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REQUEST FOR AGENDA ITEM SEEKING APPROVAL OF FUNDING, PROGRAMS, OR EVENTS

Date **July 7, 2010**

Name/Committee: **Elizabeth Bougart-Sharkov,**

SLNC Board Member, Representative At-Large

Text of Motion on the Agenda*:
I, Elizabeth Bougart-Sharkov, move that the SLNC Gov. Board endorses the "Report to the City of Burbank" by concerned citizens regarding aboveground cellular facilities(AGCF) proliferation in Residential Neighborhoods, in particular the recommendations set forth on pp. 1 to 6 as follows:

Based on the new wireless facility ordinances of Richmond and Glendale, as well as ordinances and legislation currently in the works by San Francisco and the State of Connecticut, we submit the following recommendations for your review:

1. A tiered or preferred location approach for proposed wireless facilities, to protect and preserve its residential neighborhoods, schools, daycares, senior and nursing homes.

2. Require a CUP for any or all proposed wireless facility installations, including those in a PROW or attached to a utility/telephone pole. This includes mailing notices to residents and schools within 1000 feet of the proposed wireless facility location, and providing opportunities for community input, including public hearing(s), and means of appeal.

3. Require wireless providers explain their technical needs explaining all of the reasons that a permit is being sought, for example, whether a new antenna is necessary to accommodate increased demand or to fill a significant gap in the provider's radio frequency coverage area; the reasons that the subject site is necessary to accomplish the provider's coverage objectives; the reasons that the proposed site is the most appropriate location under existing circumstances.

4. Require an "alternative site analysis" that makes the carrier prove that there is no feasible alternative site before allowing any cell tower (the carrier would have to explain why it needs to site its cell tower there rather than another feasible suitable location) or wireless facility installation, including those in the public right-of-way installation in a residential area. For example, in

Glendale, in the case of proposed sites that are inside or within 1000 feet of _____ any residential zone, the altemative site analysis shall specifically include an evaluation of the availability and feasibility of potential altemative sites located at preferred locations and within preferred zones. Richmond's alternative site analysis requires applicants to identify and indicate on a map, at a minimum, two (2) viable technically and economically feasible or superior alternative locations outside the disfavored areas which could eliminate or substantially reduce the need to locate in a restricted area. If there are fewer than two such alternative locations, the applicant must provide evidence establishing that fact. The map shall also identify all locations where an unimpaired signal can be received to eliminate or substantially reduce the need for such a location. They must also include photo-simulations of each of the alternatives (i.e., the proposed location/facility and each of the technically feasible location/design alternatives).

5. Require a "visual analysis" to assess the effects on views and aesthetics from public areas and from private residences, and to address cumulative impacts of the proposed facility and other existing and foreseeable wireless communications facilities, including foreseeable co-location facilities. The analysis may utilize simulations, field mock-up or other techniques. The analysis shall include feasible mitigations for any effects identified. If the proposed tower or structure is visible from a public right-of-way, then the applicant shall submit either a photo simulation of the proposed tower or structure from one or more locations along the public right-of-way, the locations of which shall be indicated on a map of suitable scale.

6. Encourage applicant locate at a pre-existing wireless facility locations (i.e., encouraging co-location); also require a written statement of the applicant's willingness to allow other carriers to co-locate on the proposed wireless telecommunications facility wherever technically and economically feasible and aesthetically desirable.

7. Require a projection of the applicant's anticipated future wireless telecommunications facility siting needs within the city, which information may be used by the city as part of a master planning effort designed to ensure a more planned, integrated and organized approach to wireless telecommunications facility siting.

8. For public safety purposes, the City may reasonably require inspection of a tower (including all facilities attached to the tower) by a licensed structural engineer following significant storms, seismic events, or other events which may jeopardize the structural integrity of the towers (or the facilities attached to the towers).

9. Require RF emissions estimations, including cumulative in sites where more than 1 wireless facility will be located (or co-location sites). Applicants would provide a report by an approved radio frequency expert estimating the cumulative radio frequency emissions and compliance with FCC OET Bulletin 65 that would result if the proposed facility is approved.

10. Require RF emissions evaluation after installation of proposed wireless

facility to ensure compliance with FCC.

11. The provider of any wireless communications facility that was approved by the City before the effective date of this Section, shall submit within six (6) months from the date of notification, written certification that the facility is in compliance with the approved application, any required conditions of permit approval and applicable FCC radio-frequency requirements, to be reviewed by the City's approved radio frequency expert. If the facility does not comply with the conditions of permit approval or applicable FCC requirements, the provider shall cease operation of the facility until the facility is brought into compliance. In order to assure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.

12. Radiofrequency emissions evaluations filed by wireless service providers shall be retained by the City for a period of five (5) years and shall be available to the public upon request.

13. Noise at any time of the day or night from the proposed facility will not be greater than forty-five (45) dBA as measured at a distance three (3) feet from any residential building facade.

14. Applicants must include a map and list of other wireless facilities and locations that the applicant has in the city.

15. The City shall maintain on a map, accessible on its website, showing the location of all existing wireless facilities, which shall be updated within ninety (90) days of approval or complete removal of a facility.

16. Require setbacks of a minimum of 750 feet from schools (including daycare centers) as proposed by legislators in the State of Connecticut and approved unanimously by the Connecticut House of Representatives on April 27, 2010.

17. The City shall adopt a temporary emergency moratorium or halt any proposed PROW wireless facility installations in residential areas until an updated wireless facility ordinance is adopted.

18. Conduct a separate hearing or Study Session on health and environmental concerns in light of recent studies and actions taken by local governments.

Describe the event/project in detail. Include as much supplemental information as possible (background information; supporting and opposing viewpoints, if available, etc.) Attach additional sheets as necessary.

With the rapid growing of Cellular Communication Industry, the cellular tower proliferation in Residential Neighborhoods is growing exponentially.

There is no local, independent regulation of utility pole cell site installations. Bellow are the findings of the Pacific Palisades Resident Association regarding cell towers installation regulations:

- PPRA is unaware of any local permitting process for utility pole cell site installations in public rights of way (PROWs) in Los Angeles; no officials have informed us of any such process when we have sought

information as to how and why such installations are allowed to occur without notice; instead, we have repeatedly been told that the Joint Pole Agreement (JPA) allegedly controls or is the purported "authority" under which such installations are allowed.

- The above-ground facility (AGF) ordinance expressly *exempts utility poles* (i.e., poles which support overhead lines or wires) on the basis that their installation is supposedly regulated instead by the JPA or another authority (Muni. Code sec. 62.03.2.IX.C) -- a conclusion that is not shared by DWP or the Southern California Joint Pole Committee (SCJPC; see below).

- Excavation permits are not required for pole installations in sidewalk areas (sec. 62.02(a)); the City does not require prior notice if an excavation extends less than 100 square feet (sec. 62.04(b)); and although the work is nominally supposed to be performed in accordance with statutory requirements, there is no provision for a compliance review (secs. 62.02 and 62.04).

- It is unclear whether or to what extent discretionary "collocation" permits are required in cases of utility pole cell site installations (Gov. Code sec. 65850.6); to our knowledge the City does not engage in CEQA reviews or impose any location, height, design or aesthetic limitations on new or replacement pole installations in PROWs, as contemplated by sec. 65850.6.

- DWP confirmed to LANNC members in December 2009 that there is in fact *no independent regulation of utility pole cell site installations.*

- According to DWP officials, telecom companies who are JPA members are entitled to install utility poles *of any height anywhere they wish* in PROWs to support cellular equipment; DWP officials have seen unregulated pole installations as high as 110 ft.; no wind-resistance analyses or other safety tests (as far as we can tell) are conducted; and the location and total number is unknown because *DWP does not keep records of these installations* (some of which do not even involve DWP poles, lines or equipment).

- DWP officials "defer to the City Attorney" for an explanation of the basis for these conclusions and/or practices.

2. The JPA does not regulate utility pole cell site installations.

- DWP admits that the JPA is not regulatory in nature; at the recent LANCC presentation, DWP officials acknowledged that the JPA is *not* a regulatory document.

- The term "Joint Pole Authority" is a misleading misnomer often used by City officials.

- Staff of the SCJPC -- which administers and monitors joint use of poles -- explained to us that: the SCJPC is not a regulatory body; the JPA itself is administrative rather than regulatory in nature; the SCJPC does not become involved in monitoring usage until after a joint installation has already occurred; in most cases the SCJPC is not even notified of these installations for many years (if ever) and therefore does not have a complete or current list; and, to their knowledge, there is no regulation of the siting, construction, height or appearance of these installations other than "self-regulation" by the members' *own* in-house "joint pole" departments.

- The JPA has no provisions referring to or purporting to regulate the location, placement, construction, height or appearance of poles.

- The JPA provides that all members *shall* abide by local regulations (i.e., the JPA contemplates local regulation of poles); in any event, the City cannot contract away its police power and authority to regulate the use of property to protect the public health, safety and welfare (see discussion on pp. 5-6 of report by Jack Allen filed in CF No. 09-2645 on November 17, 2009 -- "Jack Allen report").

- DWP claims that it signed the JPA in 1918, yet there is no confirming evidence that it in fact did so (PPRA requested copies of all signature pages under a recent Public Records Act request of DWP, but no such pages were produced); DWP is not listed as a member under the most current 1998 version (only the City itself is a member). [Note: Although requested by PPRA, DWP also did not produce any other governing documents, such as a so-called "SCJPC Handbook" specifically referenced by DWP officials at the LANCC meeting, which may provide further insight into the JPA's role, *if any,* in regard to pole installation.]

3. There is effectively no local regulation of free-standing cell towers or "monopoles" in PROWS.

- "Monopoles and antennas" which do not support overhead lines or wires are referred to only once in the AGF ordinance (i.e., as not within the definition of "utility poles" -- Muni. Code sec. 62.03.2.I); the ordinance's specific requirements as to height, dimensions, landscaping, anti-graffiti measures and the like refer only to power cabinets, and there are no particular requirements applicable to free-standing towers or monopoles.

- The ordinance calls for prior design approval of *cabinets* by the Cultural Affairs Commission (CAC); however, there is no requirement for design approval of free-standing towers or monopoles (sec. 62.03.2.III.C.5). CAC staff also told us that they do not issue design approval for "poles" but are supposedly "required" (unclear by whom or what authority) to approve all cabinet design proposals; in fact, CAC routinely issues bulk design approval for thousands of cabinets at a time, without actual notice or community input.

- "Pole-mounted facilities" are specifically exempt from the ordinance (sec. 62.03.2.IX.C).

- AGF ordinance drafters have confirmed to PPRA that the ordinance *was not intended to apply to towers or poles of any type;* it was intended to address the then-occuring problem of unregulated cabinets in PROWs (an intent supported by the ordinance's language); new poles or towers supporting antennas were not being installed in parkways, were not on the drafters' "radar," and were accordingly not addressed in the ordinance (other than the exemption for "pole-mounted facilities" and utility poles).

- We also note the argument on pp. 6-7 of the Jack Allen report to the effect that "pole-mounted facilities" may be subject to all other applicable requirements of law, including Muni. Code sec. 12.21.A.20 *et seq.* (the "WTF ordinance," or zoning regulations applicable to cell towers on private or other public property).

- Notwithstanding the above, BOE now requires telecoms to file AGF applications for free-standing towers or monopoles in PROWs; at the same time, Jeff LaDou of BOE has informed PPRA that he has been told (unclear by whom or what authority) that he supposedly "must" grant permission for free-standing towers, despite the lack of any standards and the inapplicability of the AGF ordinance on its face to such towers.

- With no specific standards for towers or poles in the AGF ordinance, the exemption for "pole-mounted facilities," the lack of design approval by CAC, the apparent "rubber-stamped" approval of all AGF applications for monopoles, and the failure to apply any other applicable regulatory authority to such installations, there is effectively no regulation of such structures under current City practices and procedures involving PROWs.

4. The City has a constitutionally based police power to control the location and manner of construction of public utility facilities in PROWs.

- It has long been recognized that although utility franchises in PROWs are matters of state concern, the city retains a constitutionally based power to do "such things in regard to the streets and the use thereof

as were justified in the legitimate exercise of the police power." *Western Union v. Hopkins,* 160 Cal. 106, 118 (1911). Specifically, "the city still controls the particular location and manner in which public utility facilities are constructed in the streets." *Sprint v. Palos Verdes,* 583 F.3d 716, fn. 3 (9th Cir. 2009).

- In *Pac. Tel. & Tel. v. S.F.,* 51 Cal. 2d 766 (1959), San Francisco's public works code controlled the construction of public facilities in the streets and required *installation and excavation permits* showing location and manner of construction; the telephone company in that case "concede[d] the existence of the power in the city to exact these requirements." *Id.* at 773-774.

- As noted above, Los Angeles is not regulating utility pole cell site installations at the most basic level (i.e., issuance of installation and excavation permits) -- something that even utilities franchise operators concede is within the City's police power. *In PPRA's opinion, it is outrageous that in this respect the nation's second largest city is completely failing to exercise its power and duty protect the public health, safety and welfare.*

5. The PUC recognizes that it is the City's function to regulate the installation, location and design of poles.

- As explained on p. 5 of the Jack Allen report, under General Order 159A the PUC defers to local governments as to regulation of cell sites and issuance of land use approvals (acknowledging that "local citizens and local government are often in a better position than the Commission to measure local impact and to identify alternative sites"). [Note: GO 159A also states that the PUC's goals in connection with cell site construction are to ensure that a CEQA review will take place, that affected citizens and organizations are given notice and an opportunity for input in the process, and that public health, safety, welfare and zoning concerns are addressed -- none of which occur in Los Angeles in the case of utility pole cell site installations).

- PUC Rule 94 -- the only other PUC regulation specifically concerning cellular facilities -- is entirely concerned with technical requirements for placement of equipment on poles and contains no provisions for installation or regulation of poles themselves.

- PUC staff advised us recently that if it is confirmed (as it now has been) that any cell site installations are in fact not being regulated by the City or DWP and the PUC's goals are not being addressed or achieved, the PUC would be authorized to accept a complaint about the lack of regulation and to take such actions as it deems appropriate to ensure adequate regulation as contemplated by GO 159A.

6. In accordance with recent case law, the City can and should regulate the installation of all cell towers and poles in PROWs as well as on private property, with protections for residential areas and provisions for denial based on adverse aesthetic impacts.

- Under *Sprint v. San Diego,* 543 F.3d 571 (9th Cir. 2008), it is now clear that cities do have the ability under the Telecom Act to regulate more extensively for location and appearance and to protect residential areas to a greater degree than had previously been understood or believed, subject to the Act's specific restrictions on local regulation.

- More recently, in *Sprint v. Palos Verdes, supra*, the 9th Circuit held that cities have discretionary authority to bar cell towers from from state PROWs on aesthetic grounds (subject to Telecom Act restrictions) -- or, as the Court observed in fn. 3, "the City possesses constitutionally based police powers over aesthetics."

- According to commentary, this holding is a significant departure from previous case law and "represents a major blow to the wireless industry" (California Wireless Association newsletter, Dec. 11, 2009, pp. 3-4).

- As explained in PPRA's previous submission in this matter, neither the WTF ordinance nor the AGF ordinance has any particular protections for residential neighborhoods and there are no provisions specifically allowing the denial of cell towers (whether in PROWs or on private property) based on adverse aesthetic impacts -- protections and provisions which are now allowed under current decisions (subject to Telecom Act restrictions). Reform of the City's regulations should be undertaken to include these now-permitted protections and provisions.

7. Cell tower proliferation is rapidly growing -- as are serious concerns about inadequate or nonexistent regulation.

- In addition to those experienced in the Palisades, during the past year numerous cell towers and antennas were erected or proposed in PROWs and on private property near homes and schools throughout Los Angeles -- from San Pedro to Westwood to Tarzana, from Venice to Hollywood to Atwater Village -- many without notice or regulation, some seemingly overnight in parkways where there had been no poles before, and several in areas where residents claim that coverage is already good or where *other, less obtrusive alternatives* are available for antenna placement.

- Residents, community leaders and public officials are seriously concerned -- including the LAUSD Board, which unanimously passed a resolution in late 2009 (prompted by the erection of an "un-noticed" cell tower near a school and homes in San Pedro), condemning the siting of towers without notice near schools; these installations are continuing unabated in 2010 (outraged residents of West Hills saw yet another unregulated utility pole cell site installation attempt in late December 2009/early January 2010).
- Over 16 neighborhood councils, community councils and other associations have passed motions/resolutions or submitted letters to the City as of December 2009, expressing concern about cell tower proliferation and/or urging reform of the City's regulatory scheme (with most, including PPRA, calling for a comprehensive new ordinance and imposition of a moratorium).

- The City of Glendale responded to residents' concerns by imposing a moratorium on cell tower installations and drafting a new comprehensive ordinance -- with a "tiered" approach to tower siting, "preferred" and "non-preferred zones," and other protections for residential neighborhoods -- which is still in the public comment stage; the City of Burbank has indicated its interest in following suit.

- In November 2009, FCC commissioners publicly claimed a "pressing" need to "boost" cell tower installations, "cut local red tape," and "speed deployment" of "ubiquitous" antennas -- all to encourage many more antennas and towers to be built as rapidly as possible for enhanced broadband coverage.

What is the perceived/potential impact on the community if we adopt the motion (pro and con)?
Pro: <u>If a Citywide regulatory policy is put in place, residential neighborhoods will be adequately protected and measures for accountability by the Cell Communication Companies regarding installation of Cell Towers will be enacted.</u>
Con: <u>Cell Communication Companies will be forced to follow regulations which may not be desirable by those companies.</u>

What is the total budget for the project? How much is the SLNC asked to commit? Are there alternate funding sources? (Please attach itemized budget.)

<u>None</u>

What is the timeline for the project? (Be sure to include deadline for Board action, major dates, etc.)

Immediately, in order to be presented for consideration to various potentially involved departments and agencies of the City of Los Angeles.

From which budget line(s) are the funds to be drawn?

n/a

How will this motion be implemented, and by whom?

Elizabeth Bougart-Sharkov will send the Motion to the L.A. City Attorney Office for consideration.

*If motion is approved, please be sure to see the Treasurer to fill out a Demand Warrant so that payment may be issued promptly.