

# Agenda Report

**TO:** CITY COUNCIL

**DATE:** FEBRUARY 23, 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.

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## **RECOMMENDATION**

It is recommended that the City Council:

1. Adopt the Initial Study 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 as described in the 2/2/09 City Council staff report (Attachment B) and as amended in this staff report, and to repeal related uncodified resolutions as described in the 2/2/09 City Council staff 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 2/2/09 City Council staff report and as amended in this staff 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.

## **BACKGROUND**

On February 2, 2009 the City Council reviewed staff's recommendations on proposed code amendments related to Wireless Telecommunications Facilities. Staff was asked to return with additional information related to the following:

1. Requiring a removal bond for abandoned equipment in the public right-of-way;
2. Requiring a Justification Study for the establishment of new wireless facilities in the public right-of-way;
3. Allowing interested persons to appeal a right-of-way application (in addition to the applicant);
4. Amending the code for continuance requests for applications; and
5. Providing a matrix that provides an overview of the County of San Diego ordinance and the proposed City of Pasadena ordinance.

Staff is recommending a modification to the previous recommendations on items one, two and three as listed above. Item four is recommended to be included in the next series of Zoning Code amendments and item number five is included as Attachment A to this staff report.

Staff continues to recommend that the wireless and wireline (video) applications in the public right-of-way are:

- Under the same "Telecommunications Equipment Facilities" definition; and
- Processed using the same permit process (includes notification, installation and maintenance standards).

## **ANALYSIS**

### **Removal of abandoned equipment in the public right-of-way**

California Government Code Section 65964(a) identifies conditions of approval that a city cannot impose on a wireless facility application, one of which is requiring an escrow deposit for the removal of wireless facilities or any component thereof. However, this section does allow a city to require a performance bond or other surety to guarantee the removal of wireless facilities. The section further specifies that the amount of the bond will be determined on the cost of removing all the facilities associated with a wireless telecommunications facility. This would include, but not limited to, antenna,

underground vaults, and above ground cabinets. Staff recommends that a bond or surety requirement be included in the proposed ordinance for Wireless Telecommunications Facilities within the public right-of-way.

While State law allows the City to require bonds or surety for the removal of wireless facilities, it does not allow the City to require any bonds or surety for the removal of video facilities.

#### Requirement for a Justification Study in the public right-of-way

Under the current proposal, staff is recommending that a Justification Study be required for the installation of a monopole on private property (regulated by the Zoning Code). The intent of the Justification Study is to demonstrate why an applicant needs the monopole (i.e. why they cannot co-locate on another structure) and what type of service gap the facility will address.

After further consideration of the issue, staff is supportive of a new recommendation to require a Justification Study for wireless sites in the public right-of-way. As only co-located sites are permitted in the right-of-way (no monopoles), the Study will be used to verify the alternate sites and designs the applicant has considered and why the proposed location will serve the coverage requirements

Given the additional staff time needed to review the Justification Study, the previously proposed 60-day time limit for video and wireless applications would only apply to video as required under State law. Wireless applications are required to be decided within “a reasonable amount of time” but no specific days are prescribed by federal law.

#### Appeal process for right-of- way applications

As noted, 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. The City is not legally required to provide an appeal process for decisions on wireless facilities; however, staff now recommends including provisions for a process.

Staff is proposing a modification to the original recommendation so that wireless and wireline (video) applications in the public right-of-way would be appealable by any interested person. Including an appeal for any interested person, has been recommended by the community and the Planning Commission.

For decisions on right-of-way applications, staff recommends a right to appeal for any interested person (1) to the City Council (for video facilities); or (2) to the City Manager or his designee (for wireless or other facilities) by submitting a statement setting forth the facts and circumstances regarding the underlying

decision, providing a specific factual basis for the appeal, and submitting an appeal fee.

Amending the Zoning Code for continuance requests for private property applications

At the February 2, 2009 Council meeting staff was asked about the possibility of limiting the amount of continuances or the length of time a case could be continued without renoticing. This issue applies to a number of discretionary actions and staff suggests this be addressed in the next series of Zoning Code amendments.

County of San Diego and City of Pasadena Matrix

A matrix comparing the County of San Diego and the City of Pasadena ordinances is included as Attachment A to this staff report. The matrix evaluates issues discussed at the February 2, 2009 City Council hearing and is not a line by line comparison of the ordinances in their entirety. This is difficult to do as the organization of each ordinance is very different. The County of San Diego ordinance applies to a geographic area of over 4,000 square miles and over 3,000,000 people. Therefore, aspects of the ordinance are not applicable to a jurisdiction the size of Pasadena.

**FISCAL IMPACT**

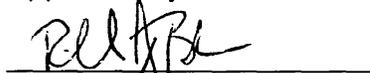
The proposed amendments will not have a significant fiscal impact.

Respectfully submitted



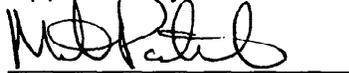
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City Manager

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Richard J. Bruckner  
Director of Planning and Development

Approved by:



Martin Pastucha  
Director of Public Works

Prepared by:



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Attachments:

- Attachment A: Matrix comparing County of San Diego to City of Pasadena
- Attachment B: City Council staff report of February 2, 2009