

Agenda Report

TO: CITY COUNCIL **DATE:** FEBRUARY 2, 2009

FROM: CITY MANAGER

SUBJECT: MUNICIPAL CODE AMENDMENTS –PROPOSED TITLE 12 REGULATIONS FOR REGULATING TELECOMMUNICATION EQUIPMENT FACILITIES IN THE PUBLIC RIGHT-OF-WAY, UPDATES TO EXISTING TITLE 17 REGULATIONS FOR WIRELESS TELECOMMUNICATION FACILITIES ON PRIVATE PROPERTY AND MINOR AMENDMENTS TO TITLE 18 CABLE COMMUNICATIONS SYSTEMS TO REFLECT THE PROPOSED AMENDMENTS TO TITLES 12 AND 17.

RECOMMENDATION

It is recommended that the City Council:

1. Adopt the Initial Study (Attachment E) and the Negative Declaration for the proposed Code Amendments and direct the City Clerk to file a Notice of Determination;
2. Approve staff's recommendation to amend Titles 12, 17 and 18 of the Municipal Code, and to repeal related uncodified resolutions as described in this report;
3. Approve a finding of consistency with the General Plan;
4. Direct the City Attorney to return within 60 days with (1) an ordinance amending the City's telecommunications facilities regulations in Titles 12, 17, and 18 as described in this agenda report; (2) a resolution repealing Resolution No. 7542 concerning the standard license agreement for wireless facilities; (3) a resolution amending Resolution No. 7559 concerning design guidelines pertaining to wireless facilities on property within the City; and (4) any such other and further actions or documents to implement the recommendations described in this agenda report.

PLANNING COMMISSION RECOMMENDATION:

On December 10, 2008 the Planning Commission recommended the proposed code amendments as prepared by staff with the following changes:

- The proposed appeal process for Title 12 applications should be modified to include interested persons in addition to the project applicant;
- Department of Public Works staff should establish a bond payment system that ensures funds required for removal of abandoned equipment in the public right-of-way;
- Staff should ensure that applications are not deemed complete for processing until all required information is submitted.

These changes are discussed below in the report.

BACKGROUND

On June 21, 2007, the City Council adopted an interim urgency ordinance temporarily prohibiting the issuance of permits for ground mounted commercial wireless facilities in residential districts. On August 2, 2007, a 10-month 15-day extension was published and took effect. On June 2, 2008, the City Council approved an additional (and final) one-year extension to the moratorium to allow staff to finish a mapping component and to allow sufficient time for a community meeting and the Planning Commission and City Council hearings. The current moratorium expires on June 12, 2009.

The project is an inter-departmental effort involving staff from the Planning and Development Department and the Department of Public Works. There are two components of the project; a new section in Title 12 (Streets and Sidewalks) that will establish a permitting procedure, installation and maintenance standards for telecommunication equipment facilities in the public right-of-way citywide and also proposed updates to the existing Title 17 (Zoning Code) standards that regulate the placement of wireless telecommunication facilities on private property citywide. Minor technical clean-up to the existing Title 18 Cable and Communication Systems is also proposed to establish consistency with the Title 12 and Title 17 amendments.

A community meeting was held on October 21, 2008. Nine people attended the meeting, with representatives from neighborhood groups as well as the telecommunication industry. A detailed summary of comments received at the community meeting and at the November 12, 2008 Planning Commission meeting, are included as Attachment A to this report.

PROPOSED TITLE 12 REGULATIONS (PUBLIC RIGHT-OF-WAY)

The proposed Title 12 standards will establish a permitting process, installation and maintenance standards for "Telecommunication Equipment Facilities"

located in the public right-of-way. The applications will be reviewed by the Department of Public Works. Staff has developed regulations that address concerns associated with such facilities to the fullest extent allowed, given that the City is limited by both federal and state law in this area. The proposed installation and maintenance standards are included as Attachment B to this report.

The proposed regulations will apply to any ground mounted cabinet, pedestal, meter, tunnel, vault, equipment, splice box, surface location marker, antenna or structure that is used to provide telecommunication or video service and is located in the public right-of-way. The regulations will exclude equipment such as traffic signal cabinets, gas, power and water equipment because those facilities are not subject to the same legal requirements as telecommunications providers. Further, the City Council established a moratorium specifically on ground mounted wireless facilities which was the resulting focus of study for staff. Traffic signal cabinets, gas meters etc. provide different functions and are not related technologically to the facilities covered under the new regulations.

Wireless antennas that are located in the public right-of-way (and on private property) are currently regulated through the Zoning Code with a Minor Conditional Use Permit (300-foot public notice with review by the Hearing Officer if a hearing is requested). Due to limitations on the City's ability to regulate such facilities based on federal and state law, staff is recommending that there be no discretionary review for applications in the public right-of-way (an application will still be required which is explained below). As a result, the proposed Title 12 definition of a Telecommunication Equipment Facility includes wireless antenna facilities along with equipment cabinets and similar facilities. Wireless antenna facilities on *private* property will continue to be regulated under the Zoning Code and require a MCUP or CUP depending on the type of facility.

Proposed Permit Process and Findings

The proposed regulations will require that an application for a permit be reviewed and approved by the Department of Public Works prior to installation of any telecommunication equipment facility in the public right-of-way. This includes the installation of video or cable equipment, or a wireless antenna. Information on the location of the facility must be submitted in a GIS compatible format that will be used to update a new database that was created to track the location of such facilities in the public right-of-way. The application process is as follows:

(1) After an application for a permit has been submitted and a preliminary location chosen in conjunction with the Department of Public Works the following notification is proposed to be required:

- Upon receipt of the application, 30 day written notification shall be provided to all properties and any neighborhood associations within 300 feet in any direction of the facility;

- After issuance of the permit, and no later than 48 hours prior to installation, notification shall be provided to the same notification list informing them of the upcoming installation.

During the 30-day review period, interested persons may contact the Department of Public Works to review the proposed location of the facility and express any comments or concerns related to placement, screening etc. As the Department of Public Works sites a facility it will look at undergrounding as the first option before pursuing an above ground or flush-mounted installation. In some instances the area below ground may be encumbered with existing utilities or other infrastructure that do not allow a below ground installation. If the installation is above ground, installation and maintenance standards have been developed that would be applied by the Department of Public Works (included as Attachment B to this report).

(2) Applications must include the same information required for private property applications such as the exact location of the proposed facility supplied in a GIS compatible format, photo simulations of what the facility will look like installed at the site, a site plan clearly indicating the location for the facility and the surrounding uses and improvements etc.

(3) Prior to issuing a permit, the Department of Public Works must also make the following findings:

- The proposed use is allowed in the public right-of-way and complies with all applicable provisions of the chapter;
- The facility will not interfere with the use of the public right-of-way and existing improvements and utilities;
- All notification requirements have been met;
- To the maximum extent feasible the facility has been designed to blend with the surrounding area and the facility is appropriately designed for the specific site.

(4) Appeals. Under State law, applications for Video related facilities must be decided within 60-days of a complete application, and appeals must go directly to the City Council. For consistency, staff is proposing the same appeal process for all "Telecommunication Equipment Facilities" as they are defined the same under these regulations. Therefore, wireless and wireline (video and telephone) applications in the public right-of-way would be decided within 60 days and be directly appealable to the City Council.

As proposed by staff, the Department of Public Works decision on the application may be appealed only by the permit applicant directly to the City Council. The Planning Commission recommends this appeal right be extended to the public. Staff proposed the appeal right to the applicant only, as these permits will be ministerial, limiting the City in its review authority. Staff is concerned that affording a right of appeal to any interested person will lead to the erroneous belief that the appeal involves a discretionary review process, which staff is not

recommending. Additionally, interested persons would already have an opportunity to meaningfully comment on the application during the 30-day review period when the Department of Public Works considers the application.

Proposed Installation and Maintenance Standards

As an overview, the proposed installation standards will require facilities:

- Be colored to blend with other streetscape or surrounding features to the extent feasible;
- Restore any area that is disturbed or altered during installation to previous condition;
- As new technology becomes available and where feasible, underground the equipment;
- Limit the placement of facilities in Residential districts to no more than one telecommunication equipment facility of any kind per each residential frontage. On corner lots, require placement on the secondary frontage;
- Landscaping shall be installed if requested by the abutting property owner, and as approved by the Department of Public Works;
- Compliance with the Tree Protection and Noise Ordinances;
- Wireless antennas are only permitted to be co-located on existing poles in the public right-of way.
- Antenna arrays for omni-directional wireless facilities may extend a maximum of seven (7) feet above the height of the pole;
- If a facility proposes to replace a City owned pole, the new pole shall be reviewed and approved by the Department of Public Works and shall match the appearance of the original pole to the extent feasible;
- Where feasible, panel antennas shall utilize brackets that allow no more than a 4" extension from the pole. Panel antennas cannot exceed the height of the pole;
- Monopoles are not permitted in the public right-of-way;
- A facility cannot be co-located on a structure that is less than 25 feet tall (e.g. street light must be at least 25 feet tall to allow a wireless antenna to co-locate);
- No illumination or private signage allowed on or at a facility.

An overview of the proposed maintenance standards will require facilities:

- Be well maintained by the applicant and free of rust, dents, graffiti, peeling paint etc.;
- Graffiti removal within 48 hours, routine requested maintenance (e.g. painting, leveling etc) within 10 days;
- If discontinued, the applicant must immediately notify the Department of Public Works and restore the site to its' previous condition.

The Planning Commission recommended that a bond be required to cover the cost of removal of abandoned facilities. State law allows cities to require a removal bond from wireless providers, but not video providers. Department of

Public Works staff has determined that the required removal of equipment will be included as part of the permit to allow a wireless carrier on a pole in the public right-of-way. Therefore, no specific bond requirement is necessary.

PROPOSED TITLE 17 REGULATIONS (PRIVATE PROPERTY)

Staff is proposing several updates to the existing standards that regulate wireless facilities on private property that were adopted in 1997. There are no changes proposed to the types of facilities allowed in various zoning districts other than not allowing monopoles in the public right-of-way citywide, or in landmark districts (currently only prohibited in RS and RM zones). The chart below outlines what types of facilities are currently allowed in different zoning districts:

Zone	Minor Facility (Co-located facility)	Major Facility (Freestanding Monopole or similar structure)
RS and RM- all residential zones- single family and multi-family. (propose to move these to Title 12)	Limited to facilities that are located on City-owned property or within a City – owned street such as a street light, utility pole, traffic signal or sign.	Not permitted (propose no monopoles in public right-of-way Citywide or Landmark Districts)
CO,CL, CG and IG (Commercial/Industrial zones)	Permitted with a MCUP subject to Section 17.50.310	Permitted with a CUP subject to Section 17.50.310
OS (Open Space)	Not Permitted	Not permitted
PS (Public Semi-Public)	Permitted with a MCUP subject to Section 17.50.310	Permitted with a CUP subject to Section 17.50.310

Under the current code in residential districts the only type of wireless facilities allowed are co-located (i.e., shared with another use, whether power, telephone, etc.) antennas on another structure in the public right-of-way or on City owned property. Monopoles are not allowed in residential districts because they are larger, taller facilities that do not blend well with the lower scale residential development found in these areas. Staff is proposing that monopoles be prohibited in the public right-of-way citywide and anywhere in landmark districts for these same reasons. In the public right-of-way citywide a facility will be permitted if it is co-located on an existing pole and meets the standards proposed under these amendments. Therefore carriers will have the ability to meet their coverage requirements.

In commercial and industrial zoned areas monopoles are permitted on private property through a CUP application subject to a series of development standards- some of which staff is proposing to modify under these Title 17 amendments. Industrial and commercial areas have taller height limits for buildings and a variety of uses that allow monopoles to blend better in these zones.

Staff is not proposing to change the existing permitting procedure for private property. Monopoles are considered “Major Facilities” which require a Conditional Use Permit application with a 500- foot notice requirement, 14 calendar days prior to the Hearing Officer meeting. Co-located antennas are considered “Minor Facilities” and require a Minor CUP with a 300-foot radius for notification, 14 days prior to the Hearing Officer meeting. There are no hearings for MCUP’s unless a request is submitted prior to the meeting. This is the standard notice requirement for CUP/MCUP applications in the Zoning Code. As previously discussed in the Title 12 discussion, currently an antenna in the public right-of-way in a residential district requires a MCUP and must conform to the “Multiple Use Facility” regulations. As this is a discretionary review in the public right-of-way, staff is proposing that these regulations be folded into the new Title 12 regulations and these co-located antennas would now be reviewed under the new Telecommunication Equipment Facility regulations. As proposed, the Department of Public Works will provide a 30-day notice of the proposed placement location to the community within a 300-foot radius.

For reference, the proposed Title 17 amendments are Attachment C to this staff report. A summary of the changes includes:

Proposed Changes for Monopoles (Major Wireless Facilities)

- Reduce the maximum allowed height for monopoles from 60 feet to 50 feet;
- Require a 500-foot distance requirement between individual monopoles (no distance requirement under current code);
- New requirement that no monopoles be permitted in designated landmark districts (including National Register Districts);
- Requirement for a Justification Study to demonstrate why co-location on an existing building or facility will not provide the carriers service requirements, and details as to the coverage gap that the new facility will serve;
- Documentation demonstrating that upon installation the project will not result in levels of radio frequency emissions that exceed Federal Communications Commission standards;
- Implement a maximum life for applications of 10 years. After 10 years, the applicant may apply for an administrative extension of the application for an additional 10 years upon documentation that the facility continues to meet all adopted code requirements, including emission levels;
- Propose that if a faux tree design is utilized that the type of tree must be compatible with those at the site. If no trees exist the applicant must create a landscape setting that integrates the faux tree with added species of a similar height and type;
- For monopoles designed as flag poles, require that a flag must be flown and properly maintained at all times, and the base of the pole shall be appropriately tapered to maintain the appearance of an actual flag pole;

- Will still require a Conditional Use Permit with a 14-day, 500-foot notice requirement;
- Will still require a distance from a residential site that is equal to the height of the monopole (e.g. 50- foot monopole requires 50-foot setback from any point of a residential site).

Proposed Changes to Co-Locations (Minor Facilities)

- Reducing the maximum height that a whip or omni-directional antenna can project from the roof-line or parapet of an existing structure from 15 feet to 10 feet;
- Adding additional screening language to require all sides of a co-location installation to be concealed from view, that there shall be no visible transition between existing and new surfaces, no exposed cable, mounting apparatus or pipes permitted and no interruption of horizontal or vertical reveals;
- Documentation demonstrating that upon installation the project will not result in levels of radio frequency emissions that exceed Federal Communications Commission standards;
- Implement a maximum life for applications of 10 years. After 10 years, the applicant may apply for an administrative extension of the application for an additional 10 years upon documentation that the facility continues to meet all adopted code requirements, including emission levels;
- If proposed on a light pole on private property, the pole must match the color, height and design of the existing light poles;
- Will still require a MCUP for private property with a 14-day, 300-foot radius notification.

Proposed Changes for Wireless Facility Co-Location with Existing Wireless

Under the current code, if an applicant proposes to co-locate on an existing monopole a MCUP is required. However, pursuant to a State law passed in 2006 establishing a clear state policy favoring wireless facilities that are co-located with existing wireless facilities, if a carrier proposes such co-location, cities may not impose a discretionary review process on that application. The city can still apply a review process and impose regulations; however this must be under a ministerial review. To address the state law requirements staff is proposing the following:

- Staff will review the request under the new Title 17 administrative Opportunities Site application, including processing time, fees etc (this application is explained further in this report);
- The co-location cannot result in an increase of height for the existing monopole;
- The monopole must comply with all applicable monopole requirements, such as setback from residential sites, height, placement standards for accessory equipment etc.;

- A new definition of “Wireless Telecommunication Co-Location Facility” will be added to the code as “the placement of or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, another major wireless facility”.

If a carrier proposes to co-locate on a *non-conforming* monopole that was installed prior to the city’s 1997 CUP requirement, an MCUP for co-location can and will be required.

The Opportunities Map

In an effort to encourage co-location of wireless facilities on existing buildings and facilities rather than the installation of new monopoles, and also to potentially limit the amount of new wireless facilities in the public right-of-way, Planning and Development staff created the Opportunities Map (the map). The map is essentially a master plan for placing co-located (minor) facilities on City owned property in exchange for application processing incentives for the applicant. The map is shown in Attachment D to this report.

The map denotes City owned property (not public right-of-way) that may be a suitable location for a minor wireless facility and/ or equipment cabinets (excluding Open Space zoned areas such as parks). These locations are preferred as they offer more opportunity for screening and can possibly prevent a facility from locating in the public right-of-way. As these mapped sites are on City owned property (excluding parks) and not in the public right-of-way, the application will be reviewed and approved by the Planning and Development Department. The application will be an administrative review by the Director of Planning and Development with notification of the decision to the Planning Commission and Council and the decision may be called for review to the Board of Zoning Appeals.

The Opportunities Map includes only City owned property as the City cannot control the decision of private property owners and require that their site be included in a “master plan”. Further, there are many factors involved in finding a location that will address the installation needs of carriers. Staff cannot determine what sites would logistically work on a citywide basis for all the different wireless carriers. The City can however more easily track City owned parcels and their potential uses, and can enter into agreements with carriers to install co-located antennas or equipment cabinets on the sites that meet their installation requirements.

Should an applicant choose a location from the map, the proposed requirements are:

- Applies to Minor (co-located) wireless applications and/or equipment proposed to be located on a designated site from the map;

- Processed through an administrative “Opportunities Site Application”;
- Planning and Development staff will review the application and the Director will issue a decision within 30 days of receipt of a complete application;
- A decision letter will be distributed to the City Council and Planning Commission and the decision may be called up for review to the Board of Zoning Appeals;
- The application will not be approved unless the review authority makes the following findings:
 - a) The proposed use is allowed with an Opportunities Site application within the zoning district and complies with all applicable provisions of the underlying zone;
 - b) The proposed use will be located on a site that is designated as a preferred location on the Opportunities Map;
 - c) The location of the proposed use complies with the special purposes of this zoning code and the applicable zoning district, and is in conformance with the goals, policies and objectives of the General Plan;
 - d) The proposed use will not be detrimental to the health or general welfare of persons residing or working in the neighborhood of the proposed use;
 - e) The proposed use will be compatible with the existing uses on the site and uses in the vicinity in terms of aesthetic values, character, scale and view protection and will not interfere with the existing activities at the site.

The application that is submitted must include the following:

- Applicant contact information
- The exact proposed location of the facility in a GIS compatible format;
- A photo simulation of what the proposed facility will look like installed at the site;
- A site plan clearly indicating the location for the facility and the surrounding uses and improvements;
- Documentation demonstrating that upon installation the project will not result in levels of radio frequency emissions that exceed Federal Communications Commission standards;
- Hold harmless and Certificate of Insurance agreements.

Recommended Code Amendments and Repealed Resolutions

To provide consistency with existing code standards and the proposed code amendments to Titles 12 and 17, staff recommends the Council take the following additional actions:

- (1) Repeal Resolution No. 7542 to remove the license agreement requirement for wireless facilities in the public right-of-way and city owned

- locations. The new application process and standards will supersede the license agreement requirement for these sites;
- (2) Amend Resolution No. 7559 related to existing Design Guidelines for Wireless Telecommunication Antenna Facilities, to reflect current code sections and to eliminate the reference to Multiple Use Facilities;
 - (3) Amend Title 18 Cable, Video and Telecommunication Service Providers to reflect the amendments to Titles 12 and 17.

Mapping Overview

Prior to developing the proposed regulations in Title 12 and the amendments to Title 17, staff undertook the management of a comprehensive mapping component for this project. The results are three new maps that have been created and will be linked to the City's GIS and Tidemark permit systems- the Opportunities Sites map and two additional maps described below. All three maps are Attachment D to this report.

Survey of Existing Cabinets

Willdan was hired by the City to survey and document the location of all existing equipment cabinets located in the public right-of-way within residential districts (including traffic signal cabinets and other types of cabinets that are not regulated under the proposed standards).

Every cabinet is shown on the map and is linked to the GIS database that includes the cabinet type (e.g. cable, traffic control etc.) and a photo. As new facilities are installed, applicants will be required to submit information in a format that is compatible to our GIS system to continue updating this comprehensive database. This map was created to show, from an overview, what types and how many cabinets we have in the City's residential neighborhoods. This will aid the Department of Public Works in future placements and will also assist in monitoring the number of cabinets on a street or in a neighborhood.

Survey of Existing Wireless Antennas

Planning and Development staff conducted a comprehensive search of all discretionary permits that have been issued for wireless antennas on private property since the 1997 inception of the requirement for a permit from the City. These facilities were then mapped using the GIS database that is linked to the Tidemark permit system. This will assist in verifying the proposed distance requirement between monopoles on private property and also provides data on siting trends for these facilities. This map shows all permitted antennas on private property citywide. To date there are three monopoles and 73 co-locations.

ENVIRONMENTAL REVIEW:

An Initial Environmental Study has been prepared for the project. The determination for the project is a Negative Declaration. The comment period for

the Initial Study ran from November 6, 2008 through December 1, 2008. Staff recommends the City Council acknowledge the conclusions of the Initial Study and adopt a Negative Declaration for the project.

GENERAL PLAN CONSISTENCY:

The proposed revisions to the Municipal Code are consistent with the following objectives and policies of the General Plan:

1. **Objective 5- Character and Scale of Pasadena:** Preservation of Pasadena's character and scale, including its traditional urban design form and historic character, shall be given highest priority in the consideration of future development;
2. **Objective 7 – Residential Neighborhoods:** Preserve the character and scale of Pasadena's established residential neighborhoods;
3. **Objective 10- Diverse Economy:** Pasadena shall promote a diverse economic base that serves local residents by providing jobs, by providing city revenues, by enhancing our dynamic social and cultural life, and by meeting the needs of international competition;
4. **Objective 14- Accessible and Well Designed City:** Promote safe, well-designed, accessible and human-scale residential and commercial areas where people of all ages can live, work and play;

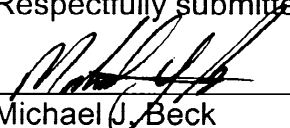
The proposed amendments will establish a regulatory procedure and performance standards for the installation of telecommunication equipment facilities citywide that are located in the public right-of-way, and an update to existing wireless antenna standards for private property. The standards will allow the benefits of new technology for Pasadena residents and businesses with balancing regulations for the placement and design of the required infrastructure.

There are more restrictive standards for residential zones and the creation of Opportunities Map sites that encourage co-location on City owned property rather than placement in the public right-of-way. The proposed code amendments would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. Further, staff is proposing stricter development standards for monopoles including a distance requirement to encourage co-location. The GIS based mapping system that has been developed will allow staff to properly place and monitor the location of each new telecommunication equipment facility that is permitted. This will aid in the future decisions of facility placement.

FISCAL IMPACT:

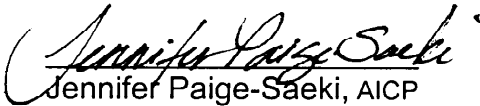
The proposed amendments will not have a significant fiscal impact. Fees will be developed as part of the annual review of the General Fee schedule to reimburse the staff costs for review of the applications.

Respectfully submitted



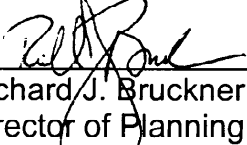
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Attachments:

- A. Community comments and staff's response
- B. Proposed Title 12 Regulations
- C. Proposed Updates to Title 17 Regulations
- D. Maps
- E. Initial Study