

OFFICE OF THE CITY MANAGER  
DES MOINES, IOWA

CITY COUNCIL COMMUNICATION 96-458  
OCTOBER 21, 1996 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
LEASE POLICY FOR COMMUNICATION ANTENNAS ON PUBLIC PROPERTY	◆ RESOLUTION ORDINANCE RECEIVE/FILE	STEVE GUNSON ENVIRONMENTAL HEALTH OFFICER

**SYNOPSIS —**

On September 16, 1996, by Roll Call No. 96-3201, Council approved an ordinance amending zoning regulations for communication towers and antennas within the City of Des Moines. In addition to that ordinance, it is appropriate to implement a guide specifically for when the City is approached by service providers to construct a pole on public, City-owned property. Attached is that proposed guide.

**FISCAL IMPACT —**

The \$300 application fee will cover administrative costs to the City. No other expenditure of City funds is anticipated. The revenues generated will be varied depending on final lease agreements. Except for enterprise operations, all revenues will come to the General Fund.

**RECOMMENDATION —**

Approval of Recommendation.

**BACKGROUND —**

Shortly after being contacted by several telecommunication companies, the City Manager appointed a committee to investigate and formulate a guide that would consider the needs of the affected neighborhoods, the service provider, and the City as a whole, whenever communication tower leases were requested.

The Communication Antenna Lease (CAL) Committee met on four occasions to draft the attached guidelines for leasing City-owned property to cellular and digital communication providers. Staff from the Engineering, Legal, Community Development, Fire, Aviation, and Park and Recreation Departments, as well as the Public Library, were in attendance. Members included: Laura Isenstein, Library Director; Roger Brown, Assistant City Attorney; Andrew Hennesy, Engineering Department; Robert Hagener, Aviation Department; Barry Vosler, Community Development Department; Ken Danley, Fire Department; Pam McAdams, City Manager's Office; Steve Gunson, Community Development Department, and Don McLaughlin, Park and Recreation.

In drafting these guidelines staff has been in communication with Public Technology Inc. (PTI); the law firm of Varnum, Riddering, Schmidt, and Howlett, LLP, Grand Rapids, Michigan (Mr. John Pestle); TeleSite Management, Little Rock, Arkansas; and the Moss & Barnett Law Firm in Minneapolis, Minnesota (Mr. Brian Grogan), for general information on rents, lease contracts, and land values involving the new PCS system in other cities around the country.

The committee's recommended guidelines address how the City should proceed in this area for the short-term. There is concern that we are entering into an area which is in a state of substantial flux, both financially and from a regulatory standpoint. We must balance short-term financial gain against potential future needs of the City.

Through committee research, the recommendation is to negotiate lease agreements in the range of \$1,500/month for each antenna lease, raised to \$2,000 after three years, and increased by the Consumer Price Index (CPI) thereafter at two-year intervals, plus an initial, significant one-time investment. The contract requires co-location of like systems, but allows the initial monopole builder to negotiate up to twice the City's rate, as long as the City receives its lease payment. The escalator clause also applies to co-located antennae.

The issue of the one-time benefit accruing to the respective operating department/facility is something most committee members felt strongly about; the group also felt that the benefit would make these leases more palatable to any affected neighborhood organizations.

The attached guide document outlines the application process and highlights the necessity and importance of neighborhood involvement. This policy would be applicable to all proposed antenna sites on City-owned property.

Although the Aviation Department and Wastewater Reclamation Authority will follow the initial process set by the committee, indications from their departmental representatives are that there are special circumstances that may require variations in their lease. In all lease situations, all appropriate boards and commissions will be consulted for a recommendation.

The committee feels that this will benefit the City, the service provider, and most importantly, the impacted neighborhood and community.

## **Lease Guidelines**

### **Telecommunications Equipment on City-Owned Property**

The following will serve as a guide for the negotiation of leases of City-owned property for the placement of telecommunications antennas and monopole towers:

#### **Compensation/terms—**

- 1) The monthly lease rate for each individual building mounted antenna or monopole will be \$\_\_\_\_. These revenues will revert to the City's General Fund.

An escalator clause will be included in the lease.

- 2) A one time benefit in the equivalent of \$\_\_\_\_\_ will be negotiated for each building mounted antenna or monopole. The benefit should, whenever possible, accrue to the concerned City facility. The nature of the benefit will be negotiated by the City Manager and the operating department, with input from the affected neighborhood.
- 3) Where technically feasible, provisions for the placement of City-owned radio and telecommunication transmission equipment will be included in the lease at no cost to the City.

Leases shall specify that monopoles be constructed to provide the space and structural capacity for the co-location of at least one other antenna similar to the one placed by the owner; this will be in addition to the provision of space for City owned equipment.

The City will have the right of review and approval for all subleases for co-location. The City will receive \$\_\_\_\_\_/month for each additional antenna; the monopole owner will be permitted to charge the subleasee up to two times the monthly amount paid to the City. The escalator clause will also apply to co-located antennas.

The owner will not be allowed to reject the co-location of an antenna from another provider.

- 4) Leases should be written for a duration of 15 years; this is variable based on the projected future use and life expectancy of the facility in question. Provisions for canceling the lease shall be included based on the potential need to close or remove the facility from the City's inventory at some future point.
- 5) The placement of temporary transmission equipment pending construction of a permanent facility will be limited to 60 calendar days. All lease provisions will commence with the placement of the temporary equipment.

#### **Application Process--**

- 1) All applications to lease City-owned property for the placement of telecommunication antennas mounted on buildings or monopoles, and site access agreements, shall be filed on a form specified by the City's Property

Manager. The Property Manager will then schedule a meeting of the Communication Antenna Lease (CAL) Committee to perform a "first cut" screening of the application(s).

Committee considerations will include: compliance with zoning regulations; anticipated neighborhood opposition/support; the nature and desirability of a one time benefit to the facility in question; and operational and aesthetic compatibility with the facility.

A \$300 application processing fee will be filed with the application; this fee will be non-refundable.

- 2) If the application is approved by the committee, the Property Manager will forward it to the City Manager and the Legal Department with a recommendation to proceed with negotiations.

If the application is not approved by the committee, a recommendation for denial will be forwarded to the City Manager. The City Manager will notify the applicant of his/her decision to approve or deny the application.

City Council Members will be informed of staff's intent to begin lease negotiations, or that staff has recommended denial of an application.

If a lease application is denied by the City Manager, the applicant may appeal this decision to the City Council by filing a written request to speak, with the City Clerk, at a regularly scheduled Council meeting.

- 3) Based on the Committee's recommendations, the following reviews would commence and run simultaneously:
  - a. By the Board of Adjustment as determined by ordinance.
  - b. By affected neighborhoods upon recommendation of the CAL Committee, or as determined to be appropriate by the City Manager.

City staff will inform the applicant of the appropriate neighborhoods which should be contacted, and will monitor the applicant's presentation to the organization if the neighborhood requests that a presentation be made. Staff will not act in an advocacy position for either the applicant or the neighborhood.

- c. By oversight boards and commissions such as the Parks Board, the Library Trustees, or the Aviation Board.
- 4) If approved by the Board of Adjustment and the applicable oversight board, the City Manager will conclude negotiations with the telecommunication provider for a recommendation to the City Council to approve the lease application.
- 5) The City Council will consider the lease for approval or disapproval.