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DEPARTMENT OF
PARKS AND RECREATION

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CALIFORNIA

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April 11, 2003

Law and Legislative Committee
Sacramento, California

Honorable Members in Session:

**SUBJECT: REPORT BACK TO COMPARE THE CURRENT REVOCABLE PERMIT
PROCESS VERSUS A FIXED TERM LEASE APPROACH FOR PRIVATE
WIRELESS TELECOMMUNICATION FACILITIES ON CITY OWNED
PROPERTY**

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

Staff recommends that the Law and Legislation Committee discuss the policy aspects of this report and provide direction as appropriate.

CONTACT PERSONS: William Sinclair, Real Property Agent, 264-1905
Lori Harder, Administrative Services Officer, Dept. of Parks and
Recreations Director, 264-1190

FOR THE LAW AND LEGISLATION MEETING OF: May 8, 2003

SUMMARY:

The current process for allowing telecommunication (cellular phone) facilities on City owned property is through issuance of a "revocable permit" to the applicant telecommunication company. This process is more particularly described in the City's Telecommunications Development Guidelines adopted by City Council in September 1997. At the March 6, 2003 meeting of the Law and Legislation Committee, Council member Pannell requested a report



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Law and Legislation Committee
Discussion of Revocable Permit Versus Fixed Term
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back with information on the pros and cons regarding the current revocable permit process and information on whether a fixed term lease approach could be utilized as an alternate to a revocable permit. See Attachment "A" for a summary discussion of the pros and cons by various Telecommunications Companies, City Departments, and the Citizen's Advisory Committee (CAC) for Parks and Recreation.

COMMITTEE/COMMISSION ACTION:

The Citizens Advisory Committee for Parks and Recreation reviewed the current revocable permit process versus a fixed term lease agreement on April 3, 2003. Their comments are summarized on Attachment "A".

BACKGROUND INFORMATION:

In April 1996, the City Council directed the Planning and Building Department to expedite the planning process for private wireless telecommunications facilities by creating standards related to their location and design that would be acceptable to the public and by amending the Zoning Ordinance to allow permits for such facilities by right (i.e., no discretionary permit would be required). In May 1996, City and County Planning staff joined to create a telecommunication facilities task force to coordinate efforts in dealing with the large number of telecommunication facility applications.

This task force facilitated communication between numerous industry representatives and held weekly meetings through November 1996. The task force, in conjunction with neighborhood group representatives, developed acceptable guidelines for wireless telecommunication facilities. The group also reached a consensus on recommended Zoning Ordinance amendments for both the County and City.

In April of 1997, the Law and Legislative Committee voted to forward the proposed Zoning Ordinance amendment and Resolution establishing Telecommunications Facilities Development Guidelines to the City Council. In March of 1997, the Planning Commission voted to recommend approval of the proposed Zoning Ordinance amendment and Resolution establishing Telecommunications Facilities Development Guidelines.

In September of 1997, the City Council adopted the Telecommunication Facilities Development Guidelines including fee and rent schedules and the current revocable permit process.

FINANCIAL CONSIDERATIONS:

Proceeds from the revocable permit agreements are currently utilized by City Council members for neighborhood enhancement programs within their districts.

ENVIRONMENTAL CONSIDERATIONS:

This report is solely for the purpose of reporting the pros and cons of using a revocable permit for private wireless telecommunications facilities, and is therefore, not a project for the purpose of the California Environmental Quality Act.

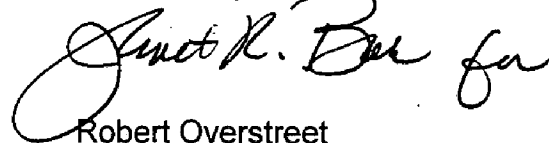
POLICY CONSIDERATIONS:

The current procedure for locating telecommunication equipment on both private and city-owned property is based on the actions taken by City Council in 1997.

ESBD CONSIDERATIONS:

This report is not affected by City policy related to ESBD.

Respectfully submitted:



Robert Overstreet
Director of Parks and Recreation

RECOMMENDATION APPROVED:



ROBERT P. THOMAS
City Manager

APPROVED:



Thomas V. Lee
Deputy City Manager

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ATTACHMENT "A"

Discussion Paper

The Pros and Cons of the Revocable Permit Process for Wireless Telecommunication Facilities

General

To date, all wireless telecommunication facilities on City owned property have been located on water towers or facilities operated by the Department of Utilities or within improved or unimproved park sites operated by the Department of Parks and Recreation. Relevant stakeholders include the telecommunication companies, the Citizens Advisory Committee for Parks and Recreation, Department of Parks and Recreation and the Department of Utilities.

Some of the discussion in 1996 and 1997 centered on whether the City of Sacramento should be encouraging installation of telecommunication facilities on city owned sites and whether the City should be competing with private property owners for wireless telecom. installations. At that time, the consensus was that our agreement should reflect the City's desire for ultimate flexibility.

The following is a summary of comments received from the various stakeholders relevant to the current revocable permit process:

Telecommunication Companies

Discussion

The discussions with telecommunication companies resulted in fairly consistent opinions. The telecommunication companies contacted include Verizon Wireless, Metro PCS, AT&T, Sure West, Cingular, Sprint PCS, and Nextel Wireless. Without exception, these companies indicate that the terms of the revocable permit are one-sided in favor of the City and present a substantial amount of risk because the 270 day revocation period called for in the City's standard permit, may cause them to lose a sizeable investment depending on the site and the cost of the facility.

The time period to recoup construction costs cannot be verified as information on revenue and net proceeds is closely held information and has never been shared with the City.

Although telecommunication companies indicate that the terms of our City's revocable permit process are unfairly one-sided, all the major carriers except Cingular have sites on City owned property. Cingular, Nextel and SureWest Wireless have expressed the most concern regarding the terms of the Revocable Permit. Nextel indicated in 1999, they would no longer do business with the City because of the terms of our agreement. The message from these carriers is that if

we offered a fixed term lease or even more favorable terms within the current agreement, they would consider City owned sites as possible locations.

The other component of the site selection process is the requisite annual rent or lease payment. The City has a set rent schedule that varies between \$15,000 and \$22,000 per year. These rents are much higher than are typically negotiated with private property owners. Therefore, more favorable terms may not result in the location of more cellular sites on City property.

Furthermore, according to City's Information Technology Department, most of the wireless network has been established and very little is left to completely establish a full coverage network throughout the City.

Pros

- None

Cons

- The initial cost to install a telecommunication facility typically ranges between \$100,000 and \$250,000. If the City revokes the permit early in the term, the costs cannot be recouped from business operations.
- There is no option for relocation within the same site as opposed to revocation.
- The terms of the revocable permit agreement make City owned property the sites of last choice.
- There is no clear indication as to the process for revocation. In other words, can it be enacted at a staff level, City Manager level or is it a City Council action?
- There is no remuneration for revocation.
- Revocation not only can cause a lack of service to residents within a certain area, it creates competitive disadvantages and results in problems with customer retention.

Department of Utilities (DOU)

Discussion

Many of the wireless telecom. installations are located on the Freeport, Oak Park and Alhambra Water Towers. The water towers within the City provide supplemental and emergency water as well as providing water pressure to the City. The cellular sites need to be maintained roughly once a month. Therefore, we have outside vendors around and on top of our water towers regularly. Although, the City has a process whereby maintenance workers need to get access from City officials, there is possible opportunity to circumvent these security checks. The DOU strongly feels our current revocable permit process should be left unaltered for facilities located on water towers.

Pros

- The current revocable permit process gives the City more control of telecommunication sites.

- Homeland security issues may result in the need to remove all telecommunication facilities off and away from the water towers.
- Allows the DOU the pull cellular equipment off the towers and other DOU structures during retrofits and maintenance.

Cons

- None

Department of Parks and Recreation

Discussion

The Department Director and his Executive Team all agreed that the form of the permit did not concern the Department but should be flexible to allow for differing circumstances. At the same time, they would like to see the City have the ability to negotiate for a larger lump sum payment, as opposed to an annual revenue stream.

Their opinion was based on the fact that the council member, community and department all have substantial input on the location of any tower within any given park. Therefore, cellular facilities within developed parks should rarely have to be moved. In an undeveloped park with no completed master plan, Parks would prefer to wait until the park is designed or alternatively, include a relocation provision within the agreement as a preference to revocation. Lastly, the Director and his Executive Team feel that the term of the agreement should be as long as possible to provide the most benefit to the park and neighborhood.

Pros

- None

Cons

- Often, a fixed term agreement such as a lease is a more reasonable alternative in a situation where the likelihood of the need to remove cellular equipment is remote. (i.e. SMUD or WAPA towers)

Citizen's Advisory Committee (CAC) for Parks and Recreation

Discussion

City staff asked the CAC to discuss the matter at it's April 3, 2003 meeting. Three of the members indicated that they felt the current revocable permit process was satisfactory and should not be changed. The remaining members indicated the terms of the permit should reflect a compromise between the current terms and those of a fixed term lease. Suggestions such as increasing the noticing period from 270 days to one year, add a relocation provision as a desired first choice or moving toward a fixed term lease with a shorter term, say 5 years versus 10 years, were all items that seemed to be part of a compromise solution. The members of this committee

recognized the diverse locational differences within the Parks. Many members felt comfortable with fixed term leases if the site had a very low probability of being redesigned or used for another purpose. The general consensus was that budgetary constraints are such that the City should encourage cellular installations as partial funding sources for park improvements. Health and safety concerns over electric magnetic fields (EMFs) did not appear to be an issue and was not discussed.

Pros

- The Revocable Permit acts as a deterrent to telecommunication companies using City Parks as possible sites. The primary use of City Parks is for the enjoyment of City residents, not as sites for communication infrastructure, which detract from the aesthetics of the park experience.
- The current agreement gives Parks and Recreation the desired amount of flexibility in locating, relocating and removal of these facilities.

Cons

- The terms of the agreement interferes with the City encouraging these facilities within Parks.

How does the City of Sacramento compare to other Agencies:

An inquiry was sent to other City's within the State and other agencies within our immediate region. Of the responses received, the vast majority of Cities use a lease, typically with 5-year terms and options for additional 5-year renewals. Some of the Cities used a License or Permit, but typically have fixed terms. The three exceptions were the City of San Jose, the County of Sacramento and CalTrans. All had some sort of unilateral revocation language within their contracts. CalTrans owns thousands of miles of transportation corridors and enters into the vast majority of agreements with wireless telecommunication companies within the State.

Staff Comments (Real Estate Services)

There is no question that in individual cases, the terms of the current agreement has caused wireless firms to select other sites. Below are Real Estate Services observations of our existing revocable permit and its affect on site selection.

- It is clear that our current agreement does not encourage wireless firms from locating on City sites.
- It is debatable whether a fixed term lease or more favorable terms would result in a dramatic increase in applications from wireless telecom. companies. Other factors such as rent and site suitability seem to be the driving motivators in terms of site selection.

- The terms of the standard agreement cannot be negotiated and therefore creates a “take it or leave it” situation. Therefore, once the process is started, typically they have built a level of comfort or acceptability of the agreement.
- Companies that do business with the City regularly such as AT&T, Sprint and Verizon have accepted the current permit process. It is no longer an issue for these firms. They realize the City has never permanently enacted the revocation language.
- The terms of the agreement do not fit every situation, but staff has no flexibility in selecting alternative agreements or changing individual clauses within the agreement.

Options:

If the decision is to move forward with a more favorable agreement, Real Estate Services staff offers the following suggestions:

- Include an option for the department responsible for the site to use a standardized lease agreement versus our current revocable permit.
- Modify the existing Revocable Permit to make its terms more favorable to wireless telecommunication providers. Some modifications may include:
 - Add a provision which would emphasize relocation on the same site versus revocation.
 - Remove the revocation provision during the first half of the initial term to allow companies time to amortize their construction costs.
 - Clearly state the City process for revocation, something which is not spelled out in the current City code.