

palisades preservation association

July 25, 2011

Public Works Committee and
Planning and Land Use Committee,
Los Angeles City Council

Re: Council File 09-2645
Regulation of Cell Tower Placement
Item No. 4

Honorable Councilmembers;

In summary, the City Attorney's Report regarding the regulation of cell tower placements states that there is no statute, regulation, or case that prohibits the City from regulating the placement and aesthetics of cell towers in the public right of way. While the City Attorney suggests that if the Council wishes to regulate cell towers in the public right of way, that the Council amend the Above Ground Facilities (AGF) ordinance. **That is a red herring.** The AGF ordinance is completely irrelevant to this discussion.

The Council already has an ordinance in effect that regulates all cell towers in the City regardless of their location. Ten years ago the Council enacted Ordinance 174132 which governed all wireless telecommunications facilities erected anywhere in the City and required approval by the Zoning Administrator. The ordinance states in Section 12.21.A.20 that:

“Wireless Telecommunication Facilities (WTF) Standards - Notwithstanding any provision of this Code to the contrary, the following standards shall apply to the placement of all wireless telecommunication facilities.” (Emphasis added.)

Therefore, no matter what the AGF ordinance states, the provisions of Ordinance 174132 apply. But the AGF ordinance does not conflict with Ordinance 174132 — it complements it.

The AGF ordinance states in §62.02.03.2.IX.C:

“Pole-mounted and street light-mounted facilities, ... street light poles, utility poles, and traffic and pedestrian control fixtures are not subject to the AGFSP, but will be subject to all other applicable requirements of law, ...” (Emphasis added.)

Thus, by the very language of the AGP ordinance, wireless communication facilities are subject to the provisions of the WTF ordinance 174132.

Public Utilities Commission General Order 170 Does Not Make the Issuance of Permits by the City Ministerial.

The City Attorney mistakenly states in footnote 4 that General Order 170 recently issued by the Public Utilities Commission “suggest[s] that local governments may only issue ministerial permits and not discretionary permits”. This is not even suggested by GO 170.

That Order it states specifically that:

“General Order 159-A, and not General Order 170, shall apply for construction of cellsites.”

In GO 159-A, which was adopted in 1996, the PUC issued the following order:

“IT IS HEREBY ORDERED that except as specifically provided herein, no cellular service provider, now subject, or which hereafter may become subject, to the jurisdiction of this Commission, shall begin construction in this state of any cellsite or Mobile Telephone Switching Office ("MTSO") *without first having obtained all requisite land use approvals required by the relevant local government agency.*” (Emphasis added.)

Therefore, every cellsite constructed in the City of Los Angeles in the public right of way since the adoption of Ordinance 174132 in 2001, was done in violation of GO159-A.

Conclusion.

The problem is then not with the AGF ordinance — it is that the City staff is not enforcing Ordinance 174132 in the public rights of way. **Why Not?** Because there is a myth that the City Charter gives the Department of Public Works exclusive jurisdiction over the public rights of way. **That is not true.** Nothing in the City Charter grants any department exclusive jurisdiction over the public rights of way.

Only the City Council has the authority to decide whether or not any department has exclusive jurisdiction over any part of the City. However, in passing Ordinance 174132 the Council decided that the Zoning Administrator had the sole authority to approve the installation of cell towers anywhere in the City.

Therefore, it is recommended that the Committees have the Planning Director, the Director of Public Works, and the Building and Safety Director appear at a joint meeting of the Committees, along with the City Attorney and explain why the Wireless Telecommunications Facilities Ordinance 174132 is not being enforced in the public rights of way and how they intend to enforce it.

Respectfully,

JACK ALLEN, *President*