



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: AMENDMENT TO COUNCIL
POLICY 7-10

DATE: 11-29-07

Approved

Kay Winer

Date

11/30/07

COUNCIL DISTRICT: Citywide

REASON FOR SUPPLEMENTAL MEMO

An earlier draft of the revised Council Policy 7-10 was inadvertently attached to the memo submitted as item 3.5 on the City Council agenda for December 4, 2007. The final version of the amended Policy is attached to this supplemental memo and replaces the earlier attachment.

The only difference from the version submitted previously is in the overview paragraph of the Policy section on page 2 of the Policy.

Katy Allen

KATY ALLEN

Director, Public Works Department

City of San Jose, California
COUNCIL POLICY
7-10

TITLE	PAGE 1 of 4	POLICY NUMBER 7-10
PLACEMENT OF COMMUNICATION FACILITIES ON CITY-OWNED PROPERTY	EFFECTIVE DATE 10/08/96	REVISED DATE
APPROVED BY COUNCIL ACTION October 8, 1996 (9b);		

BACKGROUND

A number of telecommunications companies are seeking sites in San Jose for the location of their ~~facilities~~ telecommunication equipment, antenna(s), repeaters and related equipment. Wireline companies providing services include local exchange carriers (LEC), competitive access providers (CAP), and cable operators. Services provided by wireless companies include cellular telephone service, personal communications services (PCS), multichannel multipoint distribution service (MMDS), local multipoint distribution service (LMDS), and wireless data services.

All of these companies from time to time want to place facilities throughout San Jose to enable the transmission of signals from point-to-point, with sufficient coverage to facilitate communication between service users. Facilities installed by wireline companies, include cabling, node cabinets, amplifier cabinets, and other utility cabinets. Facilities installed by cellular and PCS services include antenna(s) mounted directly on buildings, ~~or on 25-foot to 100-foot~~ on free-standing monopoles, on 5 to 10-foot poles attached to the roof of a building, attached to light poles or signal lights, with attendant cabinets or buildings to protect computer equipment and associated cabling. Facilities installed in connection with wireless data services include radio repeaters ~~measuring approximately 12 inches by 8 inches~~ mounted on street light poles, traffic signal structures, or buildings.

As part of the providers' site selection process for the placement of their communications facilities, some of the wireline and wireless telecommunications companies have approached the City regarding leasing or using City-owned property for the placement of their facilities. By allowing City-owned property to be leased or used for this purpose, the City could accommodate the service providers and generate revenues for the City. City property shall include, but is not limited to, fire stations, libraries, convention center and out buildings, community centers, corporation yards, police facilities, light poles, street lights and other City-owned buildings and real property.

From time to time, Council approves standardized agreements for attachment to City buildings, monopoles, multi sites and has standardized rates as part of those standardized agreements.

This policy related to City-owned property and facilities including City-owned property in the public rights-of-way rather than to the public rights-of-way wherein wireline service providers place facilities and equipment subject to franchise or other agreements and excavation/encroachment permits.

PURPOSE

The City supports the expansion of telecommunication services to its businesses and residents. The purpose of this policy statement is to establish a policy and set of guidelines for the lease or use of City-owned land, buildings, light poles, street lights or other City facilities for the placement of communication facilities by private telecommunications companies.

POLICY

Overview

It is the policy of the City of San Jose that the City may allow City-owned property to be leased or used for the placement of communications facilities, with the exception of City use of City parks in accordance with the City's Charter. The appropriateness of allowing particular City-owned property to be leased or used shall be determined on a case-by-case basis in accordance with Land Use Policy 6-20, Policy for Siting Wireless Facilities, Municipal Code 15.50, Excavation/Encroachment permits in the public right-of-way and Municipal Ordinance Nos. 25099 and 25100, process for issuance of excavation/encroachment permits in the public right-of-way and any other applicable permits or administrative process for the placement of utility structures on private property, respectively, and in accordance with criteria set forth in this policy to ensure security of the facility and its occupants, and security of and non-interference with City communications and projects. Use Agreements ~~shall be~~ are non-exclusive, allowing and encouraging additional wireless companies to use the same structures or City-owned property, if technically feasible. The City Council from time to time establishes standard rental terms and rates by Council Resolution to be used in standardized agreements. ~~At a minimum, lease or use rates should be determined based on the market value of each particular property.~~

Criteria for Placement of Telecommunications Equipment

1. The portion of right-of-way, City-owned land, pole or building upon which the communications facilities will be placed is not immediately needed for public purposes or would not interfere with the City's use of the property.
2. On City-owned property, excluding the City property within the right-of-way, the siting of wireless communications facilities shall be in conformance with all

PLACEMENT OF COMMUNICATION FACILITIES ON CITY-OWNED PROPERTY	Page 3 of 4	Policy No. 7-10
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criteria in Land Use Policy 6-20, including appropriate land use and inappropriate land use designations; visual, height, setbacks from residential use requirements; parking, and vacant site criteria; progress reports regarding interference and access issues; environmental review; and permit streamlining criteria.

3. The siting of ~~wireline~~ communications facilities within rights-of-way shall be in conformance with all siting criteria in ~~Municipal Ordinances 25009 and 25100~~ Code Chapter 15.50, as amended from time to time and as applicable.
4. The siting of communications facilities shall be in conformance with all other relevant permits, City laws, regulations and policies, including, but not limited to those related to: environmental and aesthetic concerns; preservation of historic buildings; and sign regulations.
5. Communications facilities shall be allowed to be placed on City-owned property only when that placement would not adversely affect or impact the security of the property and/or of the occupants of the property at any time, including when the lessee or user may access the facilities for installation, operation and/or maintenance or when the facilities are operating.
6. The presence of communications facilities on City-owned property, including those in the right-of-way, cannot adversely affect, in any way, public safety transmissions or compromise the security and/or integrity of internal City communications.
7. Use Agreements for use of City-owned property for placement of communications facilities on City-owned property, including property in the right-of-way, shall be non-exclusive and should allow and encourage additional telecommunications companies to use the same structures whenever technically feasible.
8. Use Agreement terms and rates are standardized so as to provide fairness in the same competitive opportunities to use public facilities with regard to all potential telecommunications providers. ~~Lease or use rates shall be based on a market analysis of each particular property and City staff shall determine the fair market rate applicable to the proposed facility or property.~~
9. Requests for use of Agreements to lease or use City-owned property shall be examined and considered on a first-come, first served basis if all applicants cannot be accommodated.
10. All repairs and maintenance of the leased or used site or facility shall be the responsibility of the telecommunications provider. City staff may inspect the property and facilities to ensure the City property and facilities are being properly maintained.
11. The criteria in this policy represent minimum standards for the lease or use of City-owned property for the placement of communications facilities. Staff may

recommend and the City Council may impose other conditions on a project-by-project basis to ensure the integrity of City-owned property or communications, to safeguard the public health, safety, welfare, or to fulfill the goals of this Policy, or as the City Council may other wise deem appropriate.

12. The City ~~shall retain~~ maintains its sole discretion to reject in ~~inappropriate~~ any siting requests, and to ensure adequate protection of City property and timely removal of telecommunications providers facilities at the ~~end or~~ termination of an agreement or a lease or of the initial term or option period of the Use Agreements.
13. In addition to terminating without cause at the convenience of the City, the lease ~~or~~ Use Agreements may be terminated by the City at any time for any of the reasons established in the Use Agreement, including, but not limited to, the following:
 - a. The City-owned property or City-owned facility is required for some other government purpose.
 - b. It is determined by the City Council that the City-owned facility or site being leased or used should be sold as ~~or~~ as a part of surplus property.
 - c. Inspection of the property reveals that the City-owned property or facilities are not being properly maintained.
 - d. Operation or maintenance of the telecommunications providers property or facilities interferes with or adversely affects or impacts the City's property, facilities, communications or projects.