

MOTION BY SUPERVISOR MARK RIDLEY-THOMAS

NOVEMBER 10, 2009

**Updating the County Code Regarding Regulation of Wireless
Telecommunication Facilities**

In late 2007, this Board of Supervisors directed County Counsel to prepare ordinances to update the County Code regarding the regulation of wireless telecommunication facilities to ensure compliance with judicial rulings that limited local governments' authority to regulate the facilities. Among other things, the motion directed that Title 16 be amended to support total oversight by the Department of Public Works for permits for facilities in the rights-of-way and that Title 22 maintain that the Department of Regional Planning have authority for permitting of all other wireless facilities.

While County Counsel subsequently prepared the updated ordinances, late last year, before the Board could consider the ordinances, the U.S. Ninth Circuit Court of Appeals in Sprint v. County of San Diego reversed its prior holdings and restored a significant amount of discretion to local jurisdictions when permitting wireless

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MOLINA _____

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telecommunication facilities. As a result, consideration of the ordinances was postponed to allow analysis of how the Sprint decision impacted the proposed ordinances.

In addition, last month, the Ninth Circuit issued another decision in Sprint v. City of Palos Verdes Estates, which provided clarity on a previously murky issue, related to whether local governments had the authority to take aesthetic issues into account when deciding whether and how to permit wireless telecommunication facilities within the rights-of-way.

It is important to note that while the permitting of wireless facilities is sometimes controversial as reflected by Board hearings in recent months, at other times, permitting of wireless facilities, particularly when thoughtfully planned, is non-controversial. The County permitting process should allow for both.

In light of these facts and the drastically changed legal landscape since the Board last considered this issue, the County should reconsider how it proposes to modify its regulations for permitting wireless facilities and update its County Code accordingly.

I THEREFORE MOVE THAT THE BOARD OF SUPERVISORS:

Direct the Interim Director of Regional Planning, in coordination with County Counsel, to prepare an ordinance amending the County Code that is consistent with state and federal law, including these recent Court rulings, to maintain the maximum -

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amount of discretion allowed for controversial cases but allow for streamlined policies and permitting procedures for non-controversial projects. The amendments should take into consideration, among other things, aesthetic concerns, service gaps and needs and other relevant issues related to permitting of these facilities.

I FURTHER MOVE THAT THE BOARD OF SUPERVISORS:

Direct the Interim Director of Regional Planning to present the proposed ordinance to the Regional Planning Commission for its review and consideration, make a recommendation to the Board of Supervisors on an ordinance, and report back in ninety days with a status report.

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