



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

Fwd: FW: CF 09-2645/Public Works Committee/Cell Report

2 messages

Adam Lid <adam.lid@lacity.org>

Wed, May 25, 2011 at 7:45 AM

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

And yet more...

----- Forwarded message -----

From: **Chris Spitz** <ppfriends3@hotmail.com>

Date: Tue, May 24, 2011 at 10:51 AM

Subject: FW: CF 09-2645/Public Works Committee/Cell Report

To: adam.lid@lacity.org

Dear Mr. Lid:

Please file the attached documents and below email in **CF 09-2645**.

Thank you.

Christina Spitz
Los Angeles WTF Working Group

From: ppfriends3@hotmail.comTo: councilmember.huizar@lacity.org; councilmember.alarcon@lacity.org; councilmember.smith@lacity.orgCC: councilman.rosendahl@lacity.org; mitch.englander@lacity.org; jerry@askew.net;a.vonwechmar@germantvfilms.com; cindy@cmprintmail.com; barbara@kohn.com

Subject: CF 09-2645/Public Works Committee/Cell Report

Date: Mon, 23 May 2011 17:55:30 -0700

Re CF 09-2645

From: Los Angeles Wireless Telecommunications Facilities (WTF) Working Group

To: Honorable Members, Public Works Committee -- Councilmembers Huizar (Chair), Alarcon (Vice-Chair) and Smith

cc: Councilmember Rosendahl (former Chair, PWC); Councilmember-elect Englander (CD12); City Attorney Trutanich; members, Los Angeles WTF Working Group

Background:

The Los Angeles WTF Working Group was formed in 2010 by community leaders in Granada Hills, Sunland-Tujunga, Hollywood and Pacific Palisades. We are concerned with residential WTF proliferation and regulation, particularly in the public right-of-way/PROW. Our members have been investigating this issue and speaking publicly about the need for regulatory reform for more than two years (in one case for more than five years); we

have also met with and provided substantial information on this subject to the City Attorney and other public officials.

In 2009 City Attorney Trutanich was directed to prepare a report on the City's regulation of PROW/WTF in light of then-recent federal court decisions (CF 09-2645 -- a continuation of essentially the same directive in 2008); a prior, similar directive in 2006 to the former City Attorney (Delgadillo) -- arising out of earlier unregulated PROW/WTF -- resulted in *no report* and the expiration of that council file after two years.

Unfortunately, CF 09-2645 (which expires in November) appears to be headed in the same direction as the 2006 council file. Although the City Attorney's office has offered occasional "assurances" about the report's supposed near-completion (including in September 2010, December 2010 and April 2011), *no report has been forthcoming* - despite exploding proliferation of unregulated or minimally regulated residential PROW/WTF, despite serious concerns expressed by **50** NCs, HOAs and coalitions in 2009-2011 (representing **85** organizations City-wide; see attached list), and despite numerous inquiries to the City Attorney. Recent inquiries on this subject have gone completely unanswered.

Request for Action:

We urge the Public Works Committee (PWC) to take the following actions as soon as possible:

- 1) Put this matter on the agenda of an upcoming PWC meeting;**
- 2) Direct the City Attorney to attend as needed.**

It is now abundantly clear that Los Angeles is the odd man out in terms of PROW/WTF regulation (or lack thereof) in residential areas (see attached lists of various cities' ordinances, including comparison of Los Angeles' regulations with those of 15 other California cities). Technological and legal advances have rendered the 8-year-old "AGF" ordinance (enacted in 2003 expressly to regulate *power cabinets* constructed in PROWs -- not poles or antennas) sorely outdated and inadequate. The court decisions that were the impetus for the directed City Attorney report ("new" cases in 2008 and 2009) are by now (2-3 years later) settled law; analysis of the effect and import of these cases is available to anyone interested and has long been available to the City Attorney. Numerous cities have revised their ordinances consistent with case law to provide for enhanced consideration of aesthetics and better protection for residential areas -- without legal challenge, e.g., San Francisco, Richmond, Glendale, Pasadena and Norwalk. There is no reason why the PWC should continue to wait for the City Attorney to produce a written report, and many compelling reasons for the PWC to act now on this issue (see attached document listing in detail reasons for the PWC to act).

Over the past few years members of the Los Angeles WTF Working Group have provided scores of pages of research to the City Attorney and other public officials -- including our own analyses, alerts about legal developments, materials obtained through Public Records requests, reports from other cities' attorneys/officials and documents which the City Attorney asked us to prepare, e.g., lists summarizing extensive regulations enacted by large and/or nearby cities (none of which have experienced legal challenges to date). We have met with the City Attorney and public officials to discuss relevant legal and factual issues. We even introduced our Councilmember and the City Attorney's office almost two years ago to Jonathan Kramer, a prominent telecommunications attorney, expert on WTF law and technology, university lecturer and consultant to cities in California and nationwide; we understand that Mr. Kramer has also provided information pertinent to PROW/WTF governance to members of the City Attorney's office.

In a nutshell, additional extensive research and/or a written report is not required in order for the PWC to recommend revision of the City's PROW/WTF regulations. A few months ago, your staff informed us that the PWC intended to take up this matter in the spring of 2011, "report or not." We hope and trust that this significant issue will be agendized at the earliest opportunity. We would be happy to meet with you to answer questions at your convenience. The members of the Los Angeles WTF Working Group stand ready to work reasonably with the PWC and entire City Council to achieve necessary regulatory reforms.

Thank you for your anticipated attention to this important matter.

Christina Spitz
Founding Member, Los Angeles WTF Working Group
Additional positions (for identification purposes):

5/25/2011

City of Los Angeles Mail - Fwd: FW: CF ...

Chair, Land Use Committee, Pacific Palisades Community Council
Vice-President, Pacific Palisades Residents Association
Member, Land Use & Planning Committee, Westside Regional Alliance of Councils

Los Angeles WTF Working Group members:

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

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

5 attachments



Organizations That Have Passed Motions.doc

34K



Comparison of WTF Governance by California Cities.doc

35K



DiscretionaryPermitsPROW.doc

39K



AdministrativepermitsPROW.doc

34K



Reasons for the PWC Act Now on the Issue of PROW.doc

36K

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

Wed, May 25, 2011 at 8:53 AM

Thanks

[Quoted text hidden]

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

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

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

Additional Neighborhood Councils

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

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

Additional Associations/Coalitions

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

Los Angeles WTF Working Group, 5/22/11
ppfriends3@hotmail.com

Reasons for the PWC Act Now On the Issue of PROW/WTF Regulation

- The City Attorney has been provided with substantial information on this subject and by now knows or should know the relevant facts and law, but for unknown reasons is not responding to inquiries and has not completed the directed report. It has become apparent that the report will not be completed in the near future -- if ever.
- A written report is not needed to confirm that Los Angeles' governance of PROW/WTF is outdated and inadequate. The AGF ordinance (enacted in 2003, before recent advances in technology and the law) on its face regulates cabinets, not poles/antennas. Reasonable, uncomplicated and legally unchallenged regulations governing *all* PROW/WTF (including poles/antennas) and providing greater protections for residential areas -- consistent with established case law -- are *already in place* in 15 cities throughout California and could be easily adapted for application in Los Angeles.
- To date, **50** NCs, HOAs, and coalitions City-wide (representing **85** organizations and millions of Angelenos), in addition to many individual citizens, have publicly expressed concern and/or called for regulatory reform (see the many motions/letters on file in CF 09-2645).
- Telecom carriers admit that WTF are being erected at an exploding rate in residential areas throughout the City -- many literally next to homes, where obtrusive towers result in substantial negative impacts (including visual blight and lowered property values), yet are subject to minimal or no environmental review and inadequate local regulatory processes; in fact, PROW siting appears to be the preferred method of installation (not surprising in light of the City's lax or non-existent regulation of such facilities).
- AT&T is now trumpeting -- in mass mailings to its customers, in prominent radio and television ads, in the LA Times and in other media -- that it will be erecting **40** new cell towers in the Los Angeles area ("*and we're not stopping there!*"); e.g., see full page ads in recent Sunday editions of the LA Times (Section A), including on 5/15/11.
- Pacific Palisades alone, a relatively small community, currently has at least **ten** proposed new WTF in various stages of planning/permitting (two of which are to be AT&T towers) -- all are in residential neighborhoods near residences or along scenic corridors, almost all are in PROWs where there are no other overhead utilities, and almost none are subject to effective (if any) environmental review.
- In many cases the use of street lights to support antennas/WTF might be preferable to erecting new obtrusive towers in residential neighborhoods, but we are told that the Bureau of Street Lighting apparently places unreasonable impediments on the use of street lights for this purpose; moreover, unlike many other cities' ordinances, our current regulations neither require nor encourage the use of street lights, discourage residential siting, nor provide for other siting or structural/pole "preferences."
- Los Angeles inexplicably exempts "pole-mounted" and utility pole installations under the existing (and outdated) AGF ordinance, ostensibly because of supposed authority, control or limitation of the Joint Pole Agreement (JPA); in contrast, as has now been made evident, 15 other California cities *do* regulate such installations, and unlike Los Angeles, JPA members Glendale and Pasadena *do not exempt pole-mounted and/or utility poles from regulation*.
- LADWP officials, staff of the Southern California Joint Pole Committee (SCJPC), Bureau of Engineering staff and even members of the C.A.'s office agree (in various public and private statements made in 2009 and 2010) that: the JPA is an administrative, *not* a regulatory, document; the JPA (which itself provides that members are subject to local regulations) does not prevent the City from regulating such installations; at present the installation of utility pole WTF in Los Angeles is "self-regulated" by the telecom carriers themselves, not by the SCJPA or any other agency or entity; and there is *no* JPA "authority" (a misnomer often used by City officials) regulating utility pole WTF in Los Angeles.
- Increased/enhanced regulation of all PROW/WTF may in fact *help the current budget crisis*. Revenues from permit application fees would likely increase, and an updated regulatory scheme may allow the City to consider imposing continuing usage fees for all PROW/WTF installations (potentially amounting to tens of millions of dollars in annual revenues, now lost to taxpayers because the City does not, to our knowledge, impose usage fees on any PROW/WTF -- unlike rent or other substantial fees routinely charged for installations on private property).
- Many organizations are calling for a **temporary moratorium** until new regulations can be drafted (see motions on file in CF 09-2645). Nine other California cities successfully enacted such moratoria or placed holds on pending applications during their ordinance drafting processes. The same should occur in Los Angeles without further delay.

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

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

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

2. Common key provisions:

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

3. Other provisions of note:

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

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

5. Legal challenges to listed ordinances: None (as of 5/22/11)

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

²Proposed ordinance passed in LB Planning Commission 4/7/11; first reading in LB City Council 5/17/11; second/final reading 5/24/11; enactment expected when temporary moratorium expires in May (LB City Attorney).

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

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

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

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

15 of the 15 require or provide for

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

12 of the 15 require or provide for

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

11 of the 15 require or provide for

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

9 of the 15 require or provide for

- permit duration limits and/or periodic review/monitoring

9 of the 15 imposed

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

8 of the 15 require or provide for

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

7 of the 15 require or provide for

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

6 of the 15 require or provide for

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

Los Angeles:

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

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

Los Angeles WTF Working Group, 5/22/11

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

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

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

- San Francisco (SF; Muni. Code §25.1500)
- Richmond (R; Muni. Code §15.04.890)
- Oakland (O; Muni. Code §17.128)
- San Diego (SD; Muni. Code §141.0420)
- Malibu (M; Muni. Code §§17.46, 17.08.040)
- Pasadena (P; Muni. Code §12.22)
- Norwalk (N; Muni. Code §§17.04.240, 17.02.295)
- Inglewood (I; Muni. Code §10-230)
- Santa Monica (SM; Muni. Code §7.06 -- new poles, over-height poles)

2. Common key provisions:

- Notice of installation and/or hearing to nearby/affected property owners/occupants (300 ft./500 ft.)
- Public comments and/or hearing prior to permit issuance²
- Design, installation and/or development standards (e.g., height, scale, color, finish, camouflage, antenna placement/number, landscaping, setbacks, ID and/or accessory equipment requirements)
- Visual/aesthetic impact and public welfare/safety considerations
- No exemption for pole-mounted or utility pole installations
- Conditions may be imposed by reviewing authority
- Appeals by any interested/aggrieved persons
- Procedures for permit revocation/termination and/or facility removal

3. Other provisions of note:

- Expanded notice (e.g., posting on-site; notice to community groups/others requesting notice; 1000 ft. notice in rural areas) (SF, R, O, SD, N, M)
- Tiered location preferences/residential siting discouraged (e.g., commercial districts preferred over residential districts, distance prohibitions) (R, O, M, SM)
- Tiered support structure preferences (e.g., co-location, existing poles, streetlights) (SF, O, P, N, SM)³
- Concentration limits (O, P, M, I, SM)
- Noise, acoustical, wind/load consideration/analysis (SF, R, N)
- Additional specific siting requirements: prohibition against installations in areas with no overhead utilities (SF) and within 500 ft. of schools, playgrounds or parks (M); height limitations for installations on existing poles (P, M, SM); pole height (O) or 100 ft. (R) set-back requirements; attachment to utility poles permitted only if surplus space available (I)
- Justification/prohibition analysis and/or hearing (coverage gap, alternative site feasibility, hardship, least intrusive means and/or needs tests) (R, SD, M, P, N, I, SM)
- RF emissions analysis and/or certification of compliance with FCC requirements (all except SD)
- Mapping of existing WTF and/or projection of anticipated future needs (N, I)
- Showing of CPUC issuance of Certificate of Public Convenience & Necessity (public utility status of applicant) (N, SM)
- Permit duration limits and/or periodic review/monitoring (SF, R, P, N, I, SM)

4. Temporary moratorium/hold on applications during drafting process: R, O, P, N, I, SM

5. Legal challenges to listed ordinances: None (as of 5/22/11)

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

²In practice, Norwalk subjects installations other than co-locations to public hearing/discretionary review (staff, Norwalk Planning Division/NMC §17.02.295(E)).

³In practice, Pasadena prefers the use of streetlights over other poles (Pasadena City Attorney/PMC §12.22.110-120).