

**DECISION AGENDA
FOR ALBANY CITY COUNCIL
2-22-05**

Wireless Communication Facilities Ordinance

Sub-section of Ord.	Question: <i>[Note: Italicized text is used for questions on specific issues under some subsections]</i>	Reference Draft Ord. 05-02	Staff notes:	Yes	No	Other?
A.	Do you accept Subsection A, Purpose and Intent?	pp. 3-4				
B.	Do you accept Subsection B, Definitions?	p. 4 and pp. 27-28				
C.	Do you accept Subsection C., Exemptions?	pp. 4-5				
D.	Do you accept Subsection D, Location by Districts, with preferences? <ul style="list-style-type: none"> • <i>If you accept tiering of districts, should there be 4 tiers or should SPC and SC be combined in the same tier?</i> • <i>Should facilities be allowed on Albany Hill?</i> • <i>Do you choose setbacks as proposed to be modified by majority of P&Z Commission?</i> 	pp. 5-7 p.6 p.6 pp. 6-7	See Note 1. See Note 2. See Note 3.			
E.	Do you accept Subsection E, Development Requirements and Standards? <ul style="list-style-type: none"> • <i>Should there be a limit of three providers per location?</i> • <i>Should there be a requirement for an emergency shut-off?</i> 	pp. 7-11 p.8 p.10	See Note 4. See Note 5.			

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F.	Do you accept Subsection F, Permit Approval Process? <ul style="list-style-type: none"> • <i>Should notice be provided beyond standard 300 foot radius?</i> • <i>Should the list of submittal requirements be more detailed?</i> • <i>Should para. 4) and 5), p.13 be combined?</i> • <i>Should “Additional Submittal Requirements” be mandatory rather than as required by Director?</i> • <i>Should 3rd party technical review be mandatory rather than at Director’s discretion?</i> • <i>Should a “significant gap” be the only standard of necessity for approving wireless facilities?</i> • <i>Should finding b.2.a. specify 3 providers?</i> 	pp.11-20 p.12 pp.12-15 p. 13 p.15-16 p.17 pp. 5,14,15,16,18, 19 and 28 (def.) p.18	See Note 6. See note 7. See note on p.13 of draft ord. See Note 8. See Note 9. See Note10. See Note 4.			
G.	Do you accept Subsection G, Operation and Maintenance Standards?	pp. 20-22				

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H.	Do you accept Subsection H, Certification of Facilities? <ul style="list-style-type: none"> • <i>Should towers be inspected only following significant storms and seismic events?</i> 	pp. 22-24 p.23	See Note 11			
I.	Do you accept Subsection I, Duration, Revocation and Discontinuance? <ul style="list-style-type: none"> • <i>Should the life of a use permit be limited?</i> 	pp.24-26 p.24	See Note12.			

[See staff notes on following pages]

Staff Notes:

1. **Tiering of Preferred Districts:** A three-member majority of the Planning and Zoning Commission supported the idea of preferring wireless facilities in the CMX (Commercial-Mixed Use District near the freeway, and in an order of descending preference from PF (Public Facilities) to SPC (San Pablo Commercial) to SC (Solano Commercial.) However, two of the majority voted to place SPC and SC in the same tier, not preferring one zone over the other. A minority of two members disagreed with the preferential approach, and at least one of those felt facilities should be allowed in all zones, so long as they were subject to use permits and design review.

Alternative: (as proposed by residents' group represented by Nan Wishner:)

Page 5, line 37:

1. No wireless communication facilities that both transmit and receive electromagnetic signals shall be permitted in any residential zone, except for those facilities designated in paragraph C. above to be exempt from City review, unless substantial technical evidence acceptable to the Planning and Zoning Commission is submitted showing ~~a clear need for this facility to close a significant gap in wireless coverage and the infeasibility of locating it elsewhere.~~

- a. That the Telecommunications Act would be violated if the carrier is not allowed to locate a facility in the prohibited zone, and
- b. That no alternative exists that would make the location in the prohibited zone unnecessary.

Alternative: (as proposed by Commission majority.)

Page 6, lines 17 and 19:

Combine c. and d. to read: "c. San Pablo Commercial District (SPC) and Solano Commercial District (SC)".

2. **Albany Hill:** The Planning and Zoning Commission supports a prohibition of wireless facilities in parks, although four members felt that allowing an exception for Albany Hill would be justified. Facilities located at the top of Albany Hill would probably be advantageously situated for service to most of Albany. The summit is a City Park. It is unique among City parks in size and elevation. A facility could be located 200 feet (horizontally) or more from any residence. An objection would be that any tall structure would be highly visible. If any antenna structure were permitted the design challenge would be to minimize its visibility. (There have been instances elsewhere of antennas disguised as trees.) Albany Hill Park has an active support group of neighborhood residents and others, and this idea has not been discussed with them. Therefore staff recommends that no exception be made for Albany Hill at this time, and any discussion of an exception be postponed with a view of a possible future amendment to the wireless ordinance

3. **Setbacks:** A three-member majority of the Planning and Zoning Commission recommended a 50 foot setback between wireless facilities and any abutting boundary of a residential district; if the Commission were satisfied that any noise or visual impacts would not be increased, then a reduction to a minimum of 10 feet could be permitted. Two members favored the staff recommendation, as written in the draft. Following a general objective of treating wireless facilities similar to other uses and structures, staff proposed to apply the setback requirement stated in the zoning ordinance for commercial properties abutting residential zones. This would

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establish a minimum of 10 feet plus an additional setback as the height increases, based on a 45 degree “daylight plane”. This would have the effect, for instance, of requiring an antenna placed at an elevation of 35 feet to be setback 33 feet from a residential property line.

The law firm of Shute, Mihaly and & Weinberger, on behalf of Albany resident Albert Chen, recommended a 100 foot setback along Solano Avenue. Staff notes that many sites on the south side of Solano, east of Key Route, are more than 100 feet deep. However, along the north side, and on the south side west of Key Route, most sites are less than 100 feet deep and would be ineligible.

Alternative: *(As suggested by residents’ group)*

Page 6, line 45:

In the San Pablo Commercial District and the Solano Commercial District any wireless communication facility that abuts a residential district shall be set back from a property line that is contiguous to the residential district a minimum distance of ~~fifty (50’) feet, provided that such distance may be reduced by the Planning and Zoning Commission based on a determination that the lesser distance will not have perceptibly greater noise impact or greater visual impact with respect to properties in the abutting residential district, and further provided that there be no less than ten (10’) feet of separation between a property line that is contiguous to the residential district and the subject wireless communication facility (with the exception of such elements as transmission cables and motor boxes.)~~ one hundred (100’) feet [or whatever distance the Council may choose.]

4. Number of providers at a location: Shute, Mihaly and & Weinberger (Attachment F in the 2-7-05 Council packet) recommended this limit. This also appears under findings, as a consideration for approval of a facility that is not co-located. Staff has not found a particular argument for such a limit. If all service needs could be met from a single site in the CMX zone, would we not want all carriers to locate their facilities at that site, assuming that visual, noise and other impacts were minimized?

5. Emergency shut-off: An emergency shut-off for the projection of emergency workers has been suggested by Nan Wishner’s group. The hazard is that firefighters or others could be exposed to excessive RF radiation while working very close to the source. The Planning and Zoning Commission felt that this was a requirement that should be applied under the building code rather than to be specified in the zoning ordinance.

Alternative: *Restore struck language on page 10, lines 5-12.*

6. Expanded notice: The City observes the 300-foot radius for public notice of application, as required by State law. This applies to all sizes of projects. The City has not distinguished among types of projects or their sizes. Wireless facilities are essentially small projects. They are subject to both use permit and design review processes. Three members of the Planning and Zoning Commission agreed that there was not justification for different noticing requirements for wireless facilities, but felt that the City should consider a general expansion of the notice radius to 500 feet. (This would require a separate zoning ordinance amendment, with hearings by both the Commission and the City Council.) Staff recommends that public noticing for wireless applications continue to be treated the same as for other project applications.

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7. Submittal Requirements: Inadvertently, a requirement for a site plan was omitted from the current draft of the ordinance. This should be among the basic requirements, and staff proposes it be inserted as shown below. Otherwise, the current draft ordinance contains a significantly more detailed list of requirements than did the original draft recommended last year by the Commission. Staff believes the requirements are comparable to those of cities such as Berkeley, Concord, and others that we consulted in preparing the draft. Typically, the requirement for some technical studies is left to administrative discretion, and the right is reserved to call for additional material as needed. In line with Commission desires, staff has tried to make submittal requirements for wireless facilities generally consistent with the requirements for other land use applications. The list of requirements can be expanded as Council desires.

Recommended Addition:

Page 13, line 10, add:

2. Site plan for the location of the facility, drawn to scale, showing all existing and proposed features, in compliance with the checklist submittal requirements as established by the Community Development Director. [Renummer subsequent items]

Alternative: (As recommended by residents' group [Wishner et al])

Add items listed in Attachment F (2-22 –05 staff report) to paragraph 4.a, beginning on page 12.

8. Additional Submittal Requirements: Certain technical studies may not be needed with all applications, for example certain modifications or upgrades. The draft ordinance authorizes the Community Development Director to call for the studies listed, plus other information that may be necessary to support a particular application. This approach is typical of how many cities describe their application submittal requirements.

Alternative:

Delete paragraph b. on page 15 line 13, and move text of b.1. (RF engineer study) and b. 2. (alternatives analysis) to paragraph a. as items 11 and 12. , thus making these items mandatory.

9. Third-party review. Residents have requested that a third-party technical review be required of all applications. As stated above regarding specific technical studies, such review may not be warranted for all types of applications. The proposed text authorizes the Director to employ whatever expertise is needed in a particular case.

Alternative: *Add paragraph d., page 17 line 16, to be basic list of submittal in paragraph a., preceding.*

10. Significant Gap. Staff is concerned that the use of “significant gap” as the standard for locating facilities may be too narrow, and could preclude justifications for other service changes, such as establishing enhanced or expanded service, or even setting up a new service system. Since the Telecommunications Act seems to encourage expansion of services, and requires equal treatment of providers, the reliance on a significant gap may not be compliant with the Act. The Planning and Zoning Commission made no

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recommendation on this issue, deferring to the City Council. Staff and the City Attorney believe that the findings statements

1 through 3, on pages 17 and 18 above are adequate; in particular that “necessity and desirability “ as required to be demonstrated for finding 1, do not require more specificity in the ordinance.

Alternative:

Page 17

Restore the deleted language for findings 4, 5 and 6.

11. Tower inspection: Any towers will be constructed through normal permitting and construction inspection processes. Periodic structural inspection is not required of structures in general, therefore it does not appear to be justified for wireless facility structures.

12. Limitation on life of permit: The original draft of the wireless ordinance, as recommend by the Planning and Zoning Commission in 2004, included a 10 year life for a use permit, with the possibility of extensions for five-year terms. This was drawn from examples in Fremont, Walnut Creek, Petaluma and Sonoma. The Commission voted 4-1 to keep that provision in the current draft; the dissenting vote favored no limit, consistent with how Albany’s zoning ordinance handles other uses. Subsection 20.100.030.E. allows the Commission to place conditions on project approvals, which may include “expiration of the permit at a certain date or under specified circumstances.” In practice the Commission has limited the life of permits, on a case-by-case basis, where there is specific uncertainty about the future impacts of the use, such as an auto body and paint shop.