



Legislation Text

File #: 11-0458, **Version:** 2

Recommendation to declare ordinance amending the Long Beach Municipal Code by amending Table 31-1 of Chapter 21.31, Tables 32-1 and 32-1A of Chapter 21.32, Table 33-2 of Chapter 21.33, Table 34-1 of Chapter 21.34, Table 35-1 of Chapter 21.35, and Table 36-1 of Chapter 21.36; by adding Chapter 21.56; and by repealing Sections 21.45.115 and 21.52.210; all relating to Wireless Telecommunications Facilities, read and adopted as read. (Citywide)

On April 20, 2010, the City Council instituted a moratorium via minute order, temporarily halting the approval of permits for wireless telecommunications facilities. This moratorium subsequently was amended to include only sites in Residential (R) and Institutional (I) zoning districts. During the moratorium, Department of Development Services staff has conducted studies of other cities' wireless ordinances, held several community meetings and two study sessions, and reached out to local residents and the wireless industry.

The product of this effort is a new wireless ordinance that staff proposes to replace the entirety of the City's existing regulations on wireless telecommunications facilities. This new ordinance, as proposed, would accomplish the following:

- Encourage placement of wireless facilities away from residential areas. Applicants would have to meet a high burden of proof to demonstrate that no other feasible locations are available before a wireless site would be placed in a residential area. Please note, however, that wireless sites cannot be banned outright from residential areas without exposing the City to legal action, as a ban may effectively deny the provision of wireless service, which is prohibited by Federal and State law, and is not the intent of this ordinance.
- Require co-location instead of construction of a new site any time a co-location opportunity is feasible.
- Require reports on each site's compliance with Federal Communications Commission (FCC) rules on radio frequency (RF) emissions.
- Institute a requirement for a master Conditional Use Permit (CUP) and five-year build-out plan for each site.
- Set clear design standards for sites, especially roof/building-mounted sites.
- Set higher application standards, including identification of all surrounding wireless sites within a one-mile radius, and a list and map of all the applicant carrier's existing sites in the City.
- Set standards and establish processes for development of wireless sites in the public right-of-way and City parks.

Prior to the recommendation of this ordinance for approval by the Planning Commission on April?, 2011, numerous hearings, study sessions, and meetings were conducted to obtain community and industry participation (Exhibit A - List of Public Meetings). During this series of preceding meetings and hearings, many Long Beach residents expressed a desire for stricter limits on RF emissions from wireless sites, a ban on sites in and near residential land uses, and stricter reporting and testing requirements for RF emissions, beyond what is required by the FCC, all due to the perceived health

concerns of RF emissions. Development Services staff has worked with the City Attorney's Office to modify the draft ordinance to incorporate many of the suggested changes to the ordinance, including a number of streamlining and simplification measures, as well as multiple clarifications.

However, staff was unable to include stricter reporting requirements and restrictions on RF emissions, as the Federal Telecommunications Act of 1996 prohibits municipal governments from considering the health effects of RF emissions when making land use decisions. The primary purpose of this ordinance is to regulate aesthetics, and any attempt to use it to regulate RF emissions endangers the legitimacy of the ordinance from a legal standpoint. Staff has included as many RF measures as are legally defensible, and believes that these measures will allow adequate confirmation of compliance with FCC regulations to satisfy neighborhood concerns.

Staff also surveyed other cities' ordinances regarding wireless sites in the public right-of-way. After considering many other ordinances, staff has selected the best elements from each and has created a set of development standards for placement of wireless sites in the public right-of-way that will be most appropriate for Long Beach. This covers sites located on utility poles, streetlights, traffic signals, and other public hardware in the right-of-way.

A flowchart is attached to illustrate how wireless applications would be processed under the new ordinance (Exhibit B - Wireless Application Process Flowchart). The new ordinance would be implemented through creation of a new chapter in the Zoning Regulations, Chapter 21.56, which would contain all wireless telecommunications standards. Existing regulations located in Sections 21.45.115 and 21.52.210 would be deleted as part of this action. An attached comparison table (Exhibit C - Comparison Table of Existing and Proposed Regulations) illustrates the core differences between the existing and proposed wireless telecommunications facilities regulations.

The Planning Commission recommended approval of the first iteration of this amendment to the Zoning Regulations on October 21, 2010, and approved of the current revised version on April 7, 2011. The Commission's recommendation is forwarded to the City Council for consideration and adoption into the proposed ordinance.

This letter was reviewed by Assistant City Attorney Michael Mais on April 27, 2011 and by Budget Management Officer Victoria Bell on April 28, 2011.

The Municipal Code requires Council action within 60 days of positive action by the Planning Commission, which took place on April 7, 2011. The current moratoriums on wireless telecommunications facilities in the residential and institutional zoning districts will expire on June 12, 2011.

There is no fiscal or job impact associated with the requested action. Differences in revenue due to modified permitting processes would be recovered by appropriate fees for service designed for full cost recovery in the Development Services Fund (SR 137) in the Department of Development Services (DV).

Approve recommendation.

AMY J. BODEK, AICP
DIRECTOR OF DEVELOPMENT SERVICES

APPROVED:

PATRICK H. WEST
CITY MANAGER

..BODY

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING TABLE 31-1 OF CHAPTER 21.31, TABLES 32-1 AND 32-1A OF CHAPTER 21.32, TABLE 33-2 OF CHAPTER 21.33, TABLE 34-1 OF CHAPTER 21.34, TABLE 35-1 OF CHAPTER 21.35, AND TABLE 36-1 OF CHAPTER 21.36; BY ADDING CHAPTER 21.56; AND BY REPEALING SECTIONS 21.45.115 AND 21.52.210; ALL RELATING TO WIRELESS TELECOMMUNICATIONS FACILITIES