) years and may be renewed in accordance with requirements established by the~~
8 ~~Department in the Personal Wireless Service Facilities Site Permit.~~

9 ~~(2) Procedure for Personal Wireless Service Facilities Site Permits. The Department of~~
10 ~~Public Works shall implement a procedure for issuing Personal Wireless Service Facilities Site~~
11 ~~Permits that is consistent with Applicable Law and the requirements of this Section.~~

12 ~~(A) Review by the Planning Department. The Department of Public Works shall submit to the~~
13 ~~Planning Department for review any application for a Personal Wireless Service Facilities Site Permit~~
14 ~~allowing for the construction, installation, or maintenance of Personal Wireless Service Facilities: (i)~~
15 ~~on historic, historically or architecturally significant, decorative, or specially designed utility poles;~~
16 ~~(ii) in a historic or locally significant district; (iii) adjacent to a historic, architecturally significant or~~
17 ~~locally significant building; or (iv) on a street where the City and County of San Francisco General~~
18 ~~Plan has identified the presence of valued scenic resources that should be protected and conserved.~~
19 ~~The Planning Department shall not recommend approval of a Personal Wireless Service Facilities Site~~
20 ~~Permit unless the Planning Department determines that a Personal Wireless Service Facilities in the~~
21 ~~proposed location is consistent with the public health, safety, convenience and general welfare and~~
22 ~~will not unreasonably affect, intrude upon or diminish any of the identified City resources. Where~~
23 ~~review by the Planning Department is required, the Department of Public Works shall not issue a~~
24 ~~Wireless Services Facilities Site Permit unless the Planning Department has recommended approval.~~

1 ~~(B) – Review by the Recreation and Park Department. The Department of Public Works shall~~
2 ~~submit to the Recreation and Park Department for review any application for a Personal Wireless~~
3 ~~Service Facilities Site Permit allowing for the construction, installation, or maintenance of a Personal~~
4 ~~Wireless Service Facility adjacent to a City park or open space. The Recreation and Park Department~~
5 ~~shall not recommend approval of a Personal Wireless Service Facilities Site Permit unless the~~
6 ~~Recreation and Park Department determines that a Personal Wireless Service Facility in the proposed~~
7 ~~location will not unreasonably affect, intrude upon or diminish a City park or open space. Where~~
8 ~~review by the Recreation and Park Department is required, the Department of Public Works shall not~~
9 ~~issue a Wireless Services Facilities Site Permit unless the Recreation and Park Department has~~
10 ~~recommended approval.~~

11 ~~(C) – Review by the Department of Public Health. The Department of Public Works shall~~
12 ~~submit to the Department of Public Health for review any application for a Personal Wireless Service~~
13 ~~Facilities Site Permit allowing for the construction, installation, or maintenance of a Personal~~
14 ~~Wireless Service Facility. The Department of Public Health shall not recommend approval of a~~
15 ~~Personal Wireless Service Facilities Site Permit unless the Department of Public Health determines~~
16 ~~that any human exposure to radio frequency emissions from the proposed Personal Wireless Service~~
17 ~~Facility is within limits established by the FCC. The Department of Public Works shall not issue a~~
18 ~~Wireless Services Facilities Site Permit unless the Department of Public Health has recommended~~
19 ~~approval.~~

20 ~~(3) – Personal Wireless Service Facilities Site Permit Fees.~~

21 ~~(A) – Fees of the Department of Public Works. An applicant for a Personal Wireless Service~~
22 ~~Facilities Site Permit shall pay to the Department of Public Works: (i) a non-refundable application~~
23 ~~fee of seventy five dollars (\$75.00) for each Personal Wireless Service Facility contained in the~~
24 ~~application to compensate the Department of Public Works for all costs related to reviewing the~~
25 ~~application and; (ii) a non-refundable time and materials inspection fee not to exceed one hundred~~

1 *fifty dollars (\$150.00) for each Personal Wireless Service Facility contained in the application to*
2 *compensate the Department of Public Works for all costs related to inspecting any Personal Wireless*
3 *Service Facility constructed under a Personal Wireless Service Facilities Site Permit to ensure*
4 *compliance with all of the terms and conditions of contained therein, including any costs incurred by*
5 *the Department of Public Health to confirm that human exposure to radio frequency emissions from*
6 *the Personal Wireless Services Facility is within FCC limits.*

7 *(B) Fees of Other City Departments. Where as required under this Section the Department of*
8 *Public Works has referred an application for a Personal Wireless Service Facilities Site Permit to the*
9 *Planning Department, the Recreation and Park Department or the Department of Public Health, the*
10 *applicant shall pay the following additional fees for each Personal Wireless Service Facility contained*
11 *in an application for a Personal Wireless Service Facilities Site Permit: (i) a Planning Department*
12 *non-refundable fee of one hundred five dollars (\$105.00) plus time and materials; (ii) a Recreation*
13 *and Park Department non-refundable fee of one hundred twenty five dollars (\$125.00) and (iii) a*
14 *Department of Public Health non-refundable fee of one hundred thirty five dollars (\$135.00) plus time*
15 *and materials for any review that takes more than thirty (30) minutes. The purpose of these fees is to*
16 *compensate the applicable City department for all costs related to reviewing an application for a*
17 *Personal Wireless Service Facilities Site Permit.*

18 *(C) Adjustment of Fees for CPI. Beginning with fiscal year 2008-2009, the fees established*
19 *herein may be adjusted each year, without further action by the Board of Supervisors, to reflect*
20 *changes in the relevant Consumer Price Index ("CPI") (as determined by the Controller). No later*
21 *than April 15th of each year, the Director of Public Works shall submit the current fee schedule to the*
22 *Controller, who shall apply the CPI adjustment to produce a new fee schedule for the following year.*
23 *No later than May 15th of each year, the Controller shall file a report with the Board of Supervisors*
24 *reporting the new fee and certifying that: (i) the fees produce sufficient revenue to support the costs of*

1 ~~providing the services for which the fee is charged; and (ii) the fees do not produce revenue that~~
2 ~~exceeds the costs of providing the services for which each permit fee is charged.~~

3 ~~(D) Discretion to Require Additional Fees. In instances where the review of an application~~
4 ~~for a Personal Wireless Service Facilities Site Permit is or will be unusually costly to the Department~~
5 ~~of Public Works or to other City agencies, the Director of Public Works, in his or her discretion, may~~
6 ~~require a Person filing an application for a Personal Wireless Service Facilities Site Permit to pay a~~
7 ~~sum in excess of the amount charged pursuant to this section. This additional sum shall be sufficient to~~
8 ~~recover actual costs incurred by the Department of Public Works and/or other agencies, boards,~~
9 ~~commissions, or departments of the City in connection with an application for approval of a Personal~~
10 ~~Wireless Service Facilities Permit and shall be charged on a time and materials basis. Whenever~~
11 ~~additional fees are charged, the Director of Public Works, upon request, shall provide in writing the~~
12 ~~basis for the additional fees and an estimate of the additional fees.~~

13 ~~(E) Deposit of Fees. All fees paid to the Department of Public Works for Personal Wireless~~
14 ~~Service Facilities Site Permits shall be deposited in the Public Works Excavation Fund established by~~
15 ~~Section 10.100-230 of the San Francisco Administrative Code. All other fees shall go directly to the~~
16 ~~appropriate City department.~~

17
18 Section 4. Retroactivity. This section shall not be codified. The Board of
19 Supervisor intends that the requirements of this ordinance shall be retroactive. Any permit
20 under Chapter 11, Article 1, Section 11.9(b) of the San Francisco Administrative Code that is
21 not final on the effective date of this ordinance shall be subject to the requirements of this
22 ordinance.

23
24 Section 5. Environmental Findings. The Planning Department has reviewed the
25 ordinance in accordance with the California Environmental Quality Act (California Public

1 Resources Code Section 21000, *et seq.*). The Board of Supervisors hereby affirms the
2 determination of the Planning Department, which is on file with the Clerk of the Board of
3 Supervisors in File No. _____, and which is hereby declared to be a part of this
4 ordinance as if set forth fully herein.

5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7
8 By: _____
9 WILLIAM K. SANDERS
Deputy City Attorney

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Adam Lid <adam.lid@lacity.org>

FW: CF 09-2645-

1 message

Chris Spitz <ppfriends3@hotmail.com>

Fri, Apr 23, 2010 at 11:37 AM

To: adam.lid@lacity.org

CF 09-2645

Dear Mr. Lid:

Once again I request that you file the following **two** messages (originally sent 4/2 and 2/4) plus attachment in CF 09-2645.

Thank you again.

Sincerely
Chris Spitz
PPRA

From: ppfriends3@hotmail.comTo: ted.jordan@lacity.org

CC: adam.lid@lacity.org; councilman.rosendahl@lacity.org; janice.hahn@lacity.org; councilmember.garcetti@lacity.org; paul.koretz@lacity.org; councilmember.huizar@lacity.org; councilmember.smith@lacity.org; councilmember.alarcon@lacity.org; councilmember.labonge@lacity.org; ctrutanich@lacity.org; cynthia.ruiz@lacity.org; paula.daniels@lacity.org; julie.gutman@lacity.org; andrea.alarcon@lacity.org; valerie.shaw@lacity.org; david.berger@lacity.org; jane.usher@lacity.org; norman.kulla@lacity.org; whitney.blumenfeld@lacity.org; jessyca.avalos@lacity.org; frank.hong@lacity.org; chris.koontz@lacity.org; jay.greenstein@lacity.org; kelli.bernard@lacity.org; renee.weitzer@lacity.org; shawn.bayliss@lacity.org; erik.sanjurjo@lacity.org; [tara.devine@lacity.org](mailto: tara.devine@lacity.org); faisal.alserrri@lacity.org; sarah.brennan@lacity.org; marisa.alcaraz@lacity.org; phyllis.winger@lacity.org; hannah.lee@lacity.org; paul.backstrom@lacity.org; barbara@kohn.com; info@pprainc.org; jennifer.badger@lacity.org

Subject: CF 09-2645/additional info. re proposed ordinances

Date: Fri, 2 Apr 2010 10:14:36 -0700

Pacific Palisades Residents Association

P.O. Box 617

Pacific Palisades, CA 90272

Re: CF 09-2645/additional information re proposed ordinances

Dear Mr. Jordan:

Please note that a staff addendum to the proposed *Glendale* wireless facility ordinance will be submitted to the Glendale city council at the April 6 public hearing on the ordinance:

<http://www.ci.glendale.ca.us/pdf/addendumtothewirelessordwillbeproposed4-6-10.pdf>.

The proposed addendum provides for *hearings of residential/"non-preferred" and historic zone PROW permit applications* to receive "public comments regarding the appropriate time, place and manner of placement" of such facilities, in cases where there is a showing by the applicant of a *significant gap in coverage* and the applicant claims there are *no feasible alternatives*.

Please also note: I am informed that public hearings and final approval of the proposed *San Francisco* right of way ordinance are not expected to take place at the earliest until late May or June.

Sincerely,
Christina Spitz
V.P., PPRA

From: ppfriends3@hotmail.com
To: ted.jordan@lacity.org
CC: adam.lid@lacity.org; councilman.rosendahl@lacity.org; janice.hahn@lacity.org; councilmember.garcetti@lacity.org; paul.koretz@lacity.org; councilmember.huizar@lacity.org; councilmember.smith@lacity.org; councilmember.alarcon@lacity.org; councilmember.labonge@lacity.org; ctrutanich@lacity.org; cynthia.ruiz@lacity.org; paula.daniels@lacity.org; julie.gutman@lacity.org; andrea.alarcon@lacity.org; valerie.shaw@lacity.org; david.berger@lacity.org; jane.usher@lacity.org; norman.kulla@lacity.org; whitney.blumenfeld@lacity.org; jessyca.avalos@lacity.org; frank.hong@lacity.org; chris.koontz@lacity.org; jay.greenstein@lacity.org; kelli.bernard@lacity.org; renee.weitzer@lacity.org; shawn.bayliss@lacity.org; barbara@kohn.com; info@pprainc.org
Subject: CF 09-2645-right of way regulation
Date: Thu, 4 Feb 2010 16:44:33 -0800

Pacific Palisades Residents Association

P.O. Box 617
Pacific Palisades, CA 90272

Re: CF No. 09-2645/additional information re wireless facility regulation in public rights of way

Dear Mr. Jordan:

The following will supplement information previously sent to you by Pacific Palisades Residents Association (PPRA), including the Summary dated January 6, 2010.

1) Government Code sections 65850.6 and 65964

PPRA does not object, as a general rule, to collocation of cell facilities on *existing poles*, without local regulation, as authorized under the above sections. We recognize that collocation on existing poles is encouraged as a way to limit the number of poles in public rights of way (PROWs). Our concerns, if any, are generally in terms of safety (i.e., whether the amount or weight of equipment on a given pole may contribute to a fire hazard or add to damages occasioned by high winds or earthquakes).

Local regulation *can and should be implemented*, however, when new pole structures are constructed in PROWs to support cell antennas and equipment (i.e., "collocation base stations"). As noted in our Summary, it appears that in connection with new replacement pole installations, even though the above statutes *expressly authorize local governments to do so*, the City does not issue discretionary collocation permits or engage in the required review process for such permits (i.e., public hearings, CEQA reviews, consideration of height, location, size, design or aesthetics, etc.).

A telecom industry attorney has noted that local governments *can* "employ their **full slate of discretionary land use powers** over permit applications for collocation base stations" (emphasis added). See attached document, "Telecom Attorney Comments."

PPRA submits that ongoing replacement pole and monopole cell site installations in PROWs are effectively collocation base stations which *the City can and should regulate, using its full slate of discretionary land use powers, as required or contemplated by the above Government Code sections.*

2) "Existing" vs. "New" Pole Installations

PPRA understands that either DWP or wireless providers (or both) apparently contend that a new pole erected to replace a previously existing shorter support pole supposedly "becomes" an "existing" pole (for collocation purposes) the day after it is installed. We submit that this is a disingenuous end-run around the City's regulatory authority.

In replacement pole cases that we are aware of, the new poles were clearly installed in order to place antennas at the very top, to avoid clearance requirements imposed by PUC Rule 94, and to allow the cell provider (if it is the installer) to become the sole entity in control of the structure. The old poles already "did the job" of supporting wires at lower heights; the new poles are usually more than twice the height of the old poles, look substantially different and do not appear to be necessary in most cases but for antenna placement requirements.

As previously noted, the Coastal Commission treats such replacement poles/cell facility base stations located in the Coastal zone as *new installations requiring Coastal permits*. So too should the City treat all such installations as structures subject to discretionary collocation permit requirements. *At a minimum*, the City's regulations should be revised to require a review of the purpose and intent of a replacement pole (and imposition of thorough collocation permit requirements if a cell site is intended) *before* the new structure is installed.

3) DWP Installation of Replacement Poles/Collocation Base Stations

In addition to the Cheviot Hills structure installed by DWP, yet another tall "collocation base station" (replacing an existing pole) was also apparently installed recently by DWP to support cell antennas and equipment (located on the NW corner of Third and Irving Bl. in Hancock Park, a residential neighborhood). This structure bears the insignia "M" for DWP (although there is no identification of the cell provider involved). Wires are attached (allowing it to come within the AGF exclusion). We believe this is a new replacement pole situation (rather than a collocation on an existing pole) because a community leader/NC member informed us that he observed the new pole being installed and the antennas attached at the top shortly thereafter.

As we have noted, it is likely that these are not isolated incidents. To the extent DWP claims that it somehow feels obliged to participate in these installations because if it did not, cell providers purportedly would simply put up their own poles wherever they wished (even right next to the existing pole), *we reject that conclusion and practice as not supported either factually or legally*.

We would also note that by requiring cell providers to go through the minimal AGF permitting process in regard to monopoles (albeit under an ordinance not intended for and without any standards applicable to poles, and without the thorough review process contemplated by the Government Code discretionary permit provisions), clearly BOE and City officials do not agree with the claim that in all cases cell providers have an unfettered right of access to PROWs.

Sincerely,

Christina Spitz
Vice-President,
Pacific Palisades Residents Association

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Telecom Attorney Comments on Senate Bill 1627.doc

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Telecom Attorney Comments on Senate Bill 1627 (Government Code Sections 65850.6 and 65964):

“[T]he statute acknowledges the ability of local governments to employ their **full slate of discretionary land use powers** over permit applications for collocation base stations [cell towers and structures supporting wireless facilities]. The Bill allows local governments to regulate the height, location, bulk and size of those structures. It requires at least one public hearing and subjects the entire process to California Environmental Quality Act review through either an environmental impact report or a negative declaration - leaving no mention of potentially applicable CEQA exemptions. The law goes so far as to expressly permit local governments to control the aesthetics and design of such structures.” [Emphasis added.]

Michael Shonafelt,* Partner, Allen Matkins
<http://www.allenmatkins.com/events/sb1628/sb1628article.htm>
(2007)

*Note: Mr. Shonafelt was attorney for Sprint in the case of *Sprint v. Palos Verdes Estates*.