



CITY OF DALY CITY

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August 11, 2011

Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

RE: 2010-2011 Civil Grand Jury Report Cell Towers: Public Opposition and Revenue Source

Dear Judge Bergeron:

On behalf of the City Council of Daly City, I have been requested to submit the following response to the Grand Jury findings and recommendations pertaining to the above-referenced report. The City Council approved this response at a public meeting held on August 8, 2011.

FINDINGS

Finding #1

There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.

Response

The City **agrees** with the finding. The City has had a comprehensive Wireless Communications Facilities Ordinance since 1997 that complies with the FCC's Telecommunications Act. Public resistance to new wireless facilities has increased over time, but the resistance is generally not based on the standards within the ordinance, but rather the perceived health risks associated with those facilities.

Finding #2

Locating applicable cell tower ordinances and policies on County and city websites is cumbersome.

Response

The City **agrees** with this finding.

Finding #3

Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause significant gap in service coverage that cannot feasibly be addressed by alternatives.

Response

The City **agrees** with this finding.

Finding #4

Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.

Response

The City **disagrees** with this finding as it pertains to the City of Daly City. Municipal Code Section 17.39.040 requires that the applicant submit an irrevocable letter of credit to allow the city to remove any abandoned facilities or if the permit has been revoked or expired. A standard condition of permit approval requires the applicant to provide written notification to the Director of Economic and Community Development Director upon cessation of operations on the site exceeding a 90 day period. Subject to the determination of the Director, the applicant is required to remove all obsolete or unused facilities from the site within 180 days of termination of its lease with the property owner or cessation of operations.

Municipal Code Section 17.39.110 states that *"If technological improvements or developments occur which allow the use of materially smaller or less visually obtrusive equipment, the applicant shall be required to replace or upgrade the approved facility upon renewal of a permit application to minimize adverse effects related to land use compatibility, visual resources, public safety or other environmental factors."* Municipal Code Section 17.39.030(H) further requires the submittal of a maintenance program for all proposed wireless facilities as part of the application process.

Finding #5

The County and all cities have varying filing and processing cell tower applications.

Response

The City **agrees** with this finding based on the survey results presented in the report. The City updated the fees for processing wireless facilities applications in 2008 after an extensive fee study. The cost recovery for processing these applications is 100% based on average processing times.

Finding #6

The County and cities generate widely varying amounts of revenue through cell tower lease agreements.

Response

The City **agrees** with this finding based on the survey results presented in the report. The City has established a methodology for calculating lease rates based on the square footage of the ground lease, number/height of poles and antennas, linear footage of utilities crossing the site, and a variety of other factors.

Finding #7

Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.

Response

The City **disagrees** with this finding as it pertains to the City of Daly City. Although the survey results indicate that the City of Daly City does not generate revenue from leases on public property that is not the case. The City of Daly City currently has 12 revenue generating installations and zero non-revenue generating installations by commercial providers on public property. The City of Daly City currently receives a total of \$314,865 annually from these leases or an average of \$28,624 annually per lease. This revenue is deposited to the City's General Fund.

RECOMMENDATIONS

Recommendation #1

Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.

Response

The City has **implemented** this recommendation. The City updated the fees for processing wireless facilities applications in 2008 after an extensive fee study. The cost recovery for processing these applications is 100% based on average processing times. When future fee analyses are conducted, the City will maintain a 100% cost recovery for wireless facility application review.

Recommendation #2

Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.

Response

The City has **implemented** this recommendation. The City has established a methodology for calculating lease rates based on the square footage of the ground lease, number/height of poles and antennas, linear footage of utilities crossing the site, and a variety of other factors.

Recommendation #3

Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements.

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Response

The City has **implemented** this recommendation. Municipal Code Section 17.39.040 requires that the applicant submit an irrevocable letter of credit to allow the city to remove any abandoned facilities or if the permit has been revoked or expired. A standard condition of permit approval requires the applicant to provide written notification to the Director of Economic and Community Development Director upon cessation of operations on the site exceeding a 90 day period. Subject to the determination of the Director, the applicant is required to remove all obsolete or unused facilities from the site within 180 days of termination of its lease with the property owner or cessation of operations.

Recommendation #4

Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.

Response

The City has **implemented** this recommendation. Municipal Code Section 17.39.110 states that *"If technological improvements or developments occur which allow the use of materially smaller or less visually obtrusive equipment, the applicant shall be required to replace or upgrade the approved facility upon renewal of a permit application to minimize adverse effects related to land use compatibility, visual resources, public safety or other environmental factors."* This code section applies to all wireless facilities, on both public and privately-owned property. While the City's lease agreements do not explicitly cite this code section, it would still apply to City leases. The City could easily include more direct language in its lease agreements pertaining to DCMC 17.39.110.

Recommendation #5

Develop a webpage within the County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.

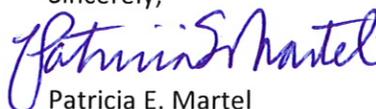
Response

The City **will implement** this recommendation. Given the volume of applications for wireless facilities, both new and renewals of existing permits, and the public interest in these facilities it is reasonable to have the applicable ordinance and description of the review process available on-line. The City could complete this action by the end of the calendar year.

In conclusion, the City of Daly City appreciates the opportunity to provide written responses to the San Mateo County Grand Jury Report on Cell Towers: Public Opposition and Revenue Source. The City Council of Daly City approved the responses contained herein on August 8, 2011.

Should you or the Grand Jury require additional information or clarification concerning the response provided, please contact me directly at (650) 991-8127.

Sincerely,



Patricia E. Martel
City Manager