



City of Cambridge

57.

IN CITY COUNCIL

April 13, 1998

MAYOR DUEHAY
VICE MAYOR GALLUCCIO
COUNTELLOR TRIANTAFILLOU

WHEREAS: The Cambridge City Council unanimously passed an order dated February 23, 1998 asking the Cambridge legislative delegation to support legislation which would restore authority to cities and towns to determine appropriate areas for siting telecommunications towers through local zoning and by-laws; and

WHEREAS: The Council requested that the Department of Telecommunications and Energy (DTE) ruling making commercial Mobile Radio Service providers (CMRS) as Public Service Corporations within the context of M.G.L. ch. 40A, sec. 3 be reversed; and

WHEREAS: The Council requested the removal of DTE from the entire process to regulate the placement of telecommunications towers within cities and towns; and

WHEREAS: The Massachusetts Municipal Association (MMA) supports section 1. of a Bill sponsored by Representative Marie J. Parente, H. 5353, but not the remainder of the Bill (attached); and

WHEREAS: The MMA supports a Bill sponsored by Senator Morrissey which states:

An Act Relative to the Siting Of Telecommunications Facilities

Section 3 of chapter 40A of the General laws is hereby amended by
Adding the following clause at the end of the second paragraph:

"For the purpose of this chapter, the term public service corporation shall not include commercial mobile radio services providers;" now therefore be it

ORDERED: That the Cambridge legislative delegation is requested to support Senator Morrissey's Bill, Senate Docket number 2160 or Section 1. only of Representative Parente's Bill H. 5353.

In City Council April 13, 1998.

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in cursive script that reads "D. Margaret Drury".

D. Margaret Drury
City Clerk

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Eight.

AN ACT RELATIVE TO THE SITING OF COMMUNICATION TOWERS AND
FACILITIES IN CITIES AND TOWNS OF THE COMMONWEALTH.

1 *Whereas*, The deferred operation of this act would tend to
2 defeat its purpose, which is to immediately protect the zoning
3 process of cities and towns in the Commonwealth, therefore it is
4 hereby declared to be an emergency law, necessary for the imme-
5 diate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General
Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 3 of Chapter 40A of the General Laws,
2 as found in the 1996 Official Edition, is hereby amended by
3 inserting after the last sentence of the second paragraph in line 49
4 after the words "welfare of the public" the following sentence:—
5 A provider of commercial mobile radio services or personal
6 wireless services shall not be designated as a public service corpo-
7 ration.

1 SECTION 2. Chapter 40A of the General Laws is hereby
2 further amended by inserting after section 9C the following
3 sections:—

4 Section 9D. Zoning ordinances or by-laws adopted or amended
5 pursuant to section 5 of this chapter may not be used to deny the
6 construction and modification of a commercial mobile radio
7 service or personal wireless service facility or communications
8 tower within said city or town. A city or town may, however, use a
9 zoning ordinance or by-law to designate the location, or co-
10 location of such a commercial mobile radio service or personal
11 wireless service facility or communications tower which said city
12 or town finds is in keeping with an established zoning district
13 within said city or town.

14 Section 9E. When a provider of commercial mobile radio
15 services or personal wireless services seeks to lease, or to pur-
16 chase real property owned by a governmental body, as defined in
17 section 2 of Chapter 30B of the General Laws, for the construc-
18 tion or modification or the co-location of a commercial mobile
19 radio service or personal wireless service facility or communica-
20 tions tower said provider shall follow all of the provisions of said
21 Chapter 30B of the General Laws relative to any such real prop-
22 erty disposition.

23 Section 9F. The owner of any commercial mobile radio service
24 or personal wireless service facility or communications tower
25 shall notify in writing the board of selectmen, in the case of a
26 town, or the mayor, in the case of a city, in which such facility or
27 tower is located at least 60 days prior to the sale of any such
28 facility or tower in any such city or town. At a minimum such
29 written notification shall include who the seller/owner is, and who
30 the purchaser of said facility or tower will be.

31 Section 9G. In any city or town in which a commercial mobile
32 radio service or personal wireless service facility or communica-
33 tions tower already exists, any subsequent request of said city or
34 town by any such provider of commercial mobile radio service or
35 personal wireless service to locate any additional commercial
36 mobile radio service or personal wireless service facility or com-
37 munications tower shall not be granted by said city or town unless
38 the provider of such commercial mobile radio service or personal
39 wireless service has first exhausted every effort to co-locate any
40 such facility on any existing tower in said city or town, and shall
41 provide proof of such effort in writing to said city or town.

42 Section 9H. Any obsolete or unused commercial mobile radio
43 service or personal wireless service facility or communications
44 tower shall be removed by, and solely at the expense of, said
45 provider of commercial mobile radio services or personal wireless
46 services or the owner of said facility or communications tower,
47 whichever the case may be, within 12 months of the cessation of
48 operations of said facility or communications tower by such
49 provider.

1 SECTION 3. When a provider of commercial mobile radio
2 services or personal wireless services seeks to lease, or to
3 purchase, any state-owned real property for the construction or
4 modification or co-location of a commercial mobile radio service
5 or personal wireless service facility or communications tower,
6 on such state-owned real property, any disposition of said real
7 property shall be in accordance with the provisions set forth in

AMENDMENTS TO H.5353

Rep. Parente of Milford moves that House Bill 5353 be amended by adding after section 3 the following section:

Section 4. Notwithstanding any general or special law, rule, or regulation to the contrary, any application or petition for the construction or modification of a communication tower or pole filed or pending in any city or town without a zoning ordinance or by-law governing the placement, location, size, and appearance of such tower shall be suspended, tolling any and all applicable time limits or requirements, for a period of 120 days after the effective date of this act or upon adoption of a zoning ordinance or by-law in said city or town, whichever is sooner. Any decision on such application or petition shall be based on any ordinance or by-law enacted during said period of suspension.

And further in section 2 by adding at the end of section 9F the following:

This section shall not prevent inter-family transfers of the ownership of any such facility, tower or pole.

And further in section 2 by adding at the end of section 9H the following:

Section 9I. At the time of submission to a city or town of an application or a permit for the siting, construction, or modification of a commercial mobile radio services or personal wireless services facility, or communication tower or pole, or at the time of the return of a request for proposal thereof when required by Chapter 30B of the General Laws, a provider of commercial mobile radio services or personal wireless services or the owner of said facility or communications tower or pole, if different from said provider, shall submit along with said application or permit an official written certification which shall have been signed by the Massachusetts Aeronautics Commission indicating that said commercial mobile radio service or personal wireless service facility, or communications tower or pole does not, in the opinion of said Commission, create a hazard to airflight or navigation; that said facility, communications tower or pole shall be properly illuminated with aircraft warning lights prior to the time it becomes operational; that all other existing facilities, communications towers or poles under the control or possession of said provider or owner have also been properly illuminated with such aircraft warning lights; that said provider or owner has presented to the Commission all necessary, accurate and up to date maps, in a form approved by said Commission, of the Commonwealth and of each city or town which shall include the precise location and exact height of any such facility, communications tower or pole; and that such provider or owner has complied with any other applicable provisions of Chapter 90 of the Massachusetts General Laws said Massachusetts Aeronautics Commission may deem necessary.

April 13, 1998

LATE ORDER

Mayor Duehay

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WHEREAS: The Cambridge City Council unanimously passed an Order dated February 23, 1998 asking the Cambridge legislative delegation to support legislation which would restore authority to cities and towns to determine appropriate areas for siting telecommunications towers through local zoning and by-laws and

WHEREAS: The Council requested that the Department of Telecommunications and Energy (DTE) ruling making Commercial Mobile Radio Service providers (CMRS) as Public Service Corporations within the context of M.G.L. ch. 40A, sec. 3 be reversed;

WHEREAS: The Council requested the removal of DTE from the entire process to regulate the placement of telecommunications towers within cities and towns; and

WHEREAS: The Massachusetts Municipal Association (MMA) supports section 1. of a Bill sponsored Representative Marie J. Parente, H. 5353, but not the remainder of the Bill (attached); and

WHEREAS: The MMA supports a Bill sponsored by Senator Morrissey which states:

An Act Relative To The Siting Of Telecommunication Facilities

Section 3 of chapter 40A of the General Laws is hereby amended by adding the following clause at the end of the second paragraph:

"For the purpose of this chapter, the term public service corporation shall not include commercial mobile radio services providers."

ORDERED: That the Cambridge legislative delegation is requested to support Senator Morrissey's Bill, Senate Docket number 2160 or Section 1. only of Representative Parente's Bill H. 5353.

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The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Eight.

AN ACT RELATIVE TO THE SITING OF COMMUNICATION TOWERS AND
FACILITIES IN CITIES AND TOWNS OF THE COMMONWEALTH.

1 *Whereas*, The deferred operation of this act would tend to
2 defeat its purpose, which is to immediately protect the zoning
3 process of cities and towns in the Commonwealth, therefore it is
4 hereby declared to be an emergency law, necessary for the imme-
5 diate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General
Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 3 of Chapter 40A of the General Laws,
2 as found in the 1996 Official Edition, is hereby amended by
3 inserting after the last sentence of the second paragraph in line 49
4 after the words "welfare of the public" the following sentence:—
5 A provider of commercial mobile radio services or personal
6 wireless services shall not be designated as a public service corpo-
7 ration.

1 SECTION 2. Chapter 40A of the General Laws is hereby
2 further amended by inserting after section 9C the following
3 sections:—

4 Section 9D. Zoning ordinances or by-laws adopted or amended
5 pursuant to section 5 of this chapter may not be used to deny the
6 construction and modification of a commercial mobile radio
7 service or personal wireless service facility or communications
8 tower within said city or town. A city or town may, however, use a
9 zoning ordinance or by-law to designate the location, or co-
10 location of such a commercial mobile radio service or personal
11 wireless service facility or communications tower which said city
12 or town finds is in keeping with an established zoning district
13 within said city or town.

14 Section 9E. When a provider of commercial mobile radio
15 services or personal wireless services seeks to lease, or to pur-
16 chase real property owned by a governmental body, as defined in
17 section 2 of Chapter 30B of the General Laws, for the construc-
18 tion or modification or the co-location of a commercial mobile
19 radio service or personal wireless service facility or communica-
20 tions tower said provider shall follow all of the provisions of said
21 Chapter 30B of the General Laws relative to any such real prop-
22 erty disposition.

23 Section 9F. The owner of any commercial mobile radio service
24 or personal wireless service facility or communications tower
25 shall notify in writing the board of selectmen, in the case of a
26 town, or the mayor, in the case of a city, in which such facility or
27 tower is located at least 60 days prior to the sale of any such
28 facility or tower in any such city or town. At a minimum such
29 written notification shall include who the seller/owner is, and who
30 the purchaser of said facility or tower will be.

31 Section 9G. In any city or town in which a commercial mobile
32 radio service or personal wireless service facility or communica-
33 tions tower already exists, any subsequent request of said city or
34 town by any such provider of commercial mobile radio service or
35 personal wireless service to locate any additional commercial
36 mobile radio service or personal wireless service facility or com-
37 munications tower shall not be granted by said city or town unless
38 the provider of such commercial mobile radio service or personal
39 wireless service has first exhausted every effort to co-locate any
40 such facility on any existing tower in said city or town, and shall
41 provide proof of such effort in writing to said city or town.

42 Section 9H. Any obsolete or unused commercial mobile radio
43 service or personal wireless service facility or communications
44 tower shall be removed by, and solely at the expense of, said
45 provider of commercial mobile radio services or personal wireless
46 services or the owner of said facility or communications tower,
47 whichever the case may be, within 12 months of the cessation of
48 operations of said facility or communications tower by such
49 provider.

1 SECTION 3. When a provider of commercial mobile radio
2 services or personal wireless services seeks to lease, or to
3 purchase, any state-owned real property for the construction or
4 modification or co-location of a commercial mobile radio service
5 or personal wireless service facility or communications tower,
6 on such state-owned real property, any disposition of said real
7 property shall be in accordance with the provisions set forth in
8 sections 40E-40J, inclusive of Chapter 7 of the General Laws.

AMENDMENTS TO H.5353

Rep. Parente of Milford moves that House Bill 5353 be amended by adding after section 3 the following section:

Section 4. Notwithstanding any general or special law, rule, or regulation to the contrary, any application or petition for the construction or modification of a communication tower or pole filed or pending in any city or town without a zoning ordinance or by-law governing the placement, location, size, and appearance of such tower shall be suspended, tolling any and all applicable time limits or requirements, for a period of 120 days after the effective date of this act or upon adoption of a zoning ordinance or by-law in said city or town, whichever is sooner. Any decision on such application or petition shall be based on any ordinance or by-law enacted during said period of suspension.

And further in section 2 by adding at the end of section 9F the following:

This section shall not prevent inter-family transfers of the ownership of any such facility, tower or pole.

And further in section 2 by adding at the end of section 9H the following:

Section 9I. At the time of submission to a city or town of an application or a permit for the siting, construction, or modification of a commercial mobile radio services or personal wireless services facility, or communication tower or pole, or at the time of the return of a request for proposal thereof when required by Chapter 30B of the General Laws, a provider of commercial mobile radio services or personal wireless services or the owner of said facility or communications tower or pole, if different from said provider, shall submit along with said application or permit an official written certification which shall have been signed by the Massachusetts Aeronautics Commission indicating that said commercial mobile radio service or personal wireless service facility, or communications tower or pole does not, in the opinion of said Commission, create a hazard to airflight or navigation; that said facility, communications tower or pole shall be properly illuminated with aircraft warning lights prior to the time it becomes operational; that all other existing facilities, communications towers or poles under the control or possession of said provider or owner have also been properly illuminated with such aircraft warning lights; that said provider or owner has presented to the Commission all necessary, accurate and up to date maps, in a form approved by said Commission, of the Commonwealth and of each city or town which shall include the precise location and exact height of any such facility, communications tower or pole; and that such provider or owner has complied with any other applicable provisions of Chapter 90 of the Massachusetts General Laws said Massachusetts Aeronautics Commission may deem necessary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Eight.

AN ACT RELATIVE TO THE SITING OF COMMUNICATION TOWERS AND
FACILITIES IN CITIES AND TOWNS OF THE COMMONWEALTH.

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3 process of cities and towns in the Commonwealth, therefore it is
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And further in section 2 by adding at the end of section 9F the following:

This section shall not prevent inter-family transfers of the ownership of any such facility, tower or pole.

And further in section 2 by adding at the end of section 9H the following:

Section 9I. At the time of submission to a city or town of an application or a permit for the siting, construction, or modification of a commercial mobile radio services or personal wireless services facility, or communication tower or pole, or at the time of the return of a request for proposal thereof when required by Chapter 30B of the General Laws, a provider of commercial mobile radio services or personal wireless services or the owner of said facility or communications tower or pole, if different from said provider, shall submit along with said application or permit an official written certification which shall have been signed by the Massachusetts Aeronautics Commission indicating that said commercial mobile radio service or personal wireless service facility, or communications tower or pole does not, in the opinion of said Commission, create a hazard to airflight or navigation; that said facility, communications tower or pole shall be properly illuminated with aircraft warning lights prior to the time it becomes operational; that all other existing facilities, communications towers or poles under the control or possession of said provider or owner have also been properly illuminated with such aircraft warning lights; that said provider or owner has presented to the Commission all necessary, accurate and up to date maps, in a form approved by said Commission, of the Commonwealth and of each city or town which shall include the precise location and exact height of any such facility, communications tower or pole; and that such provider or owner has complied with any other applicable provisions of Chapter 90 of the Massachusetts General Laws said Massachusetts Aeronautics Commission may deem necessary.

ORDERED: That the Cambridge legislative delegation is requested to support Senator Morrissey's Bill, Senate Docket number 2160 or Section 1. only of Representative Parente's Bill H. 5353.

In City Council April 13, 1998.

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

D. Margaret Drury
City Clerk

57.

April 13, 1998

“For the purpose of this chapter, the term public service corporation shall not include commercial mobile radio services providers,” now therefore be it

Consent Order #57

S-246

Mayor Duehay, Vice Mayor Galluccio and
Councillor Triantafillou re: support
Senate Docket number 2160 or Section 1.
only of Bill H. 5353.

In City Council April 13, 1998

ORDER ADOPTED