

THE SITING OF WIRELESS TELECOMMUNICATIONS EQUIPMENT
ON CITY-OWNED PROPERTY

Purpose

To describe the manner in which specific city-owned or city Trust properties may be used as locations for wireless telecommunications devices that transmit voice or data.

Policy

It is the policy of the City to effectively balance the needs of its residents, visitors, and businesses to use and have access to state-of-the-art wireless telecommunication systems (such as wireless Internet, voice, and other data communications) with the needs of residents to safely and effectively enjoy their property. This Policy shall be used when considering applications to install wireless communications devices on City-owned or City-held property by any wireless telecommunications provider or siting company.

Agreement Required

All telecom facilities located on City-owned property or City-held Trust property must have an agreement approved as to form by the City Attorney and approved as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager or their designee prior to the submittal of an application for the necessary permits pursuant to Section IV of this policy. The agreement shall be executed prior to the issuance of a street construction permit (encroachment permit).

Permit Required

- A. Unless otherwise exempt, all telecom facilities proposed to be located on City-owned or City-held trust property must apply for and receive a permit under the provisions of Chapter 20.49, or any successor chapter prior to the issuance of an encroachment permit.
- B. Unless otherwise exempt, all proposals affecting City-owned or City-held trust property shall be processed via this Policy through the Community Development Department and Public Works Department pursuant to the Municipal Code requirements.

City Sites Eligible or Ineligible for Facility Placement

- A. Sites Eligible for Use. The City Council has determined that the following City locations are acceptable for placement of wireless devices:

1. Fire Stations
 2. Newport Beach City Hall

 3. Parks
 4. Police Headquarters
 5. Lifeguard Headquarters
 6. The Community Centers
 7. Medians and parkways along public streets
 8. The Central Library and Branch Libraries
 9. The Corporate Yards
 10. Qualifying City-held easements
 11. Streetlights (following certification and acceptance by the Utilities Department of an effective test of the facility's impacts to the light standard under various environmental conditions), which may be located upon the right-of-way, City-trust held property.

 12. Leased City property, subject to the lease provisions.
- B. Sites Ineligible for Use. The City Council has determined that the following City locations are unacceptable for placement of wireless devices in accordance with the entirety of this Policy:
1. Open space areas owned by the City where placement of facilities in these areas would aesthetically impair the pristine nature of the area.
 2. Other properties owned by the City where the placement of facilities would conflict with existing structures, including utilities, or impede views, or otherwise impact use of the facility or property for its designated purpose.
 3. Traffic Signal Poles

Compensation and Term

The City Manager shall follow these rules when developing any Agreement for the placement of any wireless device on City property:

- A. Compensation shall be equal to fair market value, taking into account rent charged by owners of public or private properties within Newport Beach or neighboring cities for a similar type of facility and location. Such compensation shall be determined via a Rent Survey conducted by the City every five (5) years, as adjusted by the Consumer Price Index (CPI) each calendar year during non-survey years.

- B. The Agreement shall provide for a specific term to be determined by the City Manager. Where the term exceeds five (5) years, at the fifth year and every five years thereafter, rent shall be adjusted to fair market value using the Rent Survey ("Market-Based Adjustment"), or the adjusted rate as prescribed by the lease terms, whichever is greater.
- C. The Agreement shall provide for the following rent adjustments:
1. Rent shall be adjusted annually by the Consumer Price Index (CPI) for All Urban Consumers, Anaheim-Riverside-Los Angeles or a similar index; and
 2. At the end of five (5) years of the Agreement term and every five (5) years thereafter, the Market-Based Adjustment described above; or
 3. Optionally, the License Fee shall automatically increase four percent (4%) each year, and adjust to market rate upon the first renewal term, or the License Fee shall automatically increase five percent (5%) each year, and adjust to market rate upon the second renewal term.
 4. The Agreement shall require the applicant to post a bond, letter of credit, or other financial security/securities ("Financial Security") in an amount that equals or exceeds the anticipated cost of removing the facility or facilities and repairing any damage to City property at the completion of the Agreement term or in the event that the applicant ceases use of or abandons the facility or otherwise does not remove the facility including any equipment or cabinet whether underground, in the public right-of-way, or on City or private property. The Financial Security shall name the City as eligible for receipt of the Financial Security's proceeds in the event that the applicant ceases use of or abandons the facility.
 5. If the facility is located upon park property, the City may require as a component of the rent a one (1) time upfront payment in addition to the annual/monthly rent. The amount shall be at the recommendation of the City Manager and the Director of Recreation and Senior Services, or their designee(s).

Effective Date and Council Non-Consent

- A. The City Manager shall notify (via memorandum or similar correspondence) the City Council as to a pending Agreement for telecommunications facilities on public land. The Agreement shall take effect forty-five (45) days after the City Manager's notification of the City Council unless called up by a City Council member within thirty (30) days of the City Manager's notification of City Council of a pending Agreement per this section.
- B. A City Council member reserves the right to, at any time and for any purpose, not consent to the City Manager's issuance of an Agreement under this Policy. The

City Council may do so by notifying the City Manager of the Council member's intent to bring the Agreement before City Council. The Council member must express this intent in writing or at a formal Council meeting not more than thirty (30) days after the City Manager has notified the City Council of a pending Agreement. Should the City Council not consent to the issuance of an Agreement, the Agreement shall not become effective.

Proposals for Equipment in the City Right-Of-Way

This policy shall not apply to Encroachment Permits (Telecom) for the use of right-of-way. Newport Beach Municipal Code Title 13, or any successor statute, shall govern consideration of Encroachment Permits (Telecom).

City Communications Systems Exempt

This policy shall not apply to any communications system used by City personnel for communications deemed necessary for City operations.

History

(2002, 09/24) - L-23 - Adopted
(2006, 10/10) - L-23 - Amended
(2018, 08/14) - L-23 - Amended