



July 26, 2011

City of Los Angeles
Planning and Land Use Management Committee
Public Works Committee
200 N. Spring Street
Los Angeles, CA 90012

Via Hand Delivery

RE: City's Attorneys Report R11-0213, Dated June 7, 2011, Entitled, "Developments in the Law Regarding Regulation of the Placement of Cell Towers and Related Equipment"

Dear Planning and Land Use Management Committee and Public Works Committee Members:

The California Wireless Association ("CalWA")¹ writes in response to the City's ongoing discussions concerning the possible addition of "aesthetic" regulations and the requirement of discretionary entitlements for the placement of wireless telecommunications facilities within the City's public rights of way. CalWA appreciates the effort of the Public Works Committee and City Attorney to date however we are opposed to the City Attorneys conclusions on this matter and strongly recommend that the Committees recommend no further action on this matter need be taken, except for the consideration of some additional notification requirements with respect to future wireless communications facilities within the City's public rights of way.

We present this correspondence in support of our recommendation above and sincerely thank the City for this opportunity.

As a precursor to our more substantive comments herein, we are also hopeful that the City of Los Angeles can appreciate the tremendous pressure the industry is now facing in meeting the future wireless needs of Los Angeles's citizens, business community, and public safety professionals. Again we are grateful for the opportunity to participate in this discussion, and hope to continue our participation, if necessary, as the process progresses.

¹ CalWA is a non-profit organization made up of volunteers who work in the wireless/telecommunications industry throughout California. Its goal is to raise awareness about the benefits of and to promote the wireless industry, to educate the public and political leaders on issues of importance to the wireless industry, and to cultivate working relationships within and between the industry, the public and political leaders.

While we believe that the City Attorney's Office has conducted a thoughtful examination and review of the matters at issue here, there are several additional issues that we believe are important for both Committees' to also understand before providing any further direction on this matter.

Rather than providing detailed and specific comments on the City Attorneys report, we are providing this correspondence in an effort to broaden the discussion and present additional issues and values that the subject land use also represents and supports. We respectfully request your "Committees" review of these important comments and consider a much more balanced and tolerant view of this land use that by definition in the States constitution is in fact a "Utility".

"CALIFORNIA CONSTITUTION

ARTICLE 12 PUBLIC UTILITIES

SEC. 3. Private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers, are public utilities subject to control by the Legislature. The Legislature may prescribe that additional classes of private corporations or other persons are public utilities.

The additional "aesthetic" considerations that are the subject of your deliberations will have a significant negative impact on the wireless communications industry and jeopardize achievement by the City of many additional stated City goals, objectives, and policies not considered by your Committees to date.

Prior to presenting specific evidence of the City's own recognition of "additional values" to which the subject land use supports, we wish to convey to your Committees some basic information that should also be considered in your deliberations, and specifically to the question of adding any "aesthetics" based only regulations to this utility infrastructure.

1. All telecommunications facilities including wireless are defined as a "utility" under state law (see reference to State Constitution above);
 - a. No other utility is required to address "aesthetics" in nearly the same manner that is forced upon the wireless telecommunications industry.
 - b. We all rely on local government to apply regulations on similar land uses equitably and fairly. Please consider this fundamental tenant of government as you deliberate on this matter.

2. President Obama in his recent “State of the Union” address has identified the deployment of broadband wireless infrastructure as an urgent need and immediate priority for this country;
 - a. By adding additional regulations and requiring additional discretionary entitlements (thereby not maintaining the current more streamlined process) for the review and processing of those applications that are designed in a manner that is consistent with other similarly placed utilities, the City is behaving inconsistently with the President’s directive and as will be presented subsequently, their own (City of Los Angeles) goals and policies.
3. The unique technology employed by wireless telecommunications must be considered more prominently in the development of any land use regulations;
 - a. The application of additional “aesthetically” based regulations can significantly limit the ability of this infrastructure to function properly and to its highest and best use, thereby necessitating many more facilities and adding significantly more cost, which results in additional economic burdens for us all.
4. Wireless infrastructure is becoming critical in the provision of public safety and emergency services as well as serving as the new platform of our economy and new ways to manage and provide healthcare.
 - a. Certainly “aesthetics” is part of the equation; however the discussion needs to be more balanced and cannot solely focus on this one element at the expense of the functional requirements of the technology and all other considerations.
 - b. Please consider the broader issues of public safety and emergency services, economic development, and future critical healthcare applications as you continue to deliberate on any land use regulations you may be considering.
5. The Nation has begun to migrate Public Safety Communications to the frequencies within the more recent release by the FCC of those bands associated with the “Long Term Evolution” (LTE) networks also being deployed by commercial wireless carriers. This was specifically done to allow Public Safety professionals, during times of natural and manmade disasters, with the ability to utilize and “roam” upon these adjacent commercial LTE platforms to ensure that critical communications can be better maintained in these times of significant need.

The following discussions provide evidence in support of the numerous additional values that this land use supports as recognized by the City of Los Angeles in their own General Plan.

General Plan Framework Element; Transportation

Within the City’s Transportation Chapter of its “Framework Element” of its General Plan are obvious references that speak to the importance of this land use and how

reasonably and effectively managing it will support the ability of the City of Los Angeles to meet its stated transportation goals.

Below is a section lifted from the “Introduction” section of this Chapter/Element.

“Transportation is an essential factor contributing to the quality of life in Los Angeles. Transportation facilities and policies are integral elements in achieving the vision of the Citywide General Plan Framework Element. **A comprehensive strategy of physical and operational improvements and behavioral changes that reduce the number and length of trips generated is necessary to ensure future mobility in the City.**

The transportation system of the future will need to be a fully integrated, multimodal system that offers multiple travel choices to Los Angeles travelers. Choices for person trips must include numerous forms of transit (rail, bus, Smart Shuttle, jitney, taxi, and other), highway (drive-alone, carpool, and vanpool), **and non-vehicle options (telecommuting, electronic communication, and bicycling). New facilities and services will greatly enhance accessibility within communities, particularly in these communities with limited economic resources.**

...

Even with the integrated multimodal transportation system in place, **the accessibility and mobility objectives of the Framework Element will only be achieved through substantial shifts in travel behavior.** These shifts will include significant increases in transit utilization and carpooling/vanpooling. **They also include a reduction in person-trips as people choose to take advantage of telecommunication technologies. Without these changes, levels of service will decline significantly due to increases in vehicular travel....”**

The development of a robust and ubiquitous wireless communications network that is not overburdened with costly “aesthetic” regulations and an expensive and time consuming discretionary entitlement process will better serve the goals of the City articulated above.

General Plan Framework Element; Economic Development

Within the City’s Economic Development Chapter of its “Framework Element” are yet additional references that speak to the importance of this land use and how reasonably

and effectively managing it will support the ability of the City of Los Angeles to maintain its prominent position as a national and global economic center.

Below is a section lifted from the “Introduction” section of Chapter 7 Economic Development of the City’s Framework Element.

“The economic development policies presented in this chapter are designed to facilitate business retention and job growth in several important ways. These include providing appropriate sites and **infrastructure to accommodate future commercial and industrial growth; streamlining the City’s permitting and regulatory processes**; focusing the City’s economic development efforts to more effectively utilize available resources; and, where appropriate, providing financial incentives to attract development to targeted districts, centers, and boulevards.”

The City’s wireless network is a critical component to providing “infrastructure” that will support the City’s envisioned strong and diversified economy. This additional “value” needs to be added to the conversation and decision making process when addressing this critical infrastructure/land use.

Below are numerous “Goals”, “Objectives”, and “Policies” within this element that speak to the importance the telecommunications industry plays in the local economy as well as the critical nature this land use plays in support of the City’s stated economic development goals/objectives/policies.

“GOAL 7B A City with land appropriately and sufficiently designated to sustain a robust commercial and industrial base.

Policy 7.2.7 Encourage the introduction of **telecommuting facilities in dispersed community centers and mixed-used corridors to reduce total vehicle miles traveled (VMT)**. ([P2](#), [P47](#))

GOAL 7D A City able to attract and maintain new land uses and businesses. **Governmental Services and Administrative Processing.**

Objective 7.4 Improve the provision of governmental services, expedite the administrative processing of development applications, and minimize public and private development application costs.

Policy 7.4.1 Develop and maintain a streamlined development review process to assure the City's competitiveness within the Southern California region. (P67, P68)

Policy 7.4.2 Maximize opportunities for "by-right" development. (P4, P18)

Objective 7.5 Capture a significant share of regional growth in the "targeted" or emerging industries in the City of Los Angeles. **Target Industries.**

Policy 7.5.1 Identify emerging and pro-actively clean industries to specifically attract to the City of Los Angeles. (P35)

Policy 7.5.2 Maintain an ongoing dialogue with representatives of major firms in the target industries to determine facility/siting, infrastructure, and labor force requirements. (P35, P37)

Policy 7.5.4 Proactively market Los Angeles to emerging industries to encourage them to locate within the City, with an emphasis on the attraction of environmentally-oriented and "clean" industries. (P35, P40)"

General Plan Framework Element; Infrastructure and Public Services

Within this Chapter of the City's Framework Element, "Telecommunications" and the critical role it plays in the City's future is specifically identified as one of "thirteen infrastructure and public service systems" that "...will help the City's population and economy as it moves into the 21st century."

"The goals, objectives and policies found within this section address ***thirteen infrastructure and public service systems***, many of which are interrelated, and all of which will help support the City's population and economy as it moves into the 21st century. The systems include:

1. [Wastewater](#)
2. [Stormwater](#)
3. [Water](#)
4. [Solid Waste](#)
5. [Police](#)
6. [Fire](#)
7. [Libraries](#)
8. [Parks](#)
9. [Power](#)
10. [Schools](#)

11. [Telecommunications](#)
12. [Street Lighting](#)
13. [Urban Forest](#)

The “Infrastructure and Public Services” Chapter then specifically states the following regarding the importance of this critical land use.

“Telecommunications

Telecommunications is an emerging field with the potential to significantly alter the way Southern Californians communicate, work, and commute. The concentration of business and population in the City of Los Angeles and rapid technological advances offer the opportunity to provide an integrated network serving as the regional hub for public and private users. Following the 1994 Northridge earthquake, the use of telecommunications expanded significantly as traditional travel corridors were closed, demonstrating the potential for such use.”

A comprehensive review of all the various elements of the City’s General Plan has not been conducted as yet, however it is clear through the few examples cited above there are significant “additional values” that are supported by the continued development of a robust and ubiquitous telecommunications network.

Certainly aesthetics plays a role in the regulation of this land use but to only consider that element in your deliberation and overall decision making process would be a serious misunderstanding of the totality of this lifesaving and critical component to the City’s overall future safety, health, and economic vitality.

Again there is much additional evidence that telecommunications will only continue to grow in terms of its importance in the provision of public safety, economic development, traffic demand management, and yet unforeseen but soon to be released e-medical applications. For all these reasons we need to begin to “balance” the total of all the values that this land use provides and not follow and adopt the obstructionist attitudes of a few other jurisdictions that have chosen to ignore all the “additional values” articulated herein.

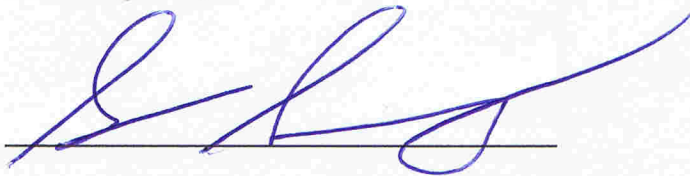
Conclusion

We ask that each commission look at the totality of the issues surrounding this critical land use and embrace the “additional values” cited within your City’s own General Plan. We also ask that your Committees make the most responsible decision on this matter and take no action at this time. The current process and regulations may need some additional notification provisions but to attempt to bring in a heightened and overly inflated “aesthetic value” would, in our opinion, be a waste of scarce City resources and an additional burden and cost that would have to be borne by all Angelinos.

In addition, in my 20 plus years working as a professional public sector planner at jurisdictions throughout the State, when the value of "aesthetics" must be measured against other "values" that include "public safety" the aesthetics considerations are in all cases secondary and subjective by a large margin to the protection of the public's safety.

Thank you for taking the time to review our comments. We look forward to participating in this process, if necessary, as it progresses.

Best Regards,



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