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DEPARTMENT OF
PUBLIC WORKS

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April 8, 1997

Law and Legislation Committee
Sacramento, CA

Honorable Members in Session:

SUBJECT: AN ORDINANCE AMENDING TITLE 12, CHAPTER 12.04, RELATING TO REVOCABLE PERMITS GRANTED TO CELLULAR/WIRELESS COMMUNICATIONS PROVIDERS FOR FACILITIES LOCATED ON CITY-OWNED PROPERTY

LOCATION/COUNCIL DISTRICT:

Citywide. All council districts.

RECOMMENDATION:

It is recommended that the Law and Legislation Committee forward the attached ordinance to the full City Council for adoption.

CONTACT: Bruce Alei, Supervising Real Property Agent, 264-5055

FOR COMMITTEE MEETING OF: April 15, 1997

SUMMARY:

This proposed ordinance amendment sets forth the recommended City policy and procedure for cellular/wireless telecommunications occupancy grants on City property. The proposed ordinance amendment will address the following three issues:

- The intent of the policy.
- The obligations that will apply to telecommunications providers for use of City property.
- The process for obtaining permission to use City property.

Law and Legislation Committee
Ordinance Amending Title 12, Chapter 12.04 Relating to Revocable Permits
April 8, 1997

BACKGROUND:

The present City Ordinance regarding revocable permits does not adequately address cellular/wireless facilities located on City-owned property. Existing ordinance language primarily addresses temporary construction permits for Public Utility Commission (PUC) authorized companies use within City streets.

Growth in the telecommunications industry, coupled with the Federal Communication Commission (FCC) issuance of new licenses and sale of additional frequency bands in the past three years, has resulted in the City being inundated with revocable permit applications for wireless telecommunication.

It is the intent of the Department of Public Works, through this policy ordinance and through coordination with the Planning Department's current telecommunications ordinance changes, to create an equitable, nondiscriminatory and competitively neutral procedure for all wireless telecommunications applicants. In brief, the key provisions of the ordinance may be summarized as follows:

- Formal Application Process for Revocable Permit

The ordinance requires that each telecommunication provider submit a formal application to the City on a prescribed form, which clearly describes the facilities proposed and the desired location on City property.

- Initial Application Fee

In addition to the application, an initial fee will be required for all applications. The fee will cover up-front staff costs, including City Real Estate Services, Neighborhood Services, and the City Attorney's Office.

- Form of Agreement Between City and Applicant

As part of the revocable permit, a formal agreement between the City and applicant will be required. The ordinance specifies a standard form agreement to be utilized for all applicants which outlines all of the terms and conditions upon which the permit is to be issued.

- Rental and Other Charges

The application process shall be administered by the City in a non-discriminatory manner through the use of standardized procedures for establishing fair market rental, and a uniform schedule of initial onetime fees.

- Review & Approval

All applications for revocable permits shall be reviewed by the Director of Public Works (or designee). The Director of Public Works shall refer all such applications to the City Council together with a recommendation concerning the approval, conditional approval, or denial of such permit.

FINANCIAL CONSIDERATIONS:

The proposed ordinance allows the City to recover its reasonable costs for processing revocable permit applications and also, through the agreement for issuance of a revocable permit, to receive compensation for fair rental value on the City's land or facility. In addition to monetary compensation, the agreement may contain provisions granting to the City air time usage or other such service as compensation from the telecommunications provider.

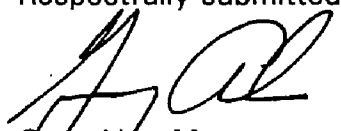
POLICY CONSIDERATIONS:

The proposed ordinance will create policy and procedures relative to revocable permits for telecommunications providers for cellular/wireless facilities located on City-owned property.

MBE/WBE:

Not applicable. Information only.

Respectfully submitted,



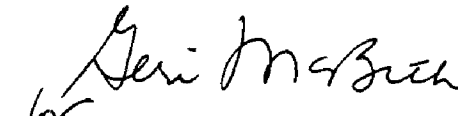
Gary Alm, Manager
Real Estate Services and Special Districts Division

RECOMMENDATION APPROVED:

Approved:



Betty Masuoka
Deputy City Manager



for Michael Kashiwagi
Director of Public Works

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE AMENDING TITLE 12, CHAPTER 12.04, RELATING TO REVOCABLE PERMITS FOR TELECOMMUNICATIONS PROVIDERS FOR FACILITIES LOCATED ON CITY-OWNED PROPERTY

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO, AS
FOLLOWS:

SECTION 1. Intent

By enactment of this ordinance, it is the intention of the City Council to establish uniform, nondiscriminatory procedures for allowing telecommunications providers to locate telecommunications facilities on City-owned property. The revocable permit process is the appropriate method for administering such usage of City-owned property, in order to assure that the City Council retains maximum flexibility and discretion as to public property for purposes of exercise of its police power and other powers and duties to the residents of the City of Sacramento. This ordinance is based upon the authority vested in the City Council by the Sacramento City Charter, the constitution and laws of the State of California, and the Telecommunications Act of 1996, P.L. 104-104.

SECTION 2.

Sacramento City Code, Title 12, Chapter 12.04, is hereby amended to add Section 12.04.122, to read as follows:

12.04.122 Telecommunications facilities located on City-owned property.

(a) Exclusive procedure. Except as specifically otherwise stated herein, the procedures specified in this section shall be the exclusive procedure governing revocable permits for telecommunications facilities which are proposed to be located on City-owned

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property. Nothing in this section shall preclude the application of the following provisions, and any applicant for a revocable permit shall comply therewith:

- (1) all applicable land use regulations, including but not limited to zoning regulations;
- (2) Sacramento City Code Section 12.04.120, relating to revocable permits for use of city rights of way or easements.
- (3) Sacramento City Code Section 38.03.026, relating to excavation permits and street cuts; and
- (4) Sacramento City Code, Title 23, relating to business occupation tax certificates.

The revocable permit application required hereunder may be filed by an applicant while land use and other applications are pending; provided, however, that no revocable permit shall be issued unless and until all other required City, state or federal permits have been obtained by the applicant, and all other state, federal and City requirements including but not limited to subsections (1) through (4) above, have been met.

(b) Definitions. The following definitions shall apply to terms used in this section:

(1) Telecommunications facilities. Facilities designed for the provision of cellular telephone facilities and other personal wireless services, including but not limited to transmitters, towers and other equipment.

(2) Personal wireless services. Personal wireless services, as defined in 47 U.S. Code 332(c)(7)(C).

(3) Telecommunications provider. A provider of cellular telephone or other personal wireless services.

(4) Utility relocation. Any required move or relocation of an existing installation or equipment owned by any provider of utility or utility-related services, whether such provider is a private or public entity, including but not limited to the City, where such move or relocation is necessitated by installation, improvement, renovation or repair of telecommunications facilities installed on City-owned property.

(5) Utility relocation costs. Any actually incurred cost or expense associated with a utility relocation.

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(6) City-owned property. Any property owned, rented or leased by the City, or in which the City has the right to use or occupancy by virtue of an easement, right of way, or other similar interest in property; provided, however, that the provisions of this section shall not apply to street easements or right of way owned by the City, where the telecommunications provider will be installing wire, conduit or similar equipment within the street. For purposes of this section, "property" includes real property or improvements thereon, and personal property, fixtures or equipment. City-owned property shall also include traffic signals, lighting or other poles or similar equipment, whether within or outside the street right of way, where telecommunications facilities are to be located or installed thereon.

(7) Collocation. The location by the same or different telecommunication providers of telecommunication facilities together in the same location or on the same tower, pole, or other structure.

(c) Application.

(1) A telecommunications provider proposing to locate telecommunications facilities on City-owned property shall make application to the City Director of Public Works through the Real Estate Services Section Supervisor, on a form provided for that purpose.

(2) The application shall clearly describe the telecommunications facilities proposed to be installed, the City property on which the facilities are proposed to be installed, and their exact proposed location thereon, including such specifications, drawings, maps and other illustrations as are required by the City Director of Public Works, through the Real Estate Services Section Supervisor.

(i) The Real Estate Services Section Supervisor shall, within ten (10) days from the date of receipt of the application make a determination as to whether the application is complete in all respects, and whether the applicant has applied for all other required land use entitlements and other required state, federal or City permits or licenses. If no such determination is made within the ten (10) day period, the application shall be deemed complete. In the event that the application is determined incomplete, the applicant shall be notified in writing of the nature and extent of the deficiencies.

(ii) Upon a determination that the application is complete, or upon expiration of the ten (ten) day period for making such determination, the Real Estate Services Section Supervisor shall process the application and meet with the applicant as required in order to determine whether the application should be granted or denied. The application may be denied for good cause, may be conditionally approved, or may be granted, subject to required procedures for approval by the City Council.

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(iii) In the event that the application is denied, the applicant shall be notified in writing of the denial, with a written statement of the reasons for the denial. The notice shall be sent by United States mail to the applicant at the address listed on the application.

(iv) An applicant whose application has been denied may appeal the denial to the City Manager, whose determination shall be final. Any such appeal shall be by letter or other written communication delivered to the City Manager within fifteen (15) days from the date that the notice of denial was mailed.

(3) The application shall be accompanied by an estimated processing fee, established by resolution of the City Council, designed to recover all City staff costs in processing the application, including but not limited to the City Department of Public Works, the Neighborhood Services Department, and the City Attorney. The application shall contain a statement that by executing the application, the applicant agrees to pay any processing costs in excess of the estimated application fee, upon billing thereof by the City.

(4) The application process shall be administered by the City in a nondiscriminatory manner, through the use of standardized procedures for establishing fair market rental, and a uniform schedule of initial, one time fees. All negotiations and discussions shall be conducted by assigned City staff.

(d) Agreement for issuance of revocable permit; issuance of revocable permit.

(1) The City Council shall, by resolution, adopt a form of agreement that shall be utilized for all applicants proposing to locate telecommunications facilities on City-owned property. The agreement form shall specify all of the terms and conditions upon which the permit is to be issued, including but not limited to the term; provisions for renewal; termination and revocation provisions; compensation to the City, including but not limited to a one-time initial fee and rental rates; if applicable, provisions for space requirements or reservations for public use; provisions for fee escalation based upon a consumer price index procedure; use and nuisance restrictions; construction requirements and specifications; maintenance and repair responsibilities; insurance, liability limitation provisions, and indemnification obligations; provisions relating to payment of taxes; assignment restrictions; provisions requiring a permittee to notify before excavation ("one call" requirements); and other provisions as may be required by the City Attorney.

(2) Upon approval by the City Director of Public Works through the Real Estate Services Section Supervisor of an application pursuant to subsection (c), the applicant shall execute a copy of the pre-approved form of agreement for issuance of a revocable permit. Upon

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execution of the agreement, City staff shall seek approval of the City Council. Upon City Council approval of the agreement, and upon approval as to form by the City Attorney, the City Manager or designee shall execute the agreement.

(3) Upon full execution of the agreement, and subject to subsection (a) and payment by the applicant of any further processing fees owing, the one time initial fee and any rental due, the City Director of Public Works through the Real Estate Services Section Supervisor shall issue the revocable permit. Each such permit shall be non-exclusive, and shall be in a form approved by the City Director of Public Works through the Real Estate Services Section Supervisor. The permit form shall refer to the agreement for issuance of revocable permit, which agreement shall govern the permit during its entire term.

(e) Relocation. Where utility relocation is required either because of the applicant's construction or installation of its facilities, or by virtue of a subsequent City project, the entire utility relocation cost shall be payable by the permittee whose telecommunication facilities are required to be relocated. Nothing in this section shall be interpreted to affect, adversely or otherwise, a permittee's ability to recover all or any part of the relocation cost from another utility or provider located on or adjacent to the City-owned property.

(f) Collocation. Where appropriate and feasible, telecommunication facilities located on City-owned property shall be collocated.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

ATTEST:

MAYOR

CITY CLERK

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