

CITY OF SAN DIEGO  
M E M O R A N D U M

DATE: October 14, 2004

TO: Community Planners Committee

FROM: Karen Lynch-Ashcraft, Senior Planner

SUBJECT: Wireless Communication Facility Ordinance Revisions

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On July 27, 2004, the City Council considered amendments to the regulations and a Council Policy related to wireless communication facilities. Both the ordinance and policy were approved, however the City Council directed staff to reconvene with the Telecommunication Issues Committee (TIC) and address concerns raised at the hearing by interested community and industry members. Those issues include: 1) Revisions to the city policy to allow traffic signals as an option for wireless facilities in the public right-of-way; 2) Consideration of a 100-200 foot separation from residential property lines; 3) Provision of incentives to stay away from residential uses, 4) Consideration of implementing individual comprehensive wireless plans for each community, 5) Consideration of fire stations as a residential use, 6) Re-evaluation of the site access fees; and 7) Re-evaluation of appraisal and leasing process. These issues are discussed in greater detail below.

For your information, a brief history of TIC follows. TIC is made up of council appointed community members and industry representatives. TIC originally began meeting in early 2000 to address several issues prevalent at the time and concluded when the committee's recommended revisions to the ordinance were adopted by the City Council and became effective in January 2001. In September of 2001, the Land Use and Housing Committee directed staff to reconvene TIC to re-visit the existing Council Policy on Communication Antennas and to research, evaluate and respond to issues identified by a group recognized as PAWSE (Public Awareness of Wireless Siting and Education). The committee met regularly over a period of eight months and then continued on an as needed basis until the ordinance and policy were considered and ultimately adopted by City Council in July 2004.

As directed by City Council on July 27, 2004, TIC reconvened August 25 to discuss the seven identified concerns. Described below is an explanation of each issue and the TIC recommendations which are being forwarded to the City Council.

### **1) City policy on traffic signals as an option for public right-of-way installations**

When the wireless industry first approached the city to install their facilities on city assets in the public right-of-way, the city preferred that the providers utilize street lights, if available, before seeking installations on traffic signals. The most important reasons for this policy were safety and maintenance. After surveying other metropolitan cities and conducting an engineering analysis, the Transportation Department and the Engineering and Capital Projects Department developed a list of criteria that the industry would have to agree to in order to protect the city and enable providers to place antennas on traffic signals. The city has revised the internal policy so that all vertical elements in the public right-of-way will be treated equally. Concern by a community member to include the language in the City Council Policy and perhaps identify traffic signals as a preference is not recommended by staff and is not endorsed by TIC. All communities are different and what may be acceptable in one community may not be in another. These types of applications will continue to be reviewed on a case by case basis in accordance with departmental policy.

### **2) Evaluate a 200 foot separation between wireless facilities and residential property**

TIC evaluated the concept of providing a separation between wireless facilities and residential properties and determined that the existing ordinance language could be revised to accommodate the idea. Originally, staff received input from the public to include a separation similar to the City's of Del Mar and Encinitas, both of which maintain 100-foot separations between sensitive land uses such as residential. Since precedence has been set within the County of San Diego with 100-foot separations, it would be difficult to impose a greater separation without appearing arbitrary relative to the land use rationale for such separations.

Instead of merely imposing a separation requirement that could be challenged as a disguise to regulate radio frequency, which is not allowed under the Telecommunication Act of 1996, TIC decided it would develop an incentive for the industry to utilize sites that are further away from residential properties. To do this, TIC decided to include an exception to the regulations that would allow a lower decision process level for wireless antennas located 100-feet or further from a residential use, a school use or a day care facility. An application for a facility where the antennas are at least 100-feet away from one of these uses would move to a lower decision process level. For example, the recently adopted regulations would require a Process Four Conditional Use Permit (Planning Commission decision, appealable to the City Council) for a wireless facility in a park site. However, if the park were large enough so that the antennas were proposed 100-feet or more from the nearest residential use property line, it would become a Process Two Neighborhood Use Permit (staff decision, appealable to the Planning Commission).

Similarly, if a wireless facility was proposed on a property such as a church, which under the new regulations would require a Process Three Conditional Use Permit (Hearing Officer decision, appealable to the Planning Commission), it too, would become a Process

Two Neighborhood Use Permit, if the property was large enough to accommodate a 100-foot separation between the antennas and the residential property line.

The above proposal by TIC for the 100-foot separation would not apply in the public right-of-way. Under California Public Utilities Code section 7901, wireless providers have the right to use the public right-of-way for their facilities. However, under California Public Utilities Code section 7901.1 cities maintain the right to regulate the use of the public right-of-way as it relates to time, place and manner. Nevertheless, if the separation requirement were extended to the public right-of-way, wireless providers may argue that more stringent regulations combined with a more cumbersome process will have the effect of prohibiting access to the right-of way and is also a disguise for regulating radio frequency, both of which are violations of the Telecommunication Act.

### **3) Evaluate an adjusted review process for wireless facilities in park sites**

Because parks come in all shapes and sizes, not all parks should be considered for a lower decision process level. Moreover, the TIC consensus recommendation on this issue has been addressed (in #2 above) through the recommendation for a separation between wireless antennas and residential, school and day care use property lines.

### **4) Encourage individual comprehensive community wireless siting plans**

The TIC consensus recommendation is that this issue has been addressed by the preference categories and decision levels in the ordinance and policy already adopted by the City Council. Instituting a requirement for the industry to work with Community Planning Groups to develop siting plans could be legally problematic because the City does not require other businesses to provide community siting plans.

Included in the discussion on this issue some of the concerns involved in providing input into long term plans were identified. With the dynamic nature of wireless networks, it is difficult for providers to accurately predict where new sites will be needed. Networks for the most part, are in place for each of the carriers, however, for new sites, planning at this stage is typically done over a period between 12-18 months and is more general in nature not site specific. Some of the limiting factors involved in this assertion include:

- 1) Customer needs – The majority of sites are identified through customer complaints
- 2) Funding – Corporate funding to area markets fluctuates throughout the fiscal year
- 3) New sites – The sensitive nature of technology means that each new site has the potential to change future plans for the network
- 4) Proprietary information – Competition between carriers

Historically, the industry's attitude is that time is money so the easier it is to process a project, the more likely they are to pursue a location does not generate much controversy. It has been staffs experience that the industry has always followed the path of least resistance.

The new regulations and policy have and will continue to evolve to respond to legal issues, community input, advancing technology and consumer demand. As always, Community Planning Groups will maintain the opportunity to review and make recommendations on discretionary applications. TIC recommended not endorsing a requirement for these plans; however, the committee believes individual communities that pursue this option should ensure that the plan conforms to the newly adopted regulations, City Council Policy, as well as, state and federal law.

**5) Consider reclassifying fire stations as a residential use**

Fire stations are considered a public use and are not regulated by the Land Development Code. The TIC consensus recommendation is that fire stations should remain as a mixed use and be maintained as a Preference Two and decision level Process Two Neighborhood Use Permit (NUP).

**6) Evaluate where and how the site access fee is distributed**

The TIC consensus recommendation is to leave the policy language as is, allocating the Site Access Fee into a special fund to benefit the impacted property. The controlling department should work with stakeholders to determine how to best use the funds. The Real Estate Assets Department (READ) is analyzing the Mayor's request to split the Site Access fee with the General Fund.

**7) Consider revising leasing and appraisal process**

The TIC consensus recommendation is to apply the standard of "fair market value" relative to lease prices throughout the City of San Diego. READ is in discussions with the industry to resolve this issue.

Respectfully submitted,

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