

**PPCC LUC Talking Points –
Recommended Position on Draft Revised AGF Ordinance (07.10.2013)**

The City Attorney submitted a report and draft revisions to the AGF (above ground facilities) ordinance on 6/27/13. PPCC has long awaited this development. The draft ordinance *does* comply with the City Council's directive: it expands notice; it **eliminates the utility pole exemption for wireless devices and antennas**; it enhances the aesthetic provisions in some respects, in part by including a required "Least Intrusive Means" standard¹; it includes a required certification of compliance with FCC requirements; and it requires a somewhat greater showing of gap in coverage. The report and draft ordinance can be read at: http://clkrep.lacity.org/onlinedocs/2009/09-2645_rpt_atty_06-27-13.pdf.

The LUC recommends SUPPORT for the draft ordinance, but with certain proposed revisions relating to 1) Notice and Appeal; 2) Coverage Gap; 3) Aesthetics and Design; 4) Certification. The LUC's recommended revisions are set forth in full in the accompanying PPCC position paper on the draft ordinance. In summary, the recommended revisions, in relative order of importance, are:

1. NOTICE AND APPEAL:

- Notice shall (a) be expanded to **all owners and residents within 500 feet in all directions of a proposed AGF involving a pole structure** (i.e., cell tower) or any AGF structure that exceeds height and density limits; (b) include **posting of notification on-site for all AGFs**. [*The draft ordinance requires notice of AGFs exceeding allowed height limits to all owners and residents along both sides of the street for a distance of 250 linear feet in either direction, which the City Attorney acknowledges will not result in notice to all owners and residents potentially affected.*]²
- Notice for all AGF applications shall be given by **registered mail**. [*The existing ordinance requires registered mail but the word "registered" is eliminated in the draft revised ordinance.*]
- **"Community Councils" shall be added** to all notice provisions contained in the proposed ordinance along with HOAs and residents' associations, as entities entitled to receive notice of the AGF application. Community Councils shall be entitled to the same right of appeal as HOAs and residents' associations.

2. COVERAGE GAP:

- Proof of a "significant coverage gap" shall be included in specific requirements for permit applications for (a) AGF installations in residential zones, (b) requests for variances from the height limit, and (c) requests for hardship waivers.
- The draft ordinance shall be amended to include new paragraphs giving discretion to the BOE to hire an engineering expert to review and evaluate "significant coverage gap claims" and any relevant technological issues, at the applicant's expense.

3. AESTHETICS AND DESIGN:

- New language shall be drafted and inserted that requires the Cultural Affairs Commission to

¹Least Intrusive Means is defined as "the least amount of physical or aesthetic intrusion in the Public Right-of-Way, taking into account the physical characteristics of an AGF, including but not limited to, size, shape, height, volume, color, noise, camouflaging, and screening, as well as any identified significant gaps in coverage or capacity that will be reduced by the AGF" (Sec. 62.00, Definitions).

²The draft ordinance limits notice for all other AGFs (e.g., cabinets) to owners and residents of adjoining, abutting and across-the-street lots (the current notice provision); for all AGFs (cabinets and pole structures alike), it provides for additional notice to Neighborhood Councils, Council District offices, HOAs and residents' associations, but not Community Councils (Sec. 62.08.VII.D.1-2. Notification of AGF Installation). The draft ordinance further provides (new) that owners, residents, HOAs and residents' associations which receive notice are entitled to appeal; Neighborhood Councils are not entitled to appeal (Sec. 62.08.VII.E. Appeal of a Bureau of Engineering Determination to the Board).

give notice and receive input from affected communities in regard to design of pole structures, and to apply the “Least Intrusive Means” standard in design decisions. *[Both the existing and the revised draft ordinance require all designs to be approved in advance by the Cultural Affairs Commission; currently there is no process for community input nor any particular design standards that PPCC is aware of; PPCC has witnessed the approval of thousands of cabinets at a time using “bulk design” approvals devoid of community input.]*

- PPCC opposes the “density threshold” contained in the draft ordinance as it relates to pole structures (cell towers). PPCC believes that further review and community input are needed.³ At a minimum, PPCC proposes that language be drafted which strengthens the requirements for a variance from the maximum number of installations (in the case of pole structures) by requiring a showing that all reasonable alternatives have been exhausted, and that the applied-for AGF is necessary to reduce a significant coverage gap and represents the Least Intrusive Means to install the AGF.
- The draft ordinance shall be amended to include other language changes for clarity and consistency, e.g., changing titles of paragraph headings involving required design and identification requirements from “Cabinet” to “AGF Installation” to make clear that the requirements of those subsections⁴ apply to pole structures (cell towers) as well as cabinets.

4. CERTIFICATION:

- A new paragraph shall be added to require a structural engineer’s certification of load/structural safety at time of application and allow for the ability of the BOE (using their reasonable discretion) to hire a structural engineer to evaluate an AGF for load/structural safety in the event of significant events such as storms or seismic activity, at the AGF owner’s expense.⁵
- A new paragraph shall be added to require ongoing compliance with FCC requirements.⁶ This language shall require the owner’s periodic certification of continuing compliance and allow the BOE (using their reasonable discretion) to engage an RF engineer to review said periodic certifications, with the AGF owner to reimburse the City for costs of any such review.
- Along with other specific acts of noncompliance contained in the draft ordinance, a new paragraph shall be added to impose fines for an AGF owner’s failure to comply with certification requirements or operation of an AGF within all applicable FCC requirements.

Notwithstanding the LUC’s conditional support of the draft ordinance as set forth above, the LUC recommends that PPCC OPPOSE a suggested possible further change (proposed in the City Attorney’s report but not in the draft ordinance) which would retain the utility pole exemption in commercial and industrial zones and for so-called “small” antennas (undefined). The LUC believes that this exemption should only remain, *if at all*, for strictly industrial zones, and there should be no exemption based on antenna size or type.

³The draft ordinance provides that the maximum number of AGFs (including pole structures) per City Block shall be three for blocks with intersections less than 1000 feet apart; and three for blocks with intersections 1000 feet apart or more, plus “one additional AGF for every additional 250 feet of adjacent intersection separation,” with no threshold for Parking or Industrial zones (Sec. 62.08. IV.I. Density Threshold). The LUC has various issues with this language and believes that the allowed density is too high for pole structures (cell towers) but was unable to decide on possible alternative language. See objection and comments on pp. 2-3 of the PPCC Position on the Draft Revised Ordinance (Sec. 62.08.IV.I Aesthetic Requirements; Density Threshold).

⁴Secs. 62.08.IV.F, G, H Aesthetic Requirements; Treatment and Graffiti Mitigation, Identifiers and Foundations.

⁵Devastating fires occurred in Malibu Canyon in 2007, caused by over-loaded downed utility poles that resulted in settlement pay-outs of \$60+million (ref: Los Angeles Times, May 2013).

⁶The draft ordinance requires certification only at the time of application (Sec. 62.08.II.D.8).

REALIGNMENT OF CITY DEPARTMENTS - A BETTER SOLUTION

by Jack Allen¹

The City Council is now deciding whether to spend several hundred thousand dollars to pay a consultant to develop not only recommendations for a plan on how to implement a consolidation of the Department of Planning and the Department of Building and Safety as well as to consider other solutions and and recommendations of ways to improve development services in the City.

Basically, the objective is to establish a more streamlined system to better improve service delivery of development services as an effort to make the City more "development friendly." Generally, few, if any, citizens would be opposed to the City making it easier to obtain development permits if it can be done without making it more expensive and without sacrificing the controls necessary to protect the quality of life in the City, given the fact that the quality of life in the City has deteriorated consistently in the past 40 years.

It is possible that the issuance of development permits can be made more efficient without necessarily making it more expensive nor impairing the quality of life, but not in any of the ways now being considered by the City Council. Such measures however, will not satisfy developers who want a much freer reign to develop as they have in such cities as Dallas, Texas, which gives developers carte blanche to develop pretty much as they please, in typical Texan Tea Party style.

In California, and particularly in Los Angeles, there are obstacles which it difficult to do any wholesale restructuring that will facilitate the issuance of permits. First, is funding. Lack of funding necessary to hire the necessary personnel to streamline the issuance of permits is a major obstacle. It is the major reason that currently slows down the issuance of permits because both all the departments involved in issuance of permits are short of personnel. Any major efforts to streamline the issuance of development permits will depend on finding a major source of funds not only to implement the changes but to sustain them and those funds cannot come just from increasing fees.

The second major obstacle is the necessity for discretionary approvals. There are a myriad of discretionary approvals required for many permits depending on the location of the development and the type of development. Coastal Act permits, Subdivision Maps, Conditional Use Permits, Variances, Design Reviews Approvals, Environmental Review, Building Code variances, etc. are just a few of the discretionary permits required and there is little leeway available to streamline the issuance of such permits.

For years, the City has attempted to reduce the number of discretionary approvals but efforts to do so, means reducing or eliminating public participation in the permitting process, something the voters in Los Angeles want more of, not less. The voters want to have a say in the development process so that they can protect their quality of life. Unfortunately, the City Council has been all to willing to sacrifice the citizens' quality of life in order to satisfy the development industry for streamlining such as reducing or eliminating the time to appeal decisions and creating

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obstacles for appellants.

Another way, the City Council has short circuited its citizens is by adopting policies that severely reduce environmental review of projects so that it is meaningless. As a result, the City often approves projects which are environmentally unsound but the goal of streamlining the project is accomplished. The result often is that the City approves projects that in many cases, prove very expensive for the City in the long run because of the problems they create, such as excess traffic, lack of public funds to provide the necessary infrastructure to support the project, or the City winds up buying the project when a landslide makes the property useless, among other things. In the end, the quality of life in the City is diminished.

Therefore, while there is wide support for making the processing of development permits more efficient, it should not be done at the expense of the quality of life of the residents in the City, nor should be done at the expense of other City services.

The Proposals For Streamlining.

Two schemes have been advanced for streamlining the issuance of development permits. One is the consolidation of the Department of Planning and the Department of Building and Safety. The second is to study ways of achieving more streamlining without the consolidation.

Consolidation of the Departments.

Consolidating the Planning and Building and Safety Departments not only will not significantly achieve this goal, it is unnecessary to do so. Moreover, it most probably will violate the City Charter.

The Department of Planning is a Charter Department established in Section 550 of the City Charter. Therefore, the City Council cannot establish a new department that includes the Department of Planning by ordinance. The Council must submit the change to the voters for approval. This is not true of the Department of Building and Safety which lost its Charter status when Section 115 was adopted in 1999 as part of the Charter Reform.²

If the voters had intended to give the City Council the authority to consolidate the Planning Department with other City Departments by ordinance, they would have said so in Section 115.

² **Sec. 115. Changes in City Departments.**

After the Operative Date of this Charter, the departments of Animal Regulation and Building and Safety, which are no longer included in the Charter, shall continue to exist, and to perform the powers and duties prescribed for them in the Charter immediately prior to the Operative Date, until the departments, powers or duties are changed or eliminated by ordinance.

The adoption of this Charter is not intended to affect the powers and duties of the Department of Cultural Affairs or Department of Transportation or their respective commissions. Those powers and duties shall continue until changed or eliminated by ordinance.

In the Realignment of City Departments Report of April 13, 2013, 20 cities are listed in Figure 2 as "Cities With Consolidated Development Services." Of these cities, 18 were Charter cities but none of them listed have either the Planning Department or the Building and Safety Department as Charter departments and therefore, did not have to contend with the problem of consolidating Charter departments.

Moreover, it is misleading to list cities as having consolidated development services. Only the City of Dallas actually has done this. The other cities listed consolidated their departments not to streamline development services but for administration purposes. It was a fad in the 1980s to consolidate departments under the City Manager (which most of the city listed have a city manager form of government), creating super departments each run by an Assistant City Manager. It was thought that it gave the City Managers greater control. However, all it did was create another level of bureaucracy and with it, more expense.

In addition, in most of the cities listed, the Departments of Planning and Building and Safety continue to operate separately in the issuance of permits. But trying to compare other cities with the City of Los Angeles is like comparing apples to cucumbers. Los Angeles is more like a large bunch of grapes and the other cities, one grape. Other listed cities have Zoning Codes that are minicule compared to Los Angeles and do not have the complexities that face Los Angeles, and in most cases, are better funded than Los Angeles.

Secondly, depending on the type of development, approvals are need from not just the Planning and Building Departments, but also from the Traffic or Transportation as the case may be, Fire, Police, DWP, and various divisions of the Public Works Department. Except for the City of Dallas, none of the other cities listed include these departments in their consolidated department. departments.

It would be difficult to sever those approvals from their respective departments and could result in duplicative to administer, requiring counterparts both in the original department and in the consolidated department. It raises the question as to who would be in charge of that particular municipal service function.

Most of all, the proposed consolidation isn't a real consolidation. It merely places both departments in a new department with another layer of bureaucracy that requires staffing. The question is how is the new staffing going to be funded. Is the funding going to come out of the existing departments budgets or is the funding going to come out of the already inadequate General Fund?

The better way to achieve more efficient processing of applications for development permits would be to modify the existing construction centers.

Modifying The Existing Processing of Development Permits.

Tweaking the existing processing of development permits would be less costly and just as efficient as consolidating departments. Most of the work has already been done. There are Construction Service Centers in Downtown, Van Nuys, West Los Angeles, South Los Angeles, and San Pedro. However, the latter three Centers do not have Planning, Mechanical or Electric

Permit services. Therefore, to improve the development permit process would require that these services be provided at all the Construction Service Centers. This would be necessary even if there was a department consolidation. Regardless, it require hiring additional staffing to service requests.

It is important to note that currently there are long waiting times at the Construction Service Centers for many applications, mostly because the Centers are understaffed. The understaffing contributes to complaints that the development process is too slow.

Currently, an applicant can get expedited service if the applicant is willing to pay extra fees for expedited handling of the permit applications. Such applicants get immediate service at the Service Centers.

One of the reasons given in the April 5, 2013 Staff Report for justifying the departmental consolidation is that it would expedite the Zoning Code Review and save applicants more trips to the Service Centers. This is a ridiculous assertion. All the Plan Checker at the Service Center has to do for any project is check Zimas to get the zoning information which will suffice in most cases. If the Zimas check raises questions, all the Plan Checker has to do is send the applicant to the Zoning Section of the Service Center to get the information. The only problem now is that the applicant will have to go into a waiting line at the Zoning Section which may take some time because budget cuts have resulted in a such a reduction of staff that it takes a long time to get served. That is not a problem that can be solved by consolidating the departments.

Needless to say, if there are problems with Disabled Access, Green, and Fire, if the Service Centers are staffed with employees who can make the initial determinations, that would solve the problem without having to consolidate.

Another reason given to justify the consolidation is that it will eliminate inconsistent interpretations. If that happens, it will happen regardless of whether or not consolidation takes place because any two individuals can interpret a regulation differently, particularly since many of the regulations are not clearly written or are ambiguous. Currently, the Zoning Code Manual and Commentary serves both the departments as the interpretive guide and it should suffice. Consolidation is not going to solve that problem which is far overblown in the Staff Report.

The Staff Report justifies consolidation because approximately 250 employees in the two Departments perform the same routine administrative, clerical, accounting, and systems duties. That will still be necessary even if the Departments merge. The only possible savings might be to eliminate some supervisory positions but that will not result in any significant personnel reductions. The work to be done still remains the same.

Another bogus justification in the Staff Report is that if all Plan Checkers are housed under one leadership, it will enhance the permitting process. At present all Plan Checkers work in the Building and Safety Department so they are so housed. Or does the Staff Report mean to consolidate all the Service Centers into one Center. Because unless that is done, the Plan Checkers will be working in six different houses.

Another bogus justification for consolidating the departments is to have consistent code enforcement. It is not necessary to consolidate departments to achieve that objective. Enforcement of the Building Code should be left to the Building and Safety Department and a separate Zoning Code Enforcement Section formed in the Planning Department.

The Staff Report also seeks to justify the consolidation of departments by arguing that there is a lack of true performance measures where the two departments share responsibilities. The staff argues that consolidation will reduce the break downs in the development processing. However, there are no examples given that show that this is a problem and no analysis as to why there is no other way to solve the problem than by consolidation.

Every justification in the Staff Report for consolidation is either not a significant problem or it can be solved without consolidation, or in some cases, nothing can solve it as far as achieving a more streamlined development permit process.

One proposal to further streamline the processing of development permits is to assign Project Managers to each project. Again, does the City or the applicant pay for a Project Manager? For larger developments, the applicants usually hire their own Project Managers who are usually former City employees that are very familiar with how to process a development permit and who act as liaison between the applicant and the various departments. One example is Psomas and Associates.

The Construction Service Centers would be more efficient if it was possible to file all applications and appeals at a Service Center rather than have to go to the Downtown or City Hall to file them. It would also be more efficient in situations which require the mailing of notices that the applicant or appellants could process the mailing at a Service Center rather than have to go to the City Hall Mall to have the mailing lists processed and then return to the Service Center to file the proof that the mailing list has been processed and paid for.

Some aspects of the development permit processes cannot be expedited either at the Service Centers or by consolidating departments. One is compliance with the Subdivision Map Act which is State mandated. Another is approval of geological reports, which can only be expedited by hiring additional geologists. CEQA requirements cannot be expedited at the Service Centers. Neither can Coastal Development Permits, Conditional Use Permits, Variances, and other discretionary permits.

One way of expediting the development permit process is to require the applicants to provide all documents in electronic PDF form and have those documents available not only to City staff but to the public on line. This would reduce delays caused by objections that documents were either unavailable or not known about.

Conclusion

In conclusion, it is not recommended that consolidating departments be used as the method of expediting the issuance of development permits. The City should look to improving the existing processes for that purpose.