

**CITY OF OAKLAND**  
**AGENDA REPORT**

2011 JUN 16 PM 5:37

**TO:** CED Committee  
**ATTN:** Chair Brunner and committee members  
**FROM:** Councilmember Libby Schaaf  
**DATE:** June 14, 2011

**RE:** Adopt An Ordinance Amending Oakland Municipal Code Title 15, Chapter 15.10, To Add A New Provision Requiring The City Of Oakland To Provide 30 Days Mailed And Posted Notice To Properly Owners And Tenants (Both Residential And Commercial) Within 300 Feet Of A City Of Oakland-Owned Property Of The City's Intent To Install Or Allow The Installation Of A Public Safety-related Telecommunications Facility, Such as A Tower, Pole Or Antenna, That Is Not Otherwise Subject To A Public Notice Requirement.

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**SUMMARY**

An ordinance has been prepared amending Oakland's Municipal Code Title 15, Chapter 15.10, to add a new provision requiring The City of Oakland to provide 30 days mailed and posted notice to property owners and tenants (both residential and commercial) within 300 feet of a City of a Oakland-owned property of the City's intent to install or allow the installation of an outdoor telecommunications or other type of tower, pole or antenna, that is not otherwise subject to a public notice. This ordinance will eliminate the City's exemption from public noticing of public safety-related telecommunications projects involving the construction or installation of towers, poles, antennas and other equipment, that do not currently require public noticing. The ordinance does not apply to telecommunications installations that occur inside existing facilities or underground, and have no external visual impact. This ordinance will not impact installation projects on City property that are already subject to public noticing requirements.

**FISCAL IMPACT**

The fiscal impact of this ordinance will be the cost of writing the notice, postage costs associated with mailing the notice to all affected parties (as outlined in the ordinance language) and any other posting costs. Oakland's Zoning Department typically issues public noticing fees of approximately \$1,000 for the cost of public noticing for zoning permits; however, over half of these costs go to cover administrative staffing costs. The cost of public noticing for this ordinance should not exceed the same costs associated with a typical zoning permit-related public noticing requirement.

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All mailing and posting costs should be born by the City department that initiates and implements a public safety-related construction and/or installation project which triggers the public noticing requirement of this ordinance.

## **BACKGROUND**

Property improvements involving construction or installation of structures and other facilities on city-owned property usually involves a public noticing component whether by rule or simply by non-mandated, but typically followed planning practices. However, the City is currently allowed to exempt itself from any public noticing requirements for the installation of telecommunications infrastructure critical to public safety.

Telecommunications infrastructure (towers, poles or antennas), when installed on city-owned property for the purposes of public safety, are currently not regulated by the City's planning code, and are therefore not subject to the City's planning authority.

The impetus for this legislation is the recent installation of a 100' monopole at the City's Butters Canyon Fire Station. This structure is a critical component of the City's Department of Information Technology (DIT) overhaul of the City's Fire and Police telecommunications system; this monopole tower will play a key-role in implementing the new nationwide Platform 25 (P25) system, which allows public safety departments to more effectively and consistently communicate, even allowing for inter-municipality communications.

The DIT did not provide any public notice to the local residents who live within close proximity to the fire station. Many of these residents choose to live in this community in part because of the tremendous vistas of Oakland, San Francisco, and the San Francisco Bay afforded by their home's location. Many of these views have been permanently visually impacted by the 100' monopole. If the proposed legislation were in place at the time of this installation, then residents within 300' of the Butters Canyon Fire Station location would have had 30 days notice to discuss the advantages and disadvantages of the project, and exercise their right to question the installation's merits.

## **PROGRAM DESCRIPTION**

The ordinance outlined in this report does not seek to place public safety-related telecommunications infrastructure within the Planning Code. Rather, this ordinance will only require the City of Oakland, under the authority of the City Administrator, to provide public notice for any type of public safety-related telecommunications improvements on city-owned land that until now have been exempt from such notice. The public notice shall be defined as: "30 days mailed and posted notice to property owners and tenants (both residential and commercial) within 300 feet of a City of Oakland-owned property of the City's intent to

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construct or install new public safety-related telecommunications facilities, including but not limited to towers, poles or antennas, that are not otherwise subject to public notice requirements." Private telecommunications companies regularly contract with the City to install non-public safety telecommunications equipment on City property and are already subject to public noticing requirements. As such, this ordinance will not apply to these installation projects since they already comply with existing public noticing requirements.

### **KEY ISSUES AND IMPACTS**

The City of Oakland should comply with similar public noticing requirements to which we hold private citizens accountable for when they propose construction and/or installation projects on private property. The City does provide public notice to all property owners and tenants within 300 feet of a proposed improvement and development of City-owned property for all projects that fall within the City's planning code and planning commission authority. There are identified rare instances, however, where the City does not need to comply with any public noticing requirement, such as with the installation telecommunications or other types of towers, poles or antenna devices when such facilities are public safety-related. This ordinance will eliminate the City's exemption from the public noticing requirement for such projects, thereby promoting a higher degree of government transparency through public notification, and fostering a spirit of open government. The City of Oakland Municipal Code will be altered to reflect the language of the ordinance if the ordinance is approved by the City Council.

### **SUSTAINABLE OPPORTUNITIES**

*Economic:* The proposed ordinance is unlikely to create any positive or negative economic impact.

*Environmental:* The proposed ordinance is unlikely to lead to any environmental impact.

*Social Equity:* This public noticing will promote social equity through increased information diffusion to all citizens and stakeholders within the geographic boundaries outlined in the public noticing requirements of this ordinance. Property owners and tenants within 300 feet of City-owned property will be informed if the City intends to install, or allow to be installed, public safety-related telecommunications facilities, that would otherwise not be subject to public noticing requirements. All affected parties will be given public notice equally, regardless of race, ethnicity, background or beliefs.

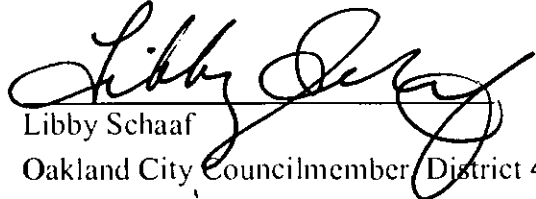
### **DISABILITY AND SENIOR CITIZEN ACCESS**

There is no direct impact or benefit to seniors or people with disabilities.

**ACTION REQUESTED OF THE CITY COUNCIL**

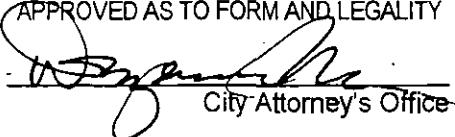
Councilmember Schaaf recommends that the City Council receives the report and approves the ordinance.

Respectfully submitted, )



Libby Schaaf  
Oakland City Councilmember District 4

Prepared by:  
Bruce Stoffmacher, Policy Analyst  
Office of Oakland Councilmember Libby Schaaf

INTRODUCED BY COUNCILMEMBER LIBBY SCHAAF

  
City Attorney's Office

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**OAKLAND CITY COUNCIL**

ORDINANCE No. \_\_\_\_\_ C.M.S.

**ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ADD TITLE 15, CHAPTER 15.10, PUBLIC NOTICE OF CITY OF OAKLAND'S INTENT TO CONSTRUCT OR INSTALL NEW PUBLIC SAFETY-RELATED TELECOMMUNICATIONS FACILITIES ON CITY-OWNED PROPERTY, TO ESTABLISH REQUIREMENTS FOR THE CITY OF OAKLAND TO PROVIDE 30 DAYS MAILED AND POSTED NOTICE TO PROPERTY OWNERS AND TENANTS (BOTH RESIDENTIAL AND COMMERCIAL) WITHIN 300 FEET OF A CITY OF OAKLAND-OWNED PROPERTY OF THE CITY'S INTENT TO CONSTRUCT OR INSTALL NEW PUBLIC SAFETY-RELATED TELECOMMUNICATIONS FACILITIES, INCLUDING BUT NOT LIMITED TO TOWERS, POLES OR ANTENNAS, THAT ARE NOT OTHERWISE SUBJECT TO A PUBLIC NOTICE REQUIREMENTS**

**WHEREAS**, the City of Oakland has a vested right to develop its property so as to realize a city-owned property's potential benefits towards the functioning of City operations and resident services; and

**WHEREAS**, the City has an increasing demand to construct parking lot facilities on City-owned land to meet a growing demand for public parking; and

**WHEREAS**, the City has an increasing demand to install telecommunications or other type of tower, pole or antennas on City-owned property for the purpose of supporting the City's critical public safety telecommunication infrastructure; and

**WHEREAS**, the City Council on November 23, 1996, established ordinance No. 11904 C.M.S. , establishing a telecommunications program and amending the Oakland planning code to add regulations pertaining to wireless communications facilities, and to make other related revisions to the Oakland Planning Code to be consistent with the regulations; and

**WHEREAS**, the City currently has no requirement to provide public notice when it constructs, installs or allows the installation of public safety-related telecommunications equipment and facilities such as towers, poles and antennas on city-owned property, and wishes to provide nearby residents and tenants with public notice of such telecommunications projects when they have an external, visual impact; and

**WHEREAS**, the City Council adopted Ordinance No. 12658 C.M.S. on may 17, 2005, a green building ordinance which mandates the City to comply with green building standards in the area of site development, water savings, energy efficiency materials, selection and environmental air quality, thus establishing an ordinance for how the City may develop facilities and structures on City-owned property;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1. Recitals.**

The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them part of this Ordinance.

**Section 2. California Environmental Quality Act Finding.**

The City Council finds and determines, that the adoption of this Ordinance is Exempt, each as a separate and independent basis, from California Environmental Quality Act (hereinafter referenced as "CEQA") under Sections 15061(b)(3), 15183, 15268, and/or Section 15303 of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

**Section 3. Add Municipal Code Title 15, Chapter 15.10, Public Notice of City of Oakland's Intent to Construct or Install New Public Safety-related Telecommunications Facilities on City-owned Property.**

The Oakland Municipal Code is hereby amended to add the following public notice provisions:

**Chapter 15.10 Public Notice of City of Oakland's intent to Construct or Install New Public Safety-related Telecommunications Facilities on City-owned Property**

**15.10.010. Purpose.**

The purpose of this provision is to provide public notice for improvement or development of City-owned property involving construction or installation, by or on behalf of the City of Oakland, of new public safety-related telecommunications facilities, including, but not limited to, open or enclosed towers, poles and antennas that have an external, visual impact.

**15.10.020. Notice Requirement.**

City of Oakland will provide 30 days mailed and posted notice to property owners and tenants (both residential and commercial) within 300 feet of a City of Oakland-owned property, when such notice is not otherwise required, of the City of Oakland's intent to construct or install new telecommunications facilities, including, but not limited to, open or enclosed towers, poles and antennas for public safety projects or purposes, excluding such telecommunications facilities installed indoor, outdoor or underground and that do not have any external visual impact.

**15.10.020. Notice Procedures.**

The City Administrator or his/her designee shall establish procedures and protocols to carry out the mailed notice and posting requirements. To the extent feasible, notice

will be coordinated with project and/or contract approvals involving the construction or installation of new public safety-related telecommunication facilities with an external, visual impact.

**15.10.030. Notice Delays.**

The purpose of this Ordinance is solely to provide notice of activities not otherwise subject to notification requirements. Nothing herein is intended to establish any right or remedy, including, without limitation, any right to challenge or appeal any action, nor to prohibit the City from constructing or installing the structures or facilities identified in this section on a schedule established under contract for such construction or installation if delay for public notice would or might cause the City to incur additional project costs or damages under contract.

**Section 4. Severability.**

If any section, subsection, subpart or provision of this Ordinance, or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this Ordinance and the application of such to other persons or circumstances shall not be affected thereby.

**Section 5. Effective Date.**

This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes on final adoption; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES-

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

DATE OF ATTESTATION: \_\_\_\_\_

## NOTICE AND DIGEST

**ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ADD TITLE 15, CHAPTER 15.10, PUBLIC NOTICE OF CITY OF OAKLAND'S INTENT TO CONSTRUCT OR INSTALL NEW PUBLIC SAFETY-RELATED TELECOMMUNICATIONS FACILITIES ON CITY-OWNED PROPERTY, TO ESTABLISH REQUIREMENTS FOR THE CITY OF OAKLAND TO PROVIDE 30 DAYS MAILED AND POSTED NOTICE TO PROPERTY OWNERS AND TENANTS (BOTH RESIDENTIAL AND COMMERCIAL) WITHIN 300 FEET OF A CITY OF OAKLAND-OWNED PROPERTY OF THE CITY'S INTENT TO CONSTRUCT OR INSTALL NEW PUBLIC SAFETY-RELATED TELECOMMUNICATIONS FACILITIES, INCLUDING BUT NOT LIMITED TO TOWERS, POLES OR ANTENNAS, THAT ARE NOT OTHERWISE SUBJECT TO A PUBLIC NOTICE REQUIREMENTS**

Adoption of the ordinance will require the City of Oakland to provide 30 days' mailed and posted notice to residents and tenants (residential and commercial) within 300 feet of a newly constructed or installed public safety-related telecommunications facility on City-owned property of the City's intent to construct or install such facilities. The City's intent is to provide public notice for public safety-related telecommunications facilities that have an external, visual impact because they are currently exempt from notice requirements in the City's Planning Code and processes. The ordinance would not require delay in constructing or installing such facilities to meet the notice requirements if delay in constructing or installing such facilities would increase project costs or cause the City to incur damages under contract.