



Submitted via email to <publicrecords@portofsandiego.org>

Tuesday, March 8, 2022

Re: 3/8/22, Board of Port Commissioners Meeting
2022-0054, Wireless Communication Facilities on District Tidelands

Dear Board of Port Commissioners,

The Communications Workers of America (CWA) writes to submit comment regarding the Wireless Communication Facilities proposal. CWA is a labor union representing over 2,800 members in the San Diego area, primarily in telecommunications. Across the country, we represent workers in telecommunications, customer service, media, airlines, public service, and manufacturing. We commend the Board for taking action in this area and creating standards that seek to protect the environmental qualities of the tidelands, provide reliable wireless service, and maintain the local control and proprietary interest contemplated by federal law. We recommend that the Port incorporate binding transparency provisions that promote worker and public safety, which many local jurisdictions have adopted or are actively considering, in its ordinances, permitting procedures, and/or license agreements.

When low-road contractors cut corners, it can create dangerous conditions for workers and the public. Like many sectors, the telecommunications industry increasingly uses a subcontracted workforce. Providers often rely on multiple layers of contractors, which can make it more difficult for a locality to hold companies accountable and ensure safe conditions for workers and the public.

When installation work goes wrong in the right-of-way, there are serious consequences. For exampleⁱ:

- In February 2019, a Verizon subcontractor in San Francisco hit a gas line and caused an explosion. The three-alarm blaze, with over 50 foot flames, burned for hours and caused substantial property damage.ⁱⁱ
- In April 2019, a subcontractor for Crown Castle in North Carolina hit a gas line and caused an explosion that killed two people, injured another twenty-five, destroyed a building including two businesses, and damaged nearby properties.ⁱⁱⁱ
- In November 2018, Comcast subcontractors in Aurora, Colorado struck a gas line while boring underground to lay fiber optic lines causing an explosion at a retirement facility. The explosion killed one person and injured three others, including one firefighter.^{iv}
- In July 2018, a Verizon subcontractor in Wisconsin hit a gas line and caused an explosion that leveled half a city block, killing a volunteer firefighter and critically injuring another.^v

Disruptions caused by low-road subcontractors can also be costly to localities, for example, causing damage to public property and utility equipment. In the context of the tidelands, shoddy work can also risk negative environmental impacts. In Sacramento, between May 2018 and

January 2019, Verizon contractors caused at least 41 utility hits, costing the city thousands of dollars and hundreds of employee hours.^{vi} The City of Tampa has sued Verizon and Frontier, alleging the companies caused nearly \$100,000 in damages to underground wastewater lines.^{vii}

Localities can promote accountability and safety by ensuring that applicants disclose subcontractors and that safety requirements apply to subcontractors. Transparency and accountability requirements as to subcontractors and licenses are a first step to ensure that low-road subcontracting doesn't endanger public safety or public property. In North Carolina, only the top-level firm was listed on the permit, not the company that was directly responsible for the work on the ground.^{viii} In the Wisconsin explosion, the subcontractor company was delinquent in its registrations to work in the state.^{ix} In San Francisco, the subcontractor didn't have a required license.^x

Localities are working to bolster their policies to ensure all work under a permit is done safely. San Diego County is moving forward with a transparency ordinance that would apply to wireless facilities in the right-of-way. On October 6, 2021, the San Diego County Board of Supervisors sought input from stakeholders on subcontractor transparency measures for county permits, and voted to direct staff to draft an ordinance that requires applicants for right-of-way permits, along with other types of permits, to provide:

- Information on the subcontractor performing work, including name and contact information, and license number;
- Start and end dates of subcontractor work;
- Scope of work done on job;
- A description of safety licenses or training requirements for the subcontractor, and;
- Verification of OSHA or wage violations.

A copy of the relevant County of San Diego Minute Order is attached.

Imperial Beach has incorporated similar requirements into its agreements with wireless providers, requiring that licensees ensure all employees and agents are adequately trained and skilled, that licensees use only licensed contractors, and that licensees provide the city with details on work to be performed, the contractors performing the work, and information for each of the contractors.^{xi} National City has incorporated similar language into its wireless facility agreements. Outside California, New York City has incorporated substantial subcontractor disclosures into its wireless facility agreements.^{xii}

Ensuring that all permitted work is done safely and responsibly – regardless of whether the work is subcontracted to a different entity – protects worker safety, public safety, and particularly for the Port of San Diego, the broader environment as well.

We commend the Port of San Diego for taking proactive measures to ensure responsible wireless deployment and appreciate the opportunity to comment on this matter. We are happy to discuss further and I can be reached at cgao@cwa-union.org and 202-322-5674. Additional resources and reports are also available at our website, www.Fair5G.org.

Sincerely,

/s/ Ceilidh Gao

Ceilidh Gao

Staff Attorney, Communications Workers of America

CC: Dan Malcolm, Chair, dmalcolm@portofsandiego.org
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ⁱ Additional examples and resources are available at: Fair5G, “Subcontracting in Small Cell Deployment: Who’s Doing the Work in Our Streets?”, https://www.fair5g.org/system/files/cwa_-_telecom_subcontractor_safety_backgrounder_1.pdf.

ⁱⁱ Ted Goldberg, KQED, “Contractor Tied to San Francisco Pipeline Explosion Didn’t Have a License,” February 15, 2019, available at <https://www.kqed.org/news/11725622/contractor-tied-to-san-francisco-pipeline-explosion-didnt-have-a-license>.

ⁱⁱⁱ Joe Johnson and Anna Johnson, “Deadly Durham gas explosion ruled accident, report says,” The News & Observer, August 9, 2019, available at <https://www.newsobserver.com/news/local/counties/durham-county/article233713942.html>.

^{iv} Tabachnik, S. 2019, November 15. No charges brought against cable contractors who caused fatal explosion at Aurora retirement facility last year. <https://www.denverpost.com/2019/11/15/heather-gardens-explosion-gas-line-investigation/>

^v Jessica Arp, Channel 3000 News, “City of Sun Prairie releases construction permits for downtown area near explosion,” July 17, 2018, available at <https://www.channel3000.com/news/city-of-sun-prairie-releases-construction-permits-for-downtown-area-near-explosion/769418541>; Bridgit Bowden, WPR, “OSHA cites 2 contractors in Sun Prairie Explosion,” January 10, 2019, available at <https://www.wpr.org/osha-cites-2-contractors-sun-prairie-explosion>; City of Sun Prairie, “Downtown Investigation Update,” December 20, 2018, available at <https://www.cityofsunprairie.com/1017/Downtown-Investigation-Update-122018>.

^{vi} Communications Workers of America, 5G Promises Ring Hollow in Sacramento, <https://www.fair5g.org/5g-promises-ring-hollow-sacramento-0>.

^{vii} Carollo, Malena. 2019, Feb. 7. City of Tampa sues Frontier and Verizon for damage to pipes, <https://www.tampabay.com/business/city-of-tampa-sues-frontier-and-verizon-for-damage-to-pipes-20190206/>.

^{viii} City of Durham Fire Department, 115 North Duke Street: Fatal Natural Gas Explosion, Origin and Cause Investigation Report, Incident No. 19-1909574, August 2, 2019, available at <https://www.newsobserver.com/news/local/counties/durham-county/article233713942.html>.

^{ix} Wisconsin Department of Financial Institutions, Corporate records for VC Technologies, LLC, available at <https://www.wdfi.org/apps/CorpSearch/Details.aspx?entityID=V026292&hash=646382736&searchFunctionID=bcfaece0-316d-4297-82f0-9646dbc3ad9f&type=Simple&q=vc+tech>.

^x Ted Goldberg, KQED, “Contractor Tied to San Francisco Pipeline Explosion Didn’t Have a License,” February 15, 2019, available at <https://www.kqed.org/news/11725622/contractor-tied-to-san-francisco-pipeline-explosion-didnt-have-a-license>.

^{xi} The language reads: “Worker Qualifications; Responsibility for Agents and Contractors. Each Party shall ensure that its employees, agents or contractors which perform work in furtherance of this Agreement are adequately trained and skilled to access structures and infrastructure in accordance with all applicable industry and governmental standards and regulations. Licensee shall use only qualified and trained persons and appropriately licensed contractors for all installation, construction or other work performed on or about the City Pole License area. Except for minor and routine repair and maintenance of Licensee’s Equipment, as determined by the City, at least five business days before any installation, construction or other work commences on or about the City Pole License area, Licensee shall provide the City with (a) a schedule with all activities to be performed in connection with the installation, construction or other work; and (b) a list with all the names; contractors’ state license numbers and license category; contractors’ workers’ compensation insurance information; contractors’ federal tax identification number; certifications, licenses, or safety training required for contractors’ work; and contact information for all contractors, or subcontractors, who will perform the installation, construction or other work on the City Pole License area.”

^{xii} SpeedMatters, 2020, January 4, “Who’s Building Our 5G? In New Franchise Agreements, NYC Leads the Way on Worker Safety and Corporate Transparency,” <https://speedmatters.org/news/who-s-building-our-5g-new-franchise-agreements-nyc-leads-way-worker-safety-and>; New York City Department of Information Technology and Telecommunications, “Mobile Telecom Franchises,” <https://www1.nyc.gov/site/doitt/business/mobile-telecom-franchises.page>.

**COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS - LAND USE
WEDNESDAY, OCTOBER 06, 2021**

MINUTE ORDER NO. 2

**SUBJECT: ORDINANCE OPTIONS FOR SUBCONTRACTOR TRANSPARENCY
MEASURES IN COUNTY PERMITS (DISTRICTS: ALL)**

OVERVIEW

On March 17, 2021 (6), the Board of Supervisors (Board) directed the Chief Administrative Officer to seek input from stakeholders and develop options for a new ordinance to promote transparency for contractors applying for both building permits and right-of-way permits in the unincorporated communities for which the County of San Diego (County) has jurisdiction.

In requiring transparency, the County's goal is to create a culture of safety and legal compliance while ensuring that labor standards are upheld. Currently, the County verifies that contractors are in good standing with the Contractors State Licensing Board (CSLB) at the time of building permit issuance, as applicants provide their CSLB license number. The CSLB site is linked to Accela, the County's automated land use permit platform, and a building permit cannot be issued unless the license number is in good standing. However, the same verifications do not apply to any subcontractors working on the project. The options presented today for the proposed ordinance would require contractors to disclose information for their subcontractors working on projects requiring County building permits and right-of-way permits in the unincorporated communities for which the County has jurisdiction.

After seeking input from community members, community planning groups, environmental stakeholder groups, construction and building stakeholders, labor advocates, and union stakeholders, options presented to the Board today include ordinance options to achieve subcontractor transparency and disclosures during the processing of building permits and right-of-way permits, as well as short-term and long-term implementation options.

RECOMMENDATION(S)

CHIEF ADMINISTRATIVE OFFICER

1. In accordance with State California Environmental Quality Act Guidelines Section 15061(b)(3), find that it can be seen with certainty that there is no possibility that the proposed project may have a significant effect on the environment for the reasons stated in the Notice of Exemption (on file with the Clerk of the Board); and
2. Receive the Ordinance Options for Subcontractor Transparency Measures in County Permits and provide direction on the following options:
Options for Building Permits: the following are options for permit types that could require subcontractor disclosures (can select any or all of the options below):
 - a. All new commercial, residential tracts (five or more lots), and multifamily construction projects (3 or more units)
 - b. Commercial tenant improvement (renovation) projects that affect more than 10,000 square feet of space under the renovation
 - c. Commercial tenant improvement (renovation) projects with a subcontractor contract value greater than \$25,000
 - d. Projects associated with General Plan Amendments

- e. Residential permits for work done on single family residences (all new homes, remodels, additions)

Options for Applicable Right-of-Way Permits: the following options list permit types that could require subcontractor disclosures (can select any or all of the options below):

- a. Projects that are done in the right-of-way to provide for transport of energy, water, or sewer that are subject to State Prevailing Wage
- b. Projects in the right-of-way not subject to State Prevailing Wage
- c. Projects with a subcontractor contract value greater than \$25,000
- d. Residential projects (driveways and retaining walls)

Options on Data to be Collected (can select any or all of the options listed below)

- a. Subcontractor specialty, name & contact, license number, and workers compensation policy
- b. Start and end dates of subcontractor work
- c. Subcontractor address
- d. Detailed scope of work done on job
- e. Verification of OSHA or wage violations
- f. Subcontractor Disadvantaged Business Enterprise (DBE) status
- g. Special safety licenses or training requirements for a subcontractor scope of work

Options to Submit Information (select one of the three options listed below)

- a. Hard copy collection (6 months): Paper form. Ongoing annual staff cost of \$50,000.
- b. Short-term electronic submittal (6 months): Create a new paper form to collect subcontractor disclosure data that can be digitally scanned and uploaded/attached to building and right-of-way permits in Accela, the County's automated land use permit platform. Total one-time cost of \$20,000.
- c. Long-term electronic submittal (12-18 months): Create a new option for Accela online permitting platform to allow contractors to add disclosure data digitally in standardized information fields once a record is created. This option provides the public and the newly authorized Office of Labor Standards and Enforcement access to disclosure data available in a format that makes it easier to search and analyze. Total one-time cost of \$250,000.

Options for Timing of Data Collection (select one of the four options below):

- a. Prior to permit issuance (prior to construction phases)
- b. Prior to subcontractor doing work on site (during construction phase)
- c. Within 14 days of when the subcontractor is selected and has started work (during construction phase)
- d. Prior to final inspection or final permit release (post construction phase)

The action sheet (Attachment A) includes a summary for each ordinance options for subcontractor transparency measures in County permits.

EQUITY IMPACT STATEMENT

Stakeholder input and community engagement identified a lack of contractor transparency as a potential impact to equity in labor standards and worker protection, including labor violations, unqualified operators, and a lack of accountability. Stakeholders commented that ongoing State enforcement and prevention efforts through the California State Licensing Board may lack resources and access to local subcontractor information.

The options presented today help address equity impacts by utilizing subcontractor disclosures to create new transparency tools to expand workforce protections and increase contracting equity. Transparency standards and disclosure tools will provide equal access to information, and better equip future enforcement and prevention efforts, both locally and as a part of the ongoing State efforts.

Community input, including from those directly impacted, shaped the development of the options to reduce the disproportionate equity impacts faced by vulnerable communities. The building permits and right-of-way project types identified in options presented today are most utilized in underserved communities and target specific project categories based on stakeholder input. Unlike the existing State efforts, these transparency and accountability efforts are established locally, including those close to the communities they serve.

FISCAL IMPACT

There is no fiscal impact associated with receiving the recommendations included in this board letter. The Board is considering options for staff to develop an ordinance and return to the Board for adoption and implementation at a future date. However, if the Board directs Planning & Development Services (PDS) to implement one or more of the options, there will be associated implementation costs ranging from \$50,000 in ongoing costs for hard copy data collection, \$20,000 in one-time costs for short-term electronic data collection, or up to \$250,000 in one-time costs for long-term electronic data collection. If the Board selects the hard copy data collection option presented today, the associated funding will need to be identified and appropriated for staff to begin the work. If options for data collection are not selected or the short-term or long term electronic data collection option is selected, there will be no change in the General Fund and no additional staff years.

BUSINESS IMPACT STATEMENT

Stakeholder outreach included groups associated with land development and construction, as well as labor groups, Community Planning & Sponsor Groups, and environmental groups, among others. Most stakeholders associated with labor indicated changes to increase transparency will protect workers and help further a level playing field for businesses. Stakeholders associated with development and construction noted that additional steps in the permit process, such as uploading subcontractor information, can add to the overall process time and increase the costs of development and housing. There was consensus that the format and process to upload required information needs to be user friendly and easy to access to minimize impacts on projects.

ACTION:

ON MOTION of Supervisor Fletcher, seconded by Supervisor Vargas, the Board of Supervisors took the following actions:

1. In accordance with State California Environmental Quality Act Guidelines Section 15061(b)(3), found that it can be seen with certainty that there is no possibility that the proposed project may have a significant effect on the environment for the reasons stated in the Notice of Exemption (on file with the Clerk of the Board).
2. Received the Ordinance Options for Subcontractor Transparency Measures in County Permits and provided direction on the following options:

Options for Building Permits:

- a. All new commercial, residential tracts (five or more lots), and multifamily construction projects (5 or more units)

- b. Commercial tenant improvement (renovation) projects that affect more than 10,000 square feet of space under the renovation
- d. Projects associated with General Plan Amendments

Options for Applicable Right-of-Way Permits:

- a. Projects that are done in the right-of-way to provide for transport of energy, water, or sewer that are subject to State Prevailing Wage
- b. Projects in the right-of-way not subject to State Prevailing Wage

Options on Data to be Collected:

- a. Subcontractor specialty, name & contact, license number, and workers compensation policy
- b. Start and end dates of subcontractor work
- c. Subcontractor address
- d. Detailed scope of work done on job
- e. Verification of OSHA or wage violations
- f. Subcontractor Disadvantaged Business Enterprise (DBE) status
- g. Special safety licenses or training requirements for a subcontractor scope of work

Options to Submit Information:

- c. Long-term electronic submittal (12-18 months): Create a new option for Accela online permitting platform to allow contractors to add disclosure data digitally in standardized information fields once a record is created. This option provides the public and the newly authorized Office of Labor Standards and Enforcement access to disclosure data available in a format that makes it easier to search and analyze. Total one-time cost of \$250,000.

Options for Timing of Data Collection:

- b. Prior to subcontractor doing work on site (during construction phase)

AYES: Vargas, Anderson, Lawson-Remer, Fletcher

NOES: Desmond

State of California)
County of San Diego) §

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER
Clerk of the Board of Supervisors



Signed
by Andrew Potter