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November 15, 2022 Agenda Item 7

Hearing on Project No. R2021-002931-(1-5), for the Wireless Facilities Ordinance

Hearing on Project No. R2021-002931-(1-5), Advance Planning Case No. RPPL2021007939-(1-5), amending County Codes, Title 16 - Highways and Title 22 - Planning and Zoning, to establish application requirements and land use regulations, including zoning and development standards, for wireless communication facilities
(Departments of Public Works and Regional Planning) (22-3462)

Children's Health Defense Written Comments on Wireless Facilities Ordinances To the Honorable Board of Supervisors:

Please accept these written comments submitted by Children's Health Defense ("CHD"). CHD is organized under California law. We have many members in Los Angeles County. These comments are submitted on behalf of the organization and in a representational capacity for its Los Angeles County members, all of whom will be affected by any revision to the County's wireless-related ordinances.

CHD is one of the organizations that, along with many individuals, has joined in the collaborative efforts led by Fiber First Los Angeles County ("FFLA"). We support the FFLA recommendations and positions. Specifically, we oppose the amendments brought forward by County staff on the merits. We support the FFLA red-lines to the Staff's draft ordinances. We adopt and agree with the FFLA California Environmental Quality Act ("CEQA") legal analysis demonstrating that the claimed CEQA exemptions do not apply and/or there are exceptions that eliminate any exemptions. There must be a far more engaging analysis of the significant environmental impacts that would obtain if the Staff's proposed ordinances are adopted and the wireless facility permitting regime contemplated by those proposed ordinances goes into effect.

Assuming (without admitting) the Staff's position on CEQA is correct, the proposed ordinance terms should still not be adopted. Instead, the FFLA red-lines that are also before you should form the basis of your deliberations. There are many compelling reasons this is so. We will list only some of the more significant reasons below:

- The Staff proposals are part of a larger policy decision to emphasize wireless centric "digital divide" "solutions" that will actually worsen the divide.

Historically disadvantaged communities, families and small businesses will continue to suffer lower quality broadband options in comparison to the traditionally privileged that already have fiber-based solutions. Wireless

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broadband is not and will never be an adequate or affordable source for those who need and rely on truly advanced network capabilities. The Board must direct Staff to focus on policies and actions that emphasize fiber to the premises, not just fiber to some wireless node.

- The Staff proposals eliminate all public notice and will functionally prevent Los Angeles County residents from being able to know about and contest many types of proposed wireless facility permit applications, even those that would directly abut or even be located on their property. People will learn about a project that directly impacts them and their property interests only when construction begins and it is too late to do anything about it. This violates due process and is simply unfair. Nor is it allowed under state law, including but not limited to CEQA and the several relevant Government Code provisions that directly and indirectly apply to wireless land use and encroachment permits.¹
- The Staff proposal to institute “ministerial” review of wireless applications in both Title 16 and 22 is particularly inappropriate. First, the particulars of the proposal do not meet the definition of “ministerial” in CEQA because they still allow some amount of discretion and subjective judgment. But more importantly, even this limited amount of discretion and judgment is inadequate. Every permit application for an individual project will necessarily demand far more flexibility depending on the specific circumstances. Each will give rise to some level of policy decision-making. These are not cookies that can be shaped for baking by a formalistic, always-applied cutter.
- The Staff proposals are not sufficiently protective of local values and choices in terms of location preferences, aesthetics or residential property values. They would allow many wireless facilities to be placed far too close to homes and other locations like schools and open spaces.
- The Staff proposals would allow placement in environmentally-sensitive and/or historically important areas where they simply do not belong.
- The Staff proposals completely ignore the significant fire risks posed by wireless facilities. This is so despite the fact that Los Angeles County has already experienced several devastating fires that were caused or made worse by telecommunications equipment failures. The Staff proposal does not consider the fact that Los Angeles County is in an earthquake-prone area that demands far more by way of structural integrity design.

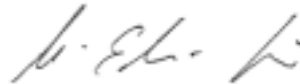
¹ There are many applicable state laws that contemplate notice and hearing. Only two examples will be cited. Government Code Sec. 65850.6(a)(1) and (b) require that any colocation authorization be a “discretionary permit.” It therefore does not contemplate a “ministerial” process. Section 65850.6(a)(2) and (b)(4) require a CEQA “negative declaration or modified negative declaration” and accordingly it does not allow proceeding under a claimed “exemption.” Subsection (c) mandates “at least one public hearing on the discretionary permit.” The state-level shot-clock based “deemed approved” remedy for certain facility types also expressly contemplates “public notice.” See Government Code Sec. 65904.1(a)(2).

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- The Staff proposals lack sufficient application content requirements. As a result it will not be possible to fully identify potential issues at the beginning. This will lead to more, not fewer, “shot clock” issues and failures.
- The Staff proposals lack essential permit conditions.
- The Staff's primary rationale for all this – that it is necessary or even mandated by the federal Communications Act or FCC rules (and in particular those relating to “shot clocks”) – is simply false. The Communications Act expressly leaves many of these decisions to local permitting authorities – for both facilities on right-of-way and on private property. The FCC has made it clear that the “shot clock” rules do not override local and state notice and hearing or other procedural requirements. Nothing in any federal rule or statute preempts CEQA requirements.

The FFLA red-lines address and resolve all of the foregoing problems. For that reason CHD commends and adopts them and we respectfully request that the Board use them instead of the Staff proposals as the basis for your deliberation. Equally important, CHD strongly suggests that the Board not adopt the Staff's recommendation that the Board find that this project is exempt from CEQA environmental review.

Respectfully Submitted,



Miriam Eckenfels-Garcia
Director, EMR & Wireless Program
Children's Health Defense