

City of San Clemente
Small Cell Ordinance
Zoning Amendment 19-189

Compiled Written Public Comment as of December 12, 2019

Crockett, Katie

From: Paul Albritton <pa@mallp.com>
Sent: Monday, December 9, 2019 1:11 PM
To: Crockett, Katie
Cc: Blackwell, Michael; Brown, Donald; Crandell, Barton; Kuczynski, Chris; Ruehlin, Jim; Talley, Jason; Wu, Zhen; Planning Mail; CityClerk Mail; Scott Smith
Subject: Verizon Wireless Comments on Draft Ordinance and Design Standards, Small Cell Wireless Facilities [San Clemente]
Attachments: Verizon Wireless Letter 12.09.19.pdf
Follow Up Flag: Follow up
Flag Status: Completed

Katie, attached please find our letter prepared on behalf of Verizon Wireless commenting on the draft ordinance and design standards for small cell wireless facilities. We encourage City staff to work with Verizon Wireless and other carriers to make needed revisions prior to review by the Planning Commission.

Thank you.

--
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December 9, 2019

VIA EMAIL

Katie Crockett
Associate Planner
City of San Clemente
910 Calle Negocio
San Clemente, California 92673

Re: Draft Ordinance and Design Standards, Small Cell Wireless Facilities
Planning Commission Agenda, December 18, 2019

Dear Katie:

We write on behalf of Verizon Wireless to provide comment on the draft ordinance regulating small cell wireless facilities (the "Draft Ordinance") and the draft *Design and Development Standards* (the "Draft Standards"). Verizon Wireless appreciates the City's efforts to accommodate recent federal actions intended to encourage the deployment of small cells within specified time periods. In particular, Verizon Wireless acknowledges the benefit of the proposed administrative wireless permit process. Verizon Wireless concurs that this is necessary to conform with the recent Federal Communications Commission ("FCC") order that outlines appropriate small cell approval criteria

Before the Planning Commission conducts its initial review, we encourage staff to carefully consider several provisions of the draft regulations that appear contrary to the FCC's guidance. For example, technically infeasible design standards are unreasonable according to the FCC. Additionally, various location standards contradict state law granting telephone corporations a statewide right to place their equipment along any right-of-way. Accordingly, Verizon Wireless requests that staff work with industry representatives to revise the Draft Ordinance and Draft Standards prior to introduction to the Planning Commission.

The FCC's Infrastructure Order

To expedite deployment of small cells and new wireless technology, the FCC adopted its September 2018 order to provide guidance on appropriate approval criteria for small cells. *See Accelerating Wireless Broadband Deployment by Removing Barriers to*

Infrastructure Investment, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) (the “Infrastructure Order”). The FCC defined “small wireless facilities” with specific height and dimension thresholds. 47 C.F.R. § 1.6002(l). Among other topics, the FCC addressed appropriate aesthetic criteria for approval of qualifying small cells, concluding that they must be: “(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.” Infrastructure Order, ¶ 86. “Reasonable” standards are “technically feasible” and meant to avoid “out-of-character deployments.” *Id.*, ¶ 87. Objective standards must “incorporate clearly-defined and ascertainable standards, applied in a principled manner.” *Id.*, ¶ 88.

As we explain, several proposed requirements contradict the FCC’s directives or state law and must be removed or revised. Our comments are as follows.

Draft Ordinance – Section 17.16.075, Wireless Permits for Small Cells

B(2). Appeals. While an administrative appeal process is suitable for small cells, *de novo* review implies the Director would consider factors beyond application materials, such as public comment as discussed below. However, the Director should evaluate only whether a small cell satisfies objective criteria based on information provided by an applicant. *The reference to “de novo” should be deleted, and the scope of review on appeal should be limited to compliance with objective standards.*

E(4)(b). Public notice. Sending notice to owners within 300 feet in advance of a decision date invites public comment, but the public’s personal concerns cannot be a factor for objective standards that must be published in advance. *At most, notice should be provided to adjacent property owners for informational purposes.*

F(1)(a)(i). “Welfare” finding. While the City may require compliance with codified health and safety regulations, “welfare” is an indefinite, subjective criterion that could be used to deny small cells that otherwise meet objective criteria. *We recommend deleting “welfare” from this finding.*

F(1)(c). Exceptions. Both this section and Draft Standards Section G require applicants to request an exception if a proposed small cell may not satisfy the Draft Standards. We note that the City cannot rely on this process to excuse standards that are infeasible, unreasonable or prohibitive in conflict with federal or state law. The exception findings are not clear and objective, as they require the Principal Planner or Director to make judicial determinations about federal and/or state law. They also include subjective determinations about least non-compliant designs and alternatives. Such findings would leave applicants guessing at the outcome of their applications, which the FCC discouraged. Infrastructure Order, ¶ 88. *The exception process and its findings cannot apply to small cells that meet the FCC’s definition, and the exception process should be reevaluated. To avoid disputes over exceptions, the City should ensure that its standards are reasonable and objective at the outset.*

Draft Standards – Section 4, Design and Development Standards

A(1). Minimize view impacts, least visible means possible. These visual criteria are matters of opinion and entirely subjective, whereas the FCC requires clear, objective criteria for small cells. *This provision should be deleted.*

A(2). Height. This provision generally limits small cell height to zone height limits, or 10 percent over the existing or adjacent structures. These height limits are inconsistent with the height allowances of the FCC's definition of "small wireless facilities," none of which are less than 50 feet. 47 C.F.R. § 1.6002(l). *This provision should be replaced with the FCC's small cell height allowances, which apply to both existing and new structures. Conflicting height standards of Sections C(1)(c) and C(3)(c) should be deleted.*

A(4). Stealthing. Referring to "best design practices of the industry," the first sentence imposes a vague stealthing requirement that is unclear and subjective. *This sentence should be deleted.*

The next sentence limits small cell designs to three options: integrated within a pole, undergrounded where feasible, or otherwise screened to minimize visual impact (which is subjective). Integration is infeasible for wood utility poles. The FCC determined that undergrounding requirements, similar to aesthetic requirements, must be reasonable, non-discriminatory and objective. Infrastructure Order, ¶¶ 86, 90. Even with the exception for technical infeasibility, the undergrounding requirement is unreasonable because small equipment boxes on the side of a pole are not "out-of-character" among typical infrastructure in the right-of-way, particularly on utility poles supporting existing utility equipment. We note that Section C(2)(a) contemplates radio equipment mounted to the side of a utility pole. *For objective criteria to allow typical small cell equipment required for service, the City should permit up to nine cubic feet of associated (non-antenna) equipment on the side of a utility pole, or five cubic feet on a streetlight pole, before any undergrounding is considered.*

B. Location. While the City may impose reasonable preferences for commercial/industrial areas over residential areas, and existing/replacement poles over new poles, these location standards lack objectivity because there is no clear scope of review. Because of this, discouraging residential areas could lead to denials of small cells along lengthy stretches of right-of-way. That would contradict California Public Utilities Code Section 7901 that grants telephone corporations the right to place their equipment, including new poles, along any right-of-way.

Further, strictly-applied preferences barring small cells in broad areas could be prohibitive in conflict with the Infrastructure Order. With their small coverage footprints, small cells serve targeted areas. The FCC found that small cells are needed for densifying networks and enhancing existing service. Restrictions that "materially inhibit" these objectives are prohibitive. Infrastructure Order, ¶¶ 37-40.

As to Section B(2), the City cannot require an exception to site in discouraged areas because, as explained above, the exception process is not objective, and it contradicts Verizon Wireless's right to use any right-of-way. All small cells should be considered through a uniform permit process. *For a reasonable scope of review that avoids prohibitive treatment, the City should allow a less-preferred location or structure if there is no preferred alternative within 200 feet along the subject right-of-way that is available and technically feasible.*

We note that the Section B lists of location and designs mix private property and the right-of-way, but those should be treated distinctly. Because Section 7901 grants telephone corporations the right to use any right-of-way, the City cannot require review of private property alternatives, nor can the City deny a right-of-way facility based on a preference for private property. *The City should adopt separate location standards for right-of-way facilities.*

B(2)(f), (g). Discouragement within 100 feet of residential property and 500 feet of schools. These buffer distances create multiple exclusion zones that violate Section 7901 as well as federal law. Right-of-way facilities pose no more aesthetic or other land use impact near homes or schools than elsewhere. There can be no other reason for these buffers than concern over radio frequency emissions. However, the federal Telecommunications Act bars local governments from regulating wireless facilities over emissions concerns if facilities are shown to comply with FCC exposure guidelines. 47 U.S.C. § 332(c)(7)(B)(iv). At schools in particular, there are many wireless users and devices that create great demand at certain times. *Section B(2)(f) should simply refer to residential zones, not a 100-foot buffer. Section B(2)(g) should be deleted.*

C(1)(a), (b). Streetlight pole equipment. Several of these standards are unreasonable, such as forbidding equipment "backpacks," presumed to mean the very small radio boxes that Verizon Wireless may place on the side of a light pole. Such small equipment is not "out-of-character" among right-of-way infrastructure. The limit of base shroud width to 250 percent of pole diameter may be insufficient to accommodate required radios, cables and mounting hardware inside. *Staff should consult with Verizon Wireless regarding potential designs for small cells on streetlight poles. For those poles owned by the City, standards for each carrier could be placed in a license agreement instead of the Draft Standards.*

C(1)(d), (e). Match "appearance of the streetlight pole" and "design...of existing poles in the vicinity." These aesthetic criteria are subjective, whereas the City should rely on quantifiable standards to be objective. *These phrases should be deleted.*

C(2)(a). Utility pole, all antennas in one shroud. This is infeasible in two ways. First, 4G and 5G antennas must be vertically separated to avoid interference, rendering a single shroud to be infeasible due to excessive size. Second, in most circumstances, shrouds or radomes impede frequencies that Verizon Wireless recently licensed from the FCC for

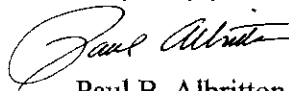
new wireless technology including 5G service. Such coverings are technically infeasible for signal propagation. Any antenna standards for right-of-way facilities must accommodate new higher-frequency facilities that integrate antennas and radios in one small box, and cannot impose shrouding. *An exception should be added to excuse the antenna shrouding requirements if technically infeasible.*

C(2)(b). Facility diameter as close to utility pole diameter as possible. As drafted, this standard overlooks equipment mounted to the side of a pole, which should be allowed with the reasonable volume standards that we suggest. If applied to antennas, this standard is inexact and not objective. For antenna dimension, the City should simply rely on the volume allowance of the FCC's definition of "small wireless facilities." 47 C.F.R. § 1.6002(l). *This provision should be replaced with a standard limiting volume of each antenna to three cubic feet.*

C(3)(b). New slimline pole design. As with section C(1)(e), the requirement to match designs of nearby poles is subjective, and those existing poles likely are not designed to conceal wireless facilities. *The City should consult with Verizon Wireless regarding design specifications for new poles to accommodate small cells.*

Verizon Wireless appreciates the City's thoughtful approach to developing small cell regulations. As noted above, the Draft Ordinance and Draft Standards include several provisions that contradict the FCC's Infrastructure Order or state law. We encourage you to work with Verizon Wireless on revisions that will accommodate new small cells to serve San Clemente residents and visitors.

Very truly yours,



Paul B. Albritton

cc: Scott Smith, Esq.

Crockett, Katie

From: Jystad, Bob <Robert.Jystad@crowncastle.com>
Sent: Wednesday, December 4, 2019 4:25 PM
To: Crockett, Katie
Subject: Crown Response to City Wireless Ordinance packet
Attachments: DOC120719-12072019141703.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Please see attached letter in response to the wireless ordinance packet. Let me know if you have questions.

Thanks!

Robert Jystad
Government Relations Manager, Orange County/Inland Empire
Small Cell Solutions
M: (310) 871-8189
E: Robert.Jystad@CrownCastle.com

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200 Spectrum Center Drive, Suite 1800
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CrownCastle.com



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Be Accountable
Be an Owner

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Crown Castle
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Suite 1700
Irvine, CA 92618

December 4, 2019

City of San Clemente
Attn: Katie Crockett, Associate Planner
910 Calle Negocio, Suite 100
San Clemente, CA 92673

Re: City of San Clemente Small Wireless Facility Draft Ordinance Packet

Dear Ms. Crockett:

Crown Castle appreciates the opportunity to address and comment on this important topic. Crown Castle respectfully reminds the City of San Clemente that the FCC order and federal law require that small wireless facilities deployments are held to the same processes/procedures as other users of the right-of-way. "We conclude that aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments..." (FCC Order 18-133 §§ 86). Regulation also bars prohibition of service (including effective prohibitions). "Congress determined that state or local requirements that prohibit or have the effect of prohibiting the provision of service are unlawful and thus preempted." (47 U.S.C. §§ 53(a), 332(c)(7)(B)(i)(II)).

In reviewing the proposed ordinance, we have identified the following areas of concern:

- Exhibit A, C: Design Standards. What objective standards will the City use to determine if an antenna is "stealthed"? Will there be photos or drawings to demonstrate what is acceptable?
- Exhibit B: B2. Please strike "An appeal by a wireless infrastructure provider must be taken jointly with a wireless service provider that intends to use the personal wireless services facilities." Any appeal or assertion of rights by Crown Castle is individual to Crown Castle, which as a right to assert such rights with or without the participation of any customer carrier.
- Exhibit C. The City must take the appeal period into account to ensure compliance with the FCC shot clock rule.
- Design and Development Standards for Small Wireless Facilities:
 - Placement in residential zones. 100-foot setback is prohibitive. Needs to be smaller to be reasonable.
 - Strand mount facilities. Outright prohibition violates FCC Order definition of aesthetics.
 - School setbacks should be reasonable and measured from occupied buildings.
 - Fire zone prohibition should be more specific. Section B, Location 2e. Spacing requirements must meet federal regulations. See FCC 18-133 at paragraph 91.

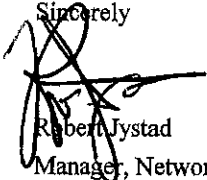
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Letter to: Katie Crockett, Associate Planner
Page 2

Thank you for providing the drafts of the ordinance and supporting documents. Crown Castle looks forward to a continued dialogue and partnership with the City of San Clemente.

Sincerely

A handwritten signature in black ink, appearing to read "Robert Jystad", written over a horizontal line.

Robert Jystad
Manager, Network Real Estate
(310) 871-8189

CC: Planning Commission, Planning Director & Assistant City Attorney

Crockett, Katie

From: Kortney Morrow <kortneymorrow@gmail.com>
Sent: Thursday, November 21, 2019 2:57 PM
To: Ward, Kathy; Ferguson, Laura; Bane, Dan; Hamm, Chris; Makshanoff, James
Cc: Crockett, Katie; Gallardo-Daly, Cecilia; Safe Cell Sites for San Clemente
Subject: Conflict of Interest on the PC

Hello City Council Members and City Manager,

I am increasingly concerned about Planning Commissioner, Michael Blackwell's conflict of interest as it relates to the design and development of our Small Wireless Facilities Ordinance and guidelines surrounding our Wireless Permit. It is clear that he has a fiduciary interest in the deployment of wireless facilities as he works within the capacity of advising/consulting the Telecom Industry. While he acknowledged his Conflict of Interest at the Public Workshop last night; his actions and comments toward the public at past Planning Commission and Design Review Subcommittee meetings have only further highlighted his bias towards Industry. I am extremely disappointed that he has chosen to not recuse himself. Optics alone, this conflict of interest does not give residents (the public) confidence in the process and I ask that Council encourage his recusal from the process immediately.

Thank you for your time and consideration.

Sincerely,
Kortney Morrow
Safe Cell Sites for San Clemente

Crockett, Katie

From: Joyce L <az3205@gmail.com>
Sent: Wednesday, November 20, 2019 2:47 PM
To: Crockett, Katie
Subject: Cell tower
Attachments: Morrow-Ordinance Comments.pdf

Hello. I just wanted to say that I agree 100% with everything in the letter by Kourtney Morrow

We especially disagree with the ordinance language which excludes public hearings. We paid over a million dollars for the opportunity to live here. We should have some say when business want to barge in with no respect fo homeowners. We need to be able to make our opinion heard. It is what this country is all about.

If you are paying attention to or counting public opinion, just know that
My husband and I are in full agreement with Kourtney Morrow. She speaks for us.

Joyce Lascrain
Colina Rodante

Crockett, Katie

From: Kortney Morrow <kortneymorrow@gmail.com>
Sent: Monday, November 18, 2019 4:58 PM
To: CityCouncil Mail; Planning Mail; Gallardo-Daly, Cecilia; Perez, Gabriel; Crockett, Katie
Cc: Laura Fischer; kristy neuhausen
Subject: Public Comments to the Draft Ordinance // Small Wireless Facilities
Attachments: Morrow-Ordinance Comments.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Dear San Clemente City Council Members, Planning Commissioners, City Planner, and Community Development Director:

First of all, I'd like to thank you for taking into consideration the correspondence I have provided over the past few months, listening with an open mind at City Council and Planning Commission meetings during public comments, and for those who have carved out time in your busy schedules to sit down with myself and others to discuss residents' concerns regarding the deployment of Small Wireless Facilities in the Public Right of Way. I understand that this is new territory for all of us, but I hope that our City Staff and City Officials will work cooperatively with the public to achieve the best possible safeguards for protecting our beautiful town. I want to emphasize, this is not a neighborhood issue, but one that will drastically affect all of us residents and our quality of life around town.

In general, I am quite disappointed with the draft as it currently stands. The proposed draft Ordinance is NOT resident friendly, and fails to establish a level of trust that our City is acting in the best interest of its residents. As one example, many residents have vocalized their concerns regarding the proximity of these small cells to residential zones, schools, and parks and have asked for setbacks anywhere from between 500-1500ft; yet, the city proposes 100ft from residential homes? Parks weren't even included. On what basis were these determinations made?

Perhaps **most alarming**, is the Ordinance's designation of Authority regarding approval of Wireless Permits. City Staff has explicitly **excluded** the Appeal of Small Wireless Facilities to a public hearing with the City Council and went out of their way to amend Section 17.12.140 - Appeals of an Action by the Public of the Municipal Code to specifically exclude Wireless Permits from the provisions of Public Appeal and decreases the time frame of those appeals from 10 days to 2 days! The time limits for filing an appeal should be the same as any other Zoning Process. These additions specific only to Wireless Permits are wrong and take aim at the principles of a democratic process. The proposed additions to the Development Review Process **MUST** be removed to maintain consistency in the Zoning/Planning process. I have been told by City officials and staff that they "do not want to be bogged down with appeals," but it is important to understand that the appeal process is the only process by which the City can maintain some control over the location, placement, design, construction, and maintenance of telecommunications antennas and infrastructure within the City's public right of way.

The remaining contents of the attached document detail my public comments, requested additions, and removal of staff's added language as it pertains to the revisions to the Authority and Appeals process of Wireless Permits within the Ordinance and Development Review Process outlined in Section 17.12.140 of San Clemente Municipal Code.

Sincerely,
Kortney Morrow

From: Kortney Morrow
Safe Cell Sites for San Clemente

Date: November 18, 2019

To: San Clemente City Council Members, Planning Commissioners, Community Development Director, and City Planner

Public Comments on the Draft Small Wireless Facilities Ordinance

Dear San Clemente City Council Members, Planning Commissioners, City Planner, and Community Development Director:

First of all, I'd like to thank you for taking into consideration the correspondence I have provided over the past few months, listening with an open mind at City Council and Planning Commission meetings during public comments, and for those who have carved out time in your busy schedules to sit down with myself and others to discuss residents' concerns regarding the deployment of Small Wireless Facilities in the Public Right of Way. I understand that this is new territory for all of us, but I hope that our City Staff and City Officials will work cooperatively with the public to achieve the best possible safeguards for protecting our beautiful town. I want to emphasize, this is not a neighborhood issue, but one that will drastically affect all of us residents and our quality of life around town.

In general, I am quite disappointed with the draft as it currently stands. The proposed draft Ordinance is NOT resident friendly, and fails to establish a level of trust that our City is acting in the best interest of its residents. As one example, many residents have vocalized their concerns regarding the proximity of these small cells to residential zones, schools, and parks and have asked for setbacks anywhere from between 500-1500ft; yet, the city proposes 100ft from residential homes? Parks weren't even included. On what basis were these determinations made?

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The remaining contents of this letter documents in detail my public comments, requested additions, and removal of staff's added language as it pertains to the revisions to the Authority and Appeals process of Wireless Permits within the Ordinance and Development Review Process outlined in Section 17.12.140 of San Clemente Municipal Code.

Sincerely,
Kortney Morrow

COMMENTS TO THE SMALL WIRELESS FACILITIES DRAFT ORDINANCE

First and foremost, please include a clause that states that this Ordinance be retroactively applied to all currently appealed or incomplete applications.

EXHIBIT B (starts on Page 9 of 26)

12.16.075 - Wireless Permits

B. Authority

- The final authority for Appeals **must be the same as any other planning/zoning Appeal Process that designates the final authority as the City Council via a public hearing.** Just on principal alone, the final authority should at the very least be an "elected" official where the public can maintain a voice in the process.
- **Must remove language that excludes public hearings as part of the process of the appeal.**
- Appeal **time frame should remain consistent** with any other planning/zoning appeals process which is **10 consecutive, calendar days** – NOT 2 business days – to the Planning Commission which can be further appealed to the City Council as the final authority.
- Additions noted in RED in the draft ordinance **MUST** be removed within Section 17.12.140(A) – Appeals of an Action / (A) Appeals by the Public

E. Application Filing, Processing, and Review

3. Incompleteness

- **Add:** Incomplete Applications Deemed Withdrawn within 60 calendar days after Director deems incomplete by written notice.

4. Public Hearing, Notice, and Appeal Provisions

- a. There are no public hearing for applications for wireless permits.
 - c. The reviewing authority's decision may be appealed per Section 17.16.075(B)(2)
- 12.16.075 (4)(a) should be **removed**
 - 12.16.075 (4)(c) language per Section 17.16.075(B)(2) needs to be remain consistent with the general rules for Appeals of an Action by the Public, Section 17.12.140(A) – and **Wireless Permits should not be precluded from public hearings with the City Council.**

Inclusion of the following into the Application Filing, Processing, and Review:

- The applicant must provide a **Master Plan** which identifies the location of the proposed facility in relation to all existing and potential facilities maintained by the operator intended to serve the city. The master plan shall reflect all potential locations that are reasonably anticipated for construction within **two years of submittal** of the application.
- Applications must include an **RF Compliance Report** for each site/facility (even within a batch) - The applicant shall submit an RF exposure compliance report that certifies under penalty of perjury that the proposed small wireless facility, both individually and cumulatively with all other emitters that contribute more than five

percent to the cumulative emissions in the vicinity (if any), will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the Director. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site. If the applicant submits a batched application, a **separate RF report shall be prepared for each facility associated with the batch.**

- Applicant to provide an **Acoustic Analysis** which should not exceed the Noise control levels set forth in the Clemente Municipal Code Chapter 8.48 and shall not exceed, either on an individual or cumulative basis, 50 dBA. The Noise levels to be added to the Design and Development Standards of our Ordinance.
- **PLEASE ADD THE FOLLOWING CONDITION:**
In the event that court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a small wireless facility permit, such permit shall automatically expire twelve (12) months from the date of that opinion.

F. Required Findings; Decisions; Consultants

2. Decisions

- Application Decision Notice – shall provide written notice to the applicant **and all persons entitled to notice.**

EXHIBIT C (starts on Page 12 of 26)

Amendment to Table 17.12.020

-AND-

17.12.140 - Appeals of an Action

- ********* Anything highlighted in RED is what is being proposed to be added to **specifically exclude Wireless Permits from Appeal to a Public Hearing at the City Council level AND decreases the time limits for filing an appeal from 10 calendar days to 2 business days!!! *******
- This is absolutely appalling and is not a process that is resident friendly. As citizens, we should be able to appeal to an **elected** official - neither of which a City Planner or Community Development Director are. In addition, the **time limits for filing an appeal should be the same** as any other Zoning Process. These additions specific only to Wireless Permits are wrong and take aim at the principles of a democratic process. These additions **MUST** be removed AS STATED ABOVE FOR 17.16.075(B)&(E).

DESIGN AND DEVELOPMENT STANDARDS (starts on Page 14 of 26)

SECTION 4. DESIGN AND DEVELOPMENT STANDARDS FOR ALL FACILITIES

B. Location

1. Preferred Locations

- First item should state **NONRESIDENTIAL ZONES**

2. Discouraged Locations ***Stronger language is needed, should say **PROHIBITED Locations**

- (e) Within **1000 ft** of another existing, approved, or planned (via applicants' Master Plans and the compilation of those in a City Master Plan of all wireless facilities sites, both macro and micro). 300ft – is entirely way to close and will significantly impact the design aesthetics within the PROW.
- (f) Within **500 ft** of residential property, as measured from the property line.
- (g) include that the setback be **500 ft from parks** as well

F. Safety

- In addition to ADA, shall also comply with the **Fair Housing Act 1988**
- Should include a process for the public to appeal or file a complaint to the City of those who are protected under ADA and FHA.

Inclusion of the following into the Design and Development Standards:

- **Signs and Advertisements**
 - All small wireless facilities and other infrastructure deployments that involve RF transmitters must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center.
- **Noise**
 - Small cells and all associated antennas, accessory equipment and other improvements must comply with all applicable noise control standards and regulations in the **San Clemente Municipal Code Chapter 8.48** and shall not exceed, either on an individual or cumulative basis, **50 dBA**.
- **Compliance with Health and Safety Regulations**
 - All small wireless facilities and other infrastructure deployments shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) and the Fair Housing Act of 1988.
- **Safety Hazard Protocols**
 - If the Fire Chief (or his or her designee) or Board of Chiefs of the North County Dispatch Joint Powers Authority finds good cause to believe that the facility (including, without limitation, its accessory equipment, antenna and/or base station) presents a fire risk, electrical hazard or other immediate threat to public health and safety in violation of any applicable law, such officials may order the facility to be shut down and powered off until such time as the fire risk or electrical hazard has been mitigated. Any mitigations required shall be at the permittee's sole cost and expense.

STANDARD CONDITIONS OF APPROVAL (starts on Page 21 of 26)

Wireless Permit Standard Conditions

3. Timing of Installation (Build-Out Period)

- should be revised to **12 months** (not 2 years) from the approval date

15. Abandonment

- Need to add requirement for **Performance Bond** (see below) during application process and then reference the Performance Bond in this section.

Inclusion of the following into the Wireless Permit Standard Conditions:

- **Add requirement of Performance Bond.**
Before the City issues any permits required to commence construction in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility or other infrastructure deployment to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility or other infrastructure deployment in accordance with this condition.
- **Add condition of Permit Revocation.**
Any permit granted under this Policy may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before any public hearing to revoke a permit granted under this Policy, the Director must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this Policy may be revoked only by the City Council after a duly notice public hearing. **The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s).** Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

Crockett, Katie

From: Jeff Perkin <jeffjperkin@yahoo.com>
Sent: Monday, November 18, 2019 2:14 PM
To: Crockett, Katie
Cc: Safe Cell Sites for San Clemente
Subject: Re: Small Cell Appeals & Ordinance Update 11-13-19

Follow Up Flag: Follow up
Flag Status: Completed

Hi Katie,

Thank you for your work on this issue. I know this ordinance must be quite a headache and very difficult to navigate. There are a couple things I'd like to see addressed about the ordinance at the upcoming workshop:

I'd like to know why we can't push for a more strongly worded and protective ordinance like Encinitas has created? Why not just restrict residential zones entirely with "exceptions pursuant" to state and federal law. Of course I realize that, currently, telecom companies will easily be able to file for those exemptions, but if the law changes in the near future, isn't it wiser to have stronger wording? As you have no doubt noticed, more and more people are waking up and we aren't just going to be willing guinea pigs to this radiation in exchange for streaming services and self-driving cars. Many cities and representatives across the country are challenging the FCC's over-reaching "order" with a lawsuit and surely they will not be able to continue this "shot clock" insanity for very long.

Therefore, if we only use weak wording like "discouraged" and allow these towers within 100 ft of residential property than it is as if we are losing the fight before it has really begun. It should be 500 ft at minimum. Why protect children with 500 ft at schools but not at home in their beds? That's crazy, especially since the human body mainly heals/regenerates at night. I realize that many areas of San Clemente will no longer be accessible if towers are pushed farther than 100 ft but so be it! The health of children is at risk and if they say we can't take health impacts into consideration, then **WE NEED TO TAKE HEALTH IMPACTS INTO CONSIDERATION**. What is more important than health? What is the right thing to do here? This is a test of our society and our individual, spiritual/moral character. It's a big mistake to take the side of the telecom industry on this! They will gladly create an electromagnetic cage for us all to die in if it means more profits and control for them and the powers behind them. In the future we will see that this radiation was massively harmful. Thousands of studies have already demonstrated this and thousands of doctors/scientists have issued their very serious concern.

I hope that the city's presentation on Wednesday is on the side of the people and not the wireless industry. Please make the wording as strong as possible and side with us, with our city's vulnerable children, and not with the misleading, ignorant and/or malevolent representatives of the telecom industry.

Thank you,
Jeff

On Wednesday, November 13, 2019, 05:44:27 PM PST, Crockett, Katie <crockettk@san-clemente.org> wrote:

Good afternoon –

You are receiving this email because you have previously asked to be notified of updates related to the City Small Cell Ordinance process and/or the Appeals of CUP 18-534 and CUP 18-535, AT&T small cells proposed in the right of way. Please see the following updates:

1. **Draft Small Cell Ordinance Available for Review/Comment:** As of yesterday morning, the draft Small Cell Ordinance was available on the Small Wireless Facilities webpage on the City's website. Those who were on the ordinance email interest list received a PDF copy by email last week. Please send any comments or questions you have to me. We will address as many as possible in the staff presentations at the Workshop next week.

2. **Small Cell Ordinance Workshop Agenda Available:** The agenda for the public Workshop is available on the Small Wireless Facilities webpage. Additionally, the City posted a Press Release regarding the workshop to the City's Homepage.

3. **Appeal of CUP 18-534 (AT&T MSVJO 014, 3018 Camino Vera Cruz CS) and Appeal of CUP 18-535 (AT&T MSVJO 016, 1101 Calle Del Cerro CS) to be Tabled:** These items are on the City Council Agenda for November 19, 2019 (continued from the 10/1/19 City Council meeting). However, the staff recommendation is to TABLE these items (i.e. no determination to be made at the 11/19/19 hearing). This is due to AT&T agreeing to toll the shotclocks for these applications until March of 2020, allowing time for the development of the City's Small Cell Ordinance before determining how to proceed on these appealed applications. Any further hearings on these two appealed applications will be re-noticed.

Please let me know if you have questions related to any of the above. If you no longer wish to receive these emails, please let me know and I will remove you from my notification list.

Best,

Katie Crockett

Associate Planner

City of San Clemente

910 Calle Negocio, Ste. 100,

San Clemente, CA 92673

CrockettK@san-clemente.org

(949) 361-6188

****Please note the upcoming City office holiday CLOSURES: November 28-29, and December 25-January 1. Additionally I will be out of the office the following days: November 25-27, and December 23-24****

Crockett, Katie

From: Kortney Morrow <kortneymorrow@gmail.com>
Sent: Monday, November 18, 2019 12:46 PM
To: Crockett, Katie
Cc: CityCouncil Mail; Bane, Dan; Ward, Kathy; Hamm, Chris; Ferguson, Laura; Makshanoff, James; Gallardo-Daly, Cecilia; Planning Mail; Perez, Gabriel
Subject: Re: Ordinance for Small Wireless Facilities // Myths of Millimeter Wave Technology

Thank you Katie for your reply! I understand that we are all trying our best.

I hope that it is not lost on anybody that the FCC bulletin staff referenced is dated July 1997. I'm simply pointing out that a CEO of the Industry, who's background is in Engineering, states information contradictory and given the fact that the FCC guidelines are over 22 years old - it is my opinion that we all must be prudent in gathering current information and research to better inform our decisions.

Kortney

On Mon, Nov 18, 2019 at 12:38 PM Crockett, Katie <CrockettK@san-clemente.org> wrote:

Hi Kortney –

I apologize if you feel that staff is “propagating myths of 5G technology.” This is certainly not our intent. My job as a Planner is to make recommendations based on existing local, state, and federal regulations. To that end staff has used [this FCC bulletin](#) as the basis for most of our understanding of how 5G propagates. It is a bit wonky and so staff has probably made generalizations – although I’m not exactly sure what has been said that you take issue with.

In any event, I encourage you to bring your questions to the Workshop, as Lee Afflerbach *is* an expert in how radiofrequency propagates. As well, I believe the SOARA representative can likely speak to this in more detail as well.

Best,

Katie Crockett

Associate Planner

CrockettK@san-clemente.org

(949) 361-6188

Crockett, Katie

From: Laura Fischer <fischerfamily2@me.com>
Sent: Monday, November 18, 2019 12:41 PM
To: Ferguson, Laura; Hamm, Chris; Ward, Kathy; Bane, Dan; Beyer, Lori; Campagnolo, Laura; Blackwell, Michael; Brown, Donald; Crandell, Barton; Kuczynski, Chris; Ruehlin, Jim; Talley, Jason; Wu, Zhen; Makshanoff, James; Gallardo-Daly, Cecilia; Planning Mail; Perez, Gabriel; Crockett, Katie; Kortney Morrow; Jim Nelson; Walter Soto
Subject: Comments Small Cell Draft Ordinance
Attachments: Encinitas FINAL VERSION small cell policy.docx; Comments SC Small Cell Ordinance_Laura Fischer.docx

City Officials and Staff,

Attached are my comments on the Draft Small Cell Ordinances. Since the city has solicited public comments, please address all comments.

I encourage all City Council Members to attend the Small Cell Workshop on Wednesday night.

I have included the Encinitas Small Cell Ordinance for your reference. In comparison, our Ordinance is quite lacking. It was not reasonable for me to go through each ordinance and add all of the information that is included in the Encinitas ordinance into our draft ordinance.

I encourage the city to use the Encinitas ordinance as a base draft, then apply feedback from the Workshop and the issues that are specific to our city needs by adding, removing, or modifying text from the Encinitas ordinance and make it our own.

Best Regards,
Laura

To: San Clemente City Council Members, City Planning Commission, City Planner, and Community Development Director
From: Laura Fischer, Safe Cell Sites for SC
Re: Draft of Small Cell Ordinance
Date: November 18, 2019

Below are listed my major comments regarding the small cell ordinance along with the applicable sections:

- Authority (Exhibit B and Exhibit C) - Only 2 non-elected city employees, the City Planner and Community Development Director, hold all power in the decision making process for small cells. There are no public hearings. The public appeal process appeals to the same individuals that made the decision which is under appeal. All "exceptions" to the ordinance are also only considered by the same two city employees.
 - I request an elected body, such as the Planning Commission review all appealed small cell applications.
 - I request an elected body, such as the Planning Commission, review all "exceptions" requested by small cell applicants.
 - I request the ordinance be split into "administrative" and "exception" categories. "Administrative" approvals can be handled by the City Planner and Community Development Director. All other appeals or exceptions should be considered by an elected city representative.
 - Extend the distance for public notice to a 700 ft radius since this has been stated by the carriers to be the area affected. If this is too costly for the City, the applicant should pay for the mailing and associated staff costs.
 - Extend the time for appeal to 10 business days, instead of 2.
- Include an ordinance that requires all tolled or appealed sites to be included under this ordinance.
- San Clemente should maintain a cellular Master Plan. The last updated list of cellular sites in our city is from 2008.
- Include a clause in the ordinance stating no one carrier can apply for more than 5 small cell sites at once.
- Severability (Section 10) and Standard Conditions 1 – Needs to include specific language that if the federal law is nullified or changed, that the small cell sites must be decommissioned and removed.
- Major and Minor utilities (Exhibit A) – It should be made clear that small cell permits require major and minor work. It should be made clear that minor work related to the small cell tower may be conducted before the approval of the conditional use permit; however, it should be specified what portion of the proposed cell is considered "minor" and may be performed separately outside the permit.
- Independent Consultants (Exhibit B, F3) – The section needs to specify when a consultant would be hired. I encourage the city consult an independent expert for each site that requires an "exception". Currently the ordinance specifies that an expert may be hired.

- Visual Criteria (Design Standards Section 4A) The wording 10% percent tall than other adjacent structures needs to be more specific as well as consistent across the document.
 - Main Ordinance Section 2-1 i-iii states the facility is up “to a height of more than 50 ft or by more than 10 percent, whichever is greater.”
 - This does not make sense, shouldn't it say “whichever is less”?
 - Design Standards Section 4A – “... the height of the adjacent zone or 10% taller than the existing support structure or adjacent infrastructure most similar to the support structure if a new support structure is required, whichever is taller.”
 - This requirement also needs to mention the 50ft requirement, or it is not consistent.
 - It should be specified (in all cases) that the height of the tallest portion of the structure should be used and give an example that on a light post, the tallest height is typically the height of the luminaire.
 - Location (Design Standards B-1-d) – “As far from occupiable buildings as possible” does not offer any specific guidance. Within what range? Within on the ROW? Do the carries need to determine what buildings are not occupied?
 - Location (Design Standards B-2-b) – “Location of antennas directly at window height of adjacent buildings”. Please also include “and buildings across the street of the ROW”. The standard is also vague. The Costa Mesa small cell ordinance shows a diagram of their interpretation this scenario.
 - Location (Design Standards B-2-c) – “Within 100 feet of a historic property, as designated on the City’s list of historic resources, unless the facility is not visible from the right of way directly abutting the historic property.” Please add “or from within the historic property.”
 - Location (Design Standards B-2-e) – Sites should not be within 1500 feet of each other. Having sites every 2 or 3 light posts will disrupt the aesthetics of the city!!
 - Location (Design Standards B-2-e) – How are distance between sites measured? The draft says “as measured from the antenna structure”. Since there are large changes in elevation in our city, does this mean measured though the air (antenna to antenna) or is it the ground distance between the base of the pole mounted antenna? I would encourage the city to use the longest of the two, which I think is the ground distance.
 - Location (Design Standards B-f) – Require 500 feet of residential property. The city needs to take a stand and make it more difficult for the carries to place these sites haphazardly throughout the city without close analysis and investigating real alternative options!!! This will not happen at 100 feet.
 - Location (Design Standards B-2-g) – 500 feet from public and private schools are specified. What about home schools or permitted in-home daycare or in-home preschools. I would also consider day care centers to belong under the school category. This may need to be explicitly written.
 - Location (Design Standards B-3-b) – Scenic vistas/corridors should be moved from the “Prohibited locations” to the “Discouraged Locations” since they automatically require an exception as do the other Discouraged Locations.

- Location (Design Standards B-3-d) – The ordinance states “Generators are not permitted in any public or private right of way.” It is not clear how this reads. Do you want to say “Small wireless facilities that require a generator....”.
- Preferred Designs/Styles (C-1-b,c) – It is difficult to understand the difference between the 5ft height specification in “b” and the 72 inches height specification no base-shroud and 36 inches with a base-shroud in “c”. Please make units consistent and it may be helpful to break the heights out or provide a diagram, as in other ordinances. Is the ordinance saying the facility can be 6 ft with no base-shroud, 5ft for a decorative base-shroud, and 3ft when a base-shroud is used OR is it a total of 8 feet max with a base shroud? Please clarify.
- Preferred Designs/Styles (C-1-c) – “The maximum height of wireless facilities mounted at the top of a lightpole is 72 inches from the top of the existing pole or the nearest lightpole in the vicinity when no base equipment shroud is proposed. The words “top of a lightpole” need to be clarified. Does it mean the top of the base pole for the light or does it mean the highest point on the light pole, which is typically the luminaire. This is important as all carriers will try to maximize the height of the antenna for greater signal coverage to the max height permitted.
- Preferred Designs/Styles (C-3-c) – Slimline Poles – The height of the slimline poles including the antenna and shroud shall be no greater than 35 feet or 10% taller than other similar poles not already containing small wireless facilities in the vicinity, whichever is greater.” How tall are slimline poles in San Clemente. Will 35 feet stand out? What is 10% greater than the average or largest in our city?
- Preferred Designs/Styles (F) – Safety – I do not understand “interfere with outdoor dining area” I have an outdoor dining area in my backyard and the appealed/tolled cell site is right above it. Can this law apply to me?
- Preferred Designs/Styles (G) – Exceptions – The ordinance requires “substantial evidence”. The expectation of what is required or guidance as to what would constitute substantial evidence needs to be provided.
 - We should specify that alternative analysis needs to be provided for a minimum of a 2000ft radius of the proposed site. This will help avoid the carriers examining the 3 light pots next to the proposed site and expecting it to cover the alternative analysis request.
 - An independent consultant must be hired in all cases to determine if no viable, technically feasible, and aesthetically equivalent or superior alternatives are available. If this is outside the shot-clock, our ordinance should specify if an independent consultant needs to be hired, then the application will be automatically tolled for a pre-set period of time as stated in the ordinance.
 - A Cellular Mater Plan should also be used to reference the additional of sites when proposed in close proximity to existing sites.

- Standard Conditions – 7 – If insurance is cancelled or modified and the city does not provide a 30 day notice, then we need a clause with the consequence of not providing notice of cancelled or modified insurance.
- Standard Conditions -12 – RF Exposure Compliance – The conditions need to say that at any time during the operation of the facility, the site may be tested for RF Compliance.
 - Is there any route for the public to request a re-test of the facility?
 - Is it reasonable to expect and technically possible that the facility can operate at maximum power during testing or is this a situation that would need to be created by creating a situation of maximum call/streaming volume?
- Standard Conditions – 14 – Modifications – Since the conditions are specific to small cells we need to specifically call out examples of what we consider a modification. For example, if radios are added or replaced, is this a modification? If the software is upgraded for a different function? The currently approved small cell designs specify a “Future radio”. For example, when the carrier adds the “Future radio” I believe this is considered a modification.
 - If site is modified and this needs to be within local regulations, what does the carrier need to do? Do they need to re-submit an application or is there a special application for a change? If so, this needs to be referenced.
- Standard Conditions – 26 – Annual Certification – Specify if the annual re-certification has not been submitted that a notification will be sent to the carrier to request the site be shut down. Currently there is no consequence written, except refusal to accept new permits from the delinquent carrier.

Crockett, Katie

From: Kortney Morrow <kortneymorrow@gmail.com>
Sent: Monday, November 18, 2019 11:58 AM
To: CityCouncil Mail; Bane, Dan; Ward, Kathy; Hamm, Chris; Ferguson, Laura; Makshanoff, James; Gallardo-Daly, Cecilia; Planning Mail; Perez, Gabriel
Cc: Crockett, Katie
Subject: Ordinance for Small Wireless Facilities // Myths of Millimeter Wave Technology
Attachments: Verizon-CEO-On-The-Future-Of-5G-CNBC_Trimmed-1.mp4

Hello City Council, City Manager, Planning Commission, City Planner, and Community Development Director:

I have previously sent this video of the CEO of Verizon (who is an Engineer) discussing the future of 5G back in 05/2018; however, I continue to hear our own City Officials and Staff propagate myths of 5G technology. I have summarized three myths that the CEO of Verizon explicitly denotes in the video below:

Confusion and Myths of Millimeter Wave

- MYTH: Has to be line of sight
 - **It does not have to be line of sight.**
- MYTH: Foliage will shut it down, cannot penetrate a leaf.
 - **Signal can penetrate leaves and pine needles.**
- MYTH: Must be within 200 ft from a home (in close proximity to homes in order to work)
 - **It does not have to be within such close proximity to homes, and Verizon is designing a network that can travel over 2000 ft from transmitter to receiver.**

Thank you for taking the time to learn more about the facts surrounding millimeter wave technology and its impact on the deployment of Small Wireless Facilities to support such technologies. This information can be used to better inform our Design and Development Standards that will dictate the location, placement, design, construction, and maintenance of telecommunications antennas and infrastructure within the City's public right of way.

Thank you,

Kortney
Safe Cell Sites for San Clemente

Crockett, Katie

From: Walter Soto <waltsoto@icloud.com>
Sent: Monday, November 18, 2019 8:29 AM
To: Crockett, Katie; Bane, Dan; Ferguson, Laura; Hamm, Chris; Ward, Kathy
Subject: Small Wireless Ordinance Accommodation for mitigating California Coastal Fog Loss and Dry/Windy Days

Hello Katie and S.C. City Council,

Regarding draft Small Wireless Facility Ordinance, I have a few questions for upcoming Nov 20th meeting with AT&T about California Coastal Fog loss and Dry/Windy days from multiple always-on Small Cell Towers millimeter wave transmissions and what accommodations could be added to current draft of Small Wireless Facility Ordinance.

Background Context

The U.S. Geological Survey (USGS) Pacific Coastal Fog Project has been tracking and quantifying the benefits of coastal fog for delivering water and nutrient, and for lowering temperature that results in reduced plant evapotranspiration stress, more photosynthesis, and increased soil metabolism, leading to higher ecosystem productivity. These coastal fog benefits are tied to the integrity of our San Clemente historical, cultural, and scenic resources that characterizes our quality of life.

The interaction of fog and millimeter waves are caused when millimeter waves traveling through the atmosphere are absorbed by molecules of water, oxygen, nitrogen, and other gaseous atmospheric constituents. These interactions have an impact on wireless transmission losses first summarized by the FCC in July 1997 Millimeter Wave Propagation: Spectrum Management Implications bulletin report number 70. Unlike 4G, the process of wireless transmission losses happen as millimeter wave's electromagnetic energy propagates through our coastal fog resulting in kinetic energy that is converted to heat, much like microwaves. This atmospheric propagation process changes our coastal fog water vapor's structure, how very small water vapor molecules form, develop, and dissipate, how colliding water vapor behave, how they collect nutrients, how much liquid water content (LWC) is delivered, and where this LWC is delivered. Thus, the need to mitigate fog loss and motivation for this email.

Questions for AT&T

- 1) Is AT&T aware of millimeter wave atmospheric propagation effects on coastal fog formation, development, or dissipation? If so, can AT&T share it for the public record.
- 2) Can AT&T provide an overlay its multiple Small Cell Tower 5G coverage area with heat density distribution transferred to our coastal fog?
- 3) Does AT&T have the capability of turning off its Small Cell Tower 5G remote radio units (RRU) independently from 4G?
- 4) Can AT&T detect the presence of our coastal fog by the 5G RRU's received transmission loss changes over time?
- 5) On very dry days, can AT&T reduce the transmission power of its 5G RRUs to reduce atmospheric heating?
- 6) On very dry and windy days, can AT&T turn off its 5G RRUs to prevent wildfires?

Requested Ordinance Accommodation Additions

- 1) To turn off 5G RRU in the presence of Coastal Fog to safeguard it benefits to our quality of life.
- 2) To turn on 5G RRU once our Coastal Fog has dissipated.
- 3) To reduce the transmission power of 5G RRUs on very dry days.
- 4) To turn off 5G RRU on very dry and windy days.

Adherence to FCC 18-133

The FCC concluded that local government ordinance is not preemptive if they are:

- 1) Reasonable – Asking for turning off 5G RRUs in the presence of Coastal Fog, reducing 5G RRUs transmission power on Dry Days, and turning off 5G RRUs on Dry and Very Windy days is a reasonable ask to safeguard our way of life given the fact that 4G RRUs would remain active.
- 2) No more burdensome than those applied to other types of infrastructure deployments – Asking for accommodation that risk fires, promotes fires, and mitigated environmental impacts are like other types of infrastructure deployments like putting power utilities underground.
- 3) Objective and published in advance – Asking for requested accommodations are based on science and such are objective. Regarding publishing in advance, did AT&T inform S.C. Council of its deployment of baseband units (BBU) that interface with its RRU? If so when? Regardless, I assume AT&T would comply with S.C. Small Wireless Ordinance once published.

Of course, defining how much coastal fog is present (perhaps tied to NOAA fog forecast), what is a dry day, what is day and very windy day, etc.. remains to be specified in next draft of ordinance but I believe there is time to get this done by Feb/March.

Thank you for your time and consideration.

Regards,
-Walt Soto

[REDACTED]
San Clemente, CA 92673
[REDACTED]

Crockett, Katie

From: Kortney Morrow <kortneymorrow@gmail.com>
Sent: Sunday, November 17, 2019 1:45 PM
To: Makshanoff, James; Gallardo-Daly, Cecilia; Perez, Gabriel; Bonigut, Tom; CityCouncil Mail; Planning Mail
Cc: Crockett, Katie; Safe Cell Sites for San Clemente
Subject: Request for Updated Study of the City's Wireless Facilities
Attachments: WMP Cell Site Inventory.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Good Afternoon City Manager, Community Development Director, City Planner, Public Works Director, City Council, and Planning Commission:

I am requesting that a **current** study be conducted to drive the creation of an updated list and map to reflect the current landscape of wireless facilities throughout our town. This study should include all existing macro and micro sites in addition to current wireless facilities' applications that are in appeal, incomplete or have been approved (like the list of small wireless facilities provided on the cell tower webpage) . In light of the recent changes facing all local municipalities with the deployment of small wireless facilities, I find this request particularly relevant and a prudent action that the City should take.

I recently received information through a public records request into the City's current list of macro and micro wireless facilities throughout the City. I received the attached document with the following statement: *"Please note that the attached list was part of a study conducted in 2008 and may not be up to date. Please follow the link below to see additional information regarding cell tower sites cell tower webpage."* The study is **more than 11 years old** and given the proliferation of wireless facilities applications, the City must consider the need for a process that regularly maintains this list to ensure it is current, accurate, and transparent to the public.

I thank you for your time and consideration, and look forward to seeing actions taken to ensure that this information is made available.

Best Regards,

Kortney Morrow
Resident of San Clemente

Crockett, Katie

From: Vonne Barnes <vonnebarnes@cox.net>
Sent: Thursday, November 14, 2019 9:59 AM
To: Crockett, Katie; Gallardo-Daly, Cecilia; Bonigut, Tom
Cc: Makshanoff, James; smith scott; Perez, Gabriel; Planning Mail; CityHall Mail; Hamm, Chris; Bane, Dan; Ferguson, Laura; Ward, Kathy; Sharp Sheryl
Subject: Ordinance • Small Cell Antennas • Encroachment Permit Provision

Ordinance • Small Cell Antennas • Add Provision re Encroachment Permit

Katie Crockett, Cecelia Gallardo, Tom Bonigut, City Council, Planning Commission, Scott Smith,

Under Draft Ordinance, E— Please include a provision for encroachment permit applications, requiring applicants to disclose whether the encroachment is for a project that has yet to be approved by the city. This will ensure that work does not prematurely begin on unapproved projects..

Implementing generalized language on the encroachment permit application such as: “approved, pending city approval of Application Permit,” does not require the Applicant to specifically identify any particular project, such as a small cell antenna. Such language would therefore allow the City Planner to “approve” the encroachment without starting a “stop clock” on unapproved projects (like small cell antennas). Please review with legal counsel.

For example:

- It appears that AT&T obtained an encroachment permit (Permit No: E19-0231, issued 7/16/19, expired 9/14.19, attached) and completed construction to facilitate small cell antenna(s) without first obtaining prior approval from the city for AT&T's project.

The unapproved construction may nullify AT&T's application and subsequent Appeal for the project. Please review with our city attorney, Scott Smith., Esq.

AT&T's encroachment permit includes: “*EXCAVATE 75 LIN FT + 1 SQ IN CONCRETE TO PLACE (1) 10"x 15 HH & (75) 1-4" DUCT. TRAFFIC CONTROL TO ACCESS MH1036, MH1035, MH1022, MH1021 FOR PLACING AND/OR SPLICING. # OF DAYS FOR WORK: Concrete replacement per ST-3. Traffic Control per plans attached.*”

From AT&T's encroachment permit photo attachments, it is clear that encroachment work on the site(s) for: “excavation” of "75 linear feet," "duct work, and " “placing and/or splicing” wiring, is to “upgrade” AT&T's cell antennae on 1001 Calle Del Cerro, and the other AT&T sites, to generate infrastructure to accommodate new unapproved pole(s) to house small cell antenna(es) for 4-5G transmission.

Respectfully,
Vonne Barnes

RSCCA Board President

Crockett, Katie

From: Kortney Morrow <kortneymorrow@gmail.com>
Sent: Wednesday, November 13, 2019 6:40 PM
To: CityCouncil Mail; Bane, Dan; Ward, Kathy; Hamm, Chris; Ferguson, Laura; Makshanoff, James; Gallardo-Daly, Cecilia; Planning Mail; Perez, Gabriel; Crockett, Katie
Cc: safecellsites4sc@gmail.com; Kristy Neuhausen; Laura Fischer; Kristin Fuller; Vonne Barnes; Jeff Perkin
Subject: Re: Small Wireless Facilities - Encinitas' Ordinance 10/30/19
Attachments: FINAL VERSION small cell policy.docx

Follow Up Flag: Follow up
Flag Status: Completed

Hello City Council Members, City Manager, Community Development Director, Planning Commission Members, City Planner and Associate City Planner,

I wanted to follow-up on the Encinitas Ordinance that I had previously sent over. Here is a copy of the updated Ordinance from Encinitas after their 10/30/19 CC Meeting including additional changes that were proposed by the Stop5G and the Attorney representing their group.

I highly encourage you to review this document to better inform your input and decision making. I think it will become clear how short our current draft ordinance falls in relation to other ordinances throughout CA alone.

I will also be providing more detailed comments as it pertains to our Draft Ordinance that was published late last week.

Thank you,

Kortney
Safe Cell Sites for San Clemente

On Nov 1, 2019, at 2:31 PM, Kortney Morrow <kortneymorrow@gmail.com> wrote:

To the City Council, City Manager, Community Development Director, Planning Commission, City Planner and Associate City Planner,

I would like to draw your attention to the updated Ordinance passed unanimously by the Encinitas' City Council this past Wednesday, October 30, 2019. Encinitas is a city that mirrors our small coastal town both in population, topography, as well as physical size (~19 sq mi) and their Small Wireless Facilities Ordinance would be an excellent choice to model our Ordinance after. They have chosen leadership that protects their entire community to fullest extent possible, to include their flora, fauna, human life (particularly children and ADA protected individuals), wildlife and mitigates the dangers that these antennas pose near Cal-Fire Severe High Fire Hazard zones when it comes to establishing parameters around the deployment of 4G/5G

antennas throughout their city. I, personally, believe in your capacity as our Leaders to do the same for all of us here in San Clemente!

I have attached the copy of their Agenda Report related to Item 10A. Amendments to City Council Policy No. C035: Small Wireless Facilities and the redlined updated Ordinance pertaining to the deployment of such facilities and provided a link to the video that is extremely informative to assist in your decision making. I urge you all to please watch the video and read the Ordinance that they have unanimously approved by their Council. Their attorney does a wonderful job outlining the FCC Orders and breaking down the specific updates to the City Ordinance that further protects local independence and ensures safety for its citizens to the fullest extent possible using a flexible policy approach to adapt to the legislative turmoil that the FCC has foisted upon local governments.

The following changes that they included in this recent update to their Ordinance is the **direct result of the public's input** provided at their City Town Hall/Workshop on September 23, 2019. Important updates include the following and updates that the City is further studying and explicitly stated that they will update in the near future once they can "word smith them":

Design Guidelines

- Equipment-Specific Standards
 - technologically neutral
 - size limits balance practical realities with legitimate aesthetic concerns
- Structure-Specific Standards
 - streetlights, utility poles, freestanding poles
- Pre-approved Design Option
 - tool to streamline review for good designs
 - still subject to location analysis

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- removed exemption for facilities under license or other agreement with the city

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- **residential zones, schools, fire hazards, environmentally sensitive areas**
- requires an exemption due to preemption

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- must be the farthest technically feasible distance from restricted site location

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- fire hazard assessment
- 12-month master plan
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- route applications to fire department for review
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- provide more information about tolling agreements under the FCC shot clock
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Lastly, I am requesting for the City to immediately publish our DRAFT Ordinance to the City website for public review and increased transparency in preparation for the City's scheduled Workshop for Small Wireless Facilities in the Public ROW on Wednesday, NOVEMBER 20, 2019 that will help facilitate an open forum for public input based on the current draft as it stands going into that meeting. Without it, the public would be at a great disadvantage to meaningfully participate in an informed capacity. Based on my research of the FCC, there is nothing that would preclude the City from doing so.

Thank you all so much for the work that you do for our city and I look forward to being able to review our DRAFT Ordinance online ASAP.

Best regards,
Kortney Morrow

<2019-10-30_Item_10A_Small_Cell_Wireless_-_Agenda_Report_Attachments_1-3.pdf>
<unknown.png>

Crockett, Katie

From: Jaime Bargiel <jaime.bargiel@sheamortgage.com>
Sent: Wednesday, November 13, 2019 5:47 PM
To: Crockett, Katie
Subject: Re: Small Cell Appeals & Ordinance Update 11-13-19

Follow Up Flag: Follow up
Flag Status: Completed

Hi Katie!

Has the Planning Commission and Council reviewed the latest out of Encinitas? Their ordinance is requiring a 500 feet separation from schools, daycares, and residences.

Thank you!

Jaime Bargiel


NMLS 239008 | BRE License 01303298 |

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On Nov 13, 2019, at 6:44 PM, Crockett, Katie <CrockettK@san-clemente.org> wrote:

Good afternoon –

You are receiving this email because you have previously asked to be notified of updates related to the City Small Cell Ordinance process and/or the Appeals of CUP 18-534 and CUP 18-535, AT&T small cells proposed in the right of way. Please see the following updates:

1. **Draft Small Cell Ordinance Available for Review/Comment:** As of yesterday morning, the draft Small Cell Ordinance was available on the Small Wireless Facilities webpage on the City's website. Those who were on the ordinance email interest list received a PDF copy by email last week. Please send any comments or questions you have to me. We will address as many as possible in the staff presentations at the Workshop next week.

Crockett, Katie

From: Vonne Barnes <vonnebarnes@cox.net>
Sent: Saturday, November 2, 2019 8:28 AM
To: Gallardo-Daly, Cecilia; Perez, Gabriel; Makshanoff, James; Crandell, Barton; Smith Mike; Planning Mail; Wu, Zhen; Talley, Jason; Ruehlin, Jim; Kuczynski, Chris; Brown, Donald; Blackwell, Michael; CityHall Mail; Hamm, Chris; Bane, Dan; Ferguson, Laura; Ward, Kathy; smith scott; Crockett, Katie
Cc: Sharp Sheryl; Morrow Kortney; Neuhausen Kristy; Levesque Bert; Barnes Vonne
Subject: Ordinance • Small Cell Antennae • Appeal At&T Cell Antenna • 1101 Calle Del Cerro
Attachments: E19-0231 issued.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Ordinance • Small Cell Antennae • Appeal At&T Cell Antenna • 1101 Calle Del Cerro &

All Parties,

• It appears that AT&T obtained an encroachment permit (Permit No: E19-0231, issued 7/16/19, expired 9/14/19, attached), and completed construction to facilitate small cell antenna(s) without first obtaining prior approval from the city for AT&T's project.

The unapproved construction may nullify AT&T's application and subsequent Appeal for the project. Please review with our city attorney, Scott Smith., Esq.

AT&T's encroachment permit includes: "EXCAVATE 75 LIN FT + 1 SQ IN CONCRETE TO PLACE (1) 10"x 15 HH & (75) 1-4" DUCT. TRAFFIC CONTROL TO ACCESS MH1036, MH1035, MH1022, MH1021 FOR PLACING AND/OR SPLICING. # OF DAYS FOR WORK: Concrete replacement per ST-3. Traffic Control per plans attached."


From AT&T's encroachment permit photo attachments, it is clear that encroachment work on the site(s) for: "excavation" of "75 linear feet," "duct work, and " "placing and/or splicing" wiring, is to "upgrade" AT&T's cell antennae on 1001 Calle Del Cerro, and the other AT&T sites to generate infrastructure to accommodate new unapproved pole(s) to house small cell antenna(es) for 4-5G transmission.

• **Draft Ordinance:** Planning Commission—Please include a provision that Applicants must disclose/notify the city on whether the encroachment is for a project that have had prior city approval to ensure to prevent work on projects that have not yet been approved for the city.

For example, The city may consider adding a **check box** and **entry** to include the approved Project Name and No on the encroachment application form for Applicants to notify the city whether the encroachment is for a city-approved project.

Such notification will avoid premature implementation of unapproved future projects, and save the city time and money that could be better applied to approved projects.

Please include this item for review as agenda item at the next associated Planning Commission meeting and/or Study Session.

Respectfully,
Vonne Barnes

San Clemente

Crockett, Katie

From: Kortney Morrow <kortneymorrow@gmail.com>
Sent: Friday, November 1, 2019 2:31 PM
To: CityCouncil Mail; Bane, Dan; Ward, Kathy; Hamm, Chris; Ferguson, Laura; Makshanoff, James; Gallardo-Daly, Cecilia; Planning Mail; Perez, Gabriel; Crockett, Katie
Cc: safecellsites4sc@gmail.com; Kristy Neuhausen; Laura Fischer; Kristin Fuller; Vonne Barnes
Subject: Small Wireless Facilities - Encinitas' Ordinance 10/30/19
Attachments: 2019-10-30_Item_10A_Small_Cell_Wireless_-_Agenda_Report_Attachments_1-3.pdf

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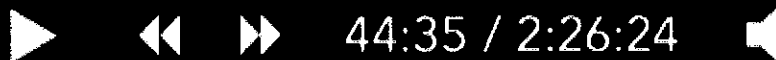
Best regards,
Kortney Morrow



BACKGROUND

September 23, 2019 Community Workshop

- Over 200 community members in attendance
- Issues raised:
 - Restrict facilities in residential areas, parks, schools, hospitals and daycare centers
 - Adverse health impacts
 - Property value impacts
 - Fire Hazards
 - Concerns with Telecom Law Firm



Regular City Council Meeting - 6:00 p.m.

Crockett, Katie

From: Laura Fischer <fischerfamily2@me.com>
Sent: Wednesday, October 23, 2019 11:52 AM
To: Crockett, Katie
Cc: Ruehlin, Jim; Crandell, Barton; Brown, Donald; Kuczynski, Chris; Talley, Jason; Wu, Zhen; Blackwell, Michael; CityClerk Mail; Bane, Dan; CityCouncil Mail; Ferguson, Laura; Hamm, Chris; Ward, Kathy; Kortney Morrow; Kristy Neuhausen; Mattkh2@verizon.net; Jamie Bargiel; Jim Nelson; Kristin Fuller
Subject: Comments on the Design and Development Standards for the Small Cells
Attachments: Letter Design Review Small Cells - Distances.docx

Katie,

Please see my attached letter for the meeting tonight for the Design and Development Standards. I wanted to get something to you as soon as possible, but may also have additional topics I would like to raise during the meeting or can summarize after the meeting. I also have copies of all of the ordinances that I quoted if you would like a copy.

I am quite pleased that we have something to review and our city is moving forward to tackle this tough issue. Thank you so much for your persistence and dedication to this topic.

Best Regards,
Laura Fischer

Safe Cell Sites for SC
15 year Reserve South SC Resident
[REDACTED]
Biomedical Engineer, BS, MS

On Oct 22, 2019, at 10:24 AM, Crockett, Katie <CrockettK@san-clemente.org> wrote:

Good morning –

Please note the **NEW LOCATION** for the Design Review Subcommittee Meeting to be held Wednesday, October 23.

The meeting has been moved to **Council Chambers at 100 Avenida Presidio.**

The meeting agenda is available [here](#). The staff report and draft Design and Development Standards can be found [here](#). Please feel free to provide any feedback on the draft to me via email, or attend the meeting. If you have questions, please do not hesitate to contact me.

Best,

Katie Crockett
Associate Planner
CrockettK@san-clemente.org
(949) 361-6188

To: Katie Crockett

From: Laura Fischer, Safe Cell Sites for SC, 15 year Reserve South SC Resident, [REDACTED]
[REDACTED] Biomedical Engineer, BS, MS

Date: October 23, 2019

Re: City of San Clemente Design and Development Standards for Small Wireless Telecommunications Facilities

I am writing my opinion that in Section C. Location #2 Discouraged Locations, the distances stated are not sufficient. Specifically, section e. "Within 300 feet of another existing, approved, or planned (for which application has been made to the City) small cell facility, as measured from the facility" as well as section f. "Within 100 feet of residential property, as measured from property line". Section (g.) should also be amended to include public parks.

I am requesting that the City of San Clemente consider section e. to be changed to "within 1500 feet of another existing, approved, or planned (for which application has been made to the City) small cell facility, as measured from the facility."

I am requesting that the City of San Clemente consider section f. to be changed to "within 500 feet of residential property, as measured from property line."

I am requesting that the City of San Clemente consider section g. to be changed to also include public parks.

As a rationale for these changes, please see the summary below of what other cities have proposed for these specific issues:

City of Encinitas (C035)

- Location Preferences #9 – any location within 500 feet from an existing small cell
- Location Preference #10 – any location within 500 feet from any structure approved for a residential use.

City of Calabasas (2019-375)

- All new personal wireless telecommunications facilities that do not meet the findings of approval for a small wireless facility permit as specified in Section 17.12.050 (G), shall be set back at least one thousand (1,000) feet from schools, dwelling units and parks, as measured from the closest point of the personal wireless telecommunications facility (including accessory equipment) to the applicable property line ..."=

City of San Diego (6992)

- "Whenever possible, no two SCWs owned by the same provider shall be located within 500 feet of one another in Most Preferred Locations, or within 1000 feet of one another

in Least Preferred Locations in order to minimize clutter and other impacts to aesthetics and community character within the right of way”

- “In order to reduce clutter and maintain the aesthetic quality and community character of certain civic and community uses, SCWs in the right of way shall not be located within 300 feet of schools, child care centers, hospitals, religious facilities, fire stations, or sheriff’s stations unless the applicant demonstrates that the compliance with this requirement would be technically infeasible.”

Los Altos (Resolution No. 2019-35)

- “No facilities shall be permitted in any public park”
- “Each small cell facility must be separated by at least 1,500 feet”

City of Brentwood (Resolution No. 2019-45)

- Locations in the Public Rights-of-Way, “6. Any location in any district within 250 feet from any structure approved for a residential use”

The distance of 100 feet from residences is not sufficient. The other cities summarized above had distances of 500 feet, 1000 feet, and 250 feet, respectively.

The distance from each other is also too short at 300 feet. The other cities summarized above had distances of 500 feet (within a preferred location) and 1000 feet within a non-preferred location), and 1500 feet. At a minimum, please consider specifying distance between cities based on preferred and non-preferred locations.

Thank you for your time and consideration.

Crockett, Katie

From: Shank, Aaron M. <AShank@porterwright.com>
Sent: Wednesday, October 23, 2019 11:25 AM
To: Crandell, Barton; Ruehlin, Jim
Cc: Crockett, Katie; MOUROUX, GREGORY B (Legal)
Subject: AT&T's comments on the City of San Clemente's proposed design standards for small cells
Attachments: AT&T Comments October 23 2019.pdf

Dear Messrs. Crandell and Ruehlin: Please accept this letter from Greg Mouroux on behalf of AT&T to provide comments on the City's proposed design and development standards for small wireless facilities. Please let us know if you have questions. Thank you.

Aaron M. Shank
Outside Legal Counsel for AT&T

AARON M. SHANK

Porter Wright Morris & Arthur LLP
[Bio / ashank@porterwright.com](mailto:ashank@porterwright.com)
D: 614.227.2110 / M: 614.578.5036 / F: 614.227.2100
41 South High Street, Suites 2800 - 3200 / Columbus, OH 43215

/ SEE WHAT INSPIRES US: porterwright.com

NOTICE FROM PORTER WRIGHT MORRIS & ARTHUR LLP:

This message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read, print or forward it. Please reply to the sender that you have received the message in error. Then delete it. Thank you.

END OF NOTICE



Gregory B. Mouroux
Assistant Vice President -
Senior Legal Counsel

AT&T
430 Bush Street, Office 361
San Francisco, CA 94108

T 415.216.2610
gregory.mouroux@att.com

October 23, 2019

VIA E-MAIL

City of San Clemente
Design Review Subcommittee
City Hall
910 Calle Negocio
San Clemente, CA 92673

RE: AT&T's Comments on the City of San Clemente's Design and Development Standards for Small Wireless Telecommunications Facilities

Dear Mr. Crandell and Mr. Ruehlin:

I write on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) to provide comments on the City of San Clemente's design and development standards for small wireless telecommunications facilities ("Proposed Design and Development Standards"). AT&T appreciates that the City recognizes the need to address changes in applicable state and federal laws, including the Federal Communications Commission's *Infrastructure Order*.¹ With more than 72% of Americans relying exclusively or primarily on wireless telecommunications in their homes, and 70% of 911 calls made from mobile phones, it is especially important to encourage responsible deployments consistent with applicable law.

Unfortunately, the Proposed Design and Development Standards require revisions to comply with both state and federal laws and to ensure the City's residents and businesses have access to vital wireless services. AT&T asks that the City consider these and other comments from the wireless industry. AT&T offers the following summary of applicable laws along with specific comments on the Proposed Design and Development Standards.

Key Legal Concepts

The Federal Telecommunications Act of 1996 ("Act") establishes key limitations on local regulations. The Act defines the scope and parameters of the City's review of AT&T's applications. Under the Act, the City must take action on AT&T's applications "within a reasonable period of time."² The FCC has established and codified application "shot clocks" to implement this timing requirement.³ And the FCC has made clear that the City must grant all necessary approvals and authorizations within the applicable shot clock.⁴ The Act also requires that the City's review of AT&T's applications be based on substantial evidence.⁵ Under the Act,

¹ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) ("*Infrastructure Order*").

² 47 U.S.C. § 332(c)(7)(B)(ii).

³ See 47 C.F.R. §§ 1.6001, *et seq.*

⁴ See *Infrastructure Order* at ¶¶ 132-137.

⁵ 47 U.S.C. § 332(c)(7)(B)(iii).



state and local governments may not unreasonably discriminate among providers of functionally equivalent services.⁶

The Act prohibits a local government from denying an application for a wireless telecommunications facility where doing so would “prohibit or have the effect of prohibiting” AT&T from providing wireless telecommunications services.⁷ The FCC has ruled that an effective prohibition occurs when the decision of a local government materially inhibits wireless services.⁸ The FCC explained that a local government “could materially inhibit service in numerous ways – not only by rendering a service provider unable to provide existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services.”⁹

Moreover, the FCC explicitly rejected all “coverage gap” tests to analyze an effective prohibition as they are premised on “an unduly narrow reading of the statute [47 U.S.C. § 332(c)(7)(B)(i)(II)] and an outdated view of the marketplace.”¹⁰ In fact, the FCC expressly rejects the test that was applied by the Ninth Circuit requiring proof that a proposed facility is the least intrusive means for filling a coverage gap.¹¹ Instead, any analysis of an effective prohibition “focuses on the service the provider wishes to provide, incorporating the capabilities and performance characteristics it wishes to employ, including facilities deployment to provide existing services more robustly, or at a better level of quality...”¹²

Under the *Infrastructure Order*, the FCC established a standard for lawful fees, which requires that: “(1) the fees are a reasonable approximation of the state or local government’s costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.”¹³ And the FCC provides a safe harbor for presumptively reasonable fees: (a) \$500 for non-recurring fees for an application including up to five small cells, plus \$100 for each small cell beyond five, or \$1,000 for non-recurring fees for a new pole to support small cells; and (b) \$270 per small cell per year for all recurring fees.¹⁴ Higher fees are presumed to violate the Act.¹⁵

The FCC also established a standard for local aesthetic regulations that they must be (1) reasonable (i.e., has to be technically feasible), (2) no more burdensome than those applied to other infrastructure deployments, and (3) objective and published in advance.¹⁶ Regulations

⁶ 47 U.S.C. § 332(c)(7)(B)(i)(I).

⁷ 47 U.S.C. § 332(c)(7)(B)(i)(II).

⁸ See *Infrastructure Order* at ¶¶ 35-42; see also, *In the Matter of California Payphone Assoc. Petition for Preemption, Etc.*, Opinion and Order, FCC 97-251, 12 FCC Rcd 14191 (July 17, 1997).

⁹ *Infrastructure Order* at ¶ 37.

¹⁰ *Infrastructure Order* at ¶ 40.

¹¹ See *id.* at n. 94.

¹² *Id.* at n. 95.

¹³ *Id.* at ¶ 50.

¹⁴ *Id.* at ¶ 79.

¹⁵ *Id.*

¹⁶ See *id.* at ¶ 86.



that do not meet these criteria are preempted as they are presumed to effectively prohibit wireless service in violation if the Act.¹⁷

AT&T has a statewide franchise right to access and construct telecommunications facilities in the public rights-of-way. Under Public Utilities Code Section 7901, AT&T has the right to access and construct facilities in public rights-of-way in order to furnish wireless services, so long as it does not “incommode” the public use of the public right-of-way. And under Section 7901.1, AT&T’s right is subject only to the City’s reasonable and equivalent time, place, and manner regulations.

AT&T’s Comments on the Proposed Design and Development Standards

1. **Gap in Coverage.** Section 4(A) requires an applicant to demonstrate a significant gap in the wireless provider’s service and that the proposed facility is the least intrusive means of providing service for the City to grant an exception to the Design and Development Standards. Again, the FCC has rejected all “coverage gap” tests for an effective prohibition, including specifically rejecting the judicially-created least intrusive means test for filling a coverage gap.¹⁸ The City must eliminate its reliance on this coverage gap analysis and other similar requirements throughout the Design and Development Standards.
2. **Subjective Standards.** The City’s design and development standards contain multiple subjective aesthetic standards that cannot be the basis for denial for small cell applications. For example, Section 4(B)(1) says that facilities must be sited to “minimize view impacts” and shall be designed to use “the least visible means possible.” The City needs to develop objective criteria to comply with the FCC’s aesthetic standard for small cells.
3. **Definition of Small Wireless Telecommunications Facility.** In Section 4(B)(3)(c), the City states that the size of a small cell cannot exceed the definition of “small wireless telecommunications facility” as defined in the San Clemente Municipal Code. But this term is not defined by the Municipal Code. The City should adopt the FCC’s definition for “small wireless facility” consistent with the regulation, 47 C.F.R. § 1.6002(l).
4. **Concealment.** Many of the City’s design standards require concealment. While AT&T is willing to work with the City on concealment, under the FCC’s aesthetic standard for small cells, concealment cannot be required to a greater extent than imposed on other infrastructure deployments in the rights-of-way. For example, there are non-concealed electric distribution facilities throughout the City’s rights-of-way.
5. **Preference Against the Placement of New Poles.** Section 4(C)(2)(a) states the City’s preference against siting small cells on new poles in the right-of-way. The City should take

¹⁷ See *id.*

¹⁸ See *Infrastructure Order* at ¶ 40, n. 94 (“We reject both the version of the ‘coverage gap’ test followed by the First, Fourth, and Seventh Circuits (requiring applicants to show ‘not just that *this* application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try’) and the version endorsed by the Second, Third, and Ninth Circuits (requiring applicants to show that the proposed facilities are the ‘least intrusive means’ for filling a coverage gap”).



additional time to rethink this requirement. This limit runs a significant risk of banning wireless facilities throughout large portions of the City. And AT&T has the state law right to set poles in the right-of-way.

6. Separation. The City should eliminate Section 4(C)(2)(e), which provides the City's preference against siting a small wireless facility within 300 feet of another small wireless facility. This type of requirement is more burdensome than applied to other infrastructure deployments and risks effectively prohibiting wireless services. Moreover, this separation requirement is certainly not needed for concealed sites.

7. Preference Against Siting Facilities Near Residences and Schools. Section 4(C)(2)(f)&(g) discourage small cells placed within 100 feet of a residential property and within 500 feet of schools unless the provider can prove an effective prohibition by demonstrating a significant gap in service. The City can articulate appropriate location preferences, but AT&T has a legal right to place its facilities in the public rights-of-way. Further, the FCC's aesthetic standard for small cells precludes the City from requiring this type of analysis for wireless applications when the City does not require it from other infrastructure deployments. To the extent these setbacks are based on the concerns over radio frequency emissions, they are improper. And, again, the FCC has explicitly rejected all coverage gap tests.

As a practical matter, the City should reconsider naming residential property and schools as the City's discouraged locations for siting wireless facilities. Small cells are low-profile, low-power facilities that need to be placed near customers to provide and improve service. Thus, they need to be placed near where residents rely on wireless connectivity the most: in their homes. Plus, access to robust wireless services near schools enhances safety, and small cells are typically used to offload network traffic that is often congested near high-usage areas such as schools. To the extent application of these preferences materially inhibits AT&T from serving customers, it will violate the Act as an effective prohibition.

8. Prohibition on Siting Facilities on Traffic Signal Poles. Section 4(C)(3)(e) of the Proposed Policy states that the City will not approve a small cell attached to a traffic signal pole. The City should strike this provision. First, the FCC made clear that its interpretations apply to all government owned or controlled structures within the right-of-way.¹⁹ This categorical ban may effectively prohibit wireless services in certain parts of the City in violation of the Act. Moreover, it makes sense to allow traffic light installations because it permits the wireless provider to cover multiple directions from one location, which a mid-block location may not support.

9. Pole Top Installations. Sections 4(C)(4)(a)(i), 4(C)(4)(b)(i) and 4(C)(4)(c)(i) require antennas and equipment to be mounted at the top of the pole. And Section 4(C)(4)(a)(i) also prohibits equipment "backpacks," which appears to also prohibit side-mounted antennas and equipment. There may, however, be several reasons that inhibit pole top installations. For instance, top-mounted antennas may not be technically feasible or network parameters may prevent pole-top installation. Also, AT&T may only have rights to certain space on the pole, or the pole owner may impose restrictions on AT&T that prevent extending the height of the pole. This requirement should, therefore, be limited to the extent practical and feasible.

¹⁹ *Infrastructure Order* at ¶ 69.



10. Maximum Height of Wireless Facilities Mounted at the Top of a Lightpole. AT&T objects to Section 4(C)(4)(a)(iv), which limits the height of a wireless facility mounted at the top of a lightpole to 60 inches from the top of the highest point of the existing pole or the nearest lightpole in the vicinity when no base equipment shroud is proposed. This limit may actually harm aesthetics by preventing AT&T's ability to deploy its most stealthy facilities. For example, AT&T's typical streetlight-top design extends up to six feet above the pole top. And for designs with base shrouds for equipment, AT&T will need the ability to place the antenna up to four feet (rather than 36 inches) above the existing pole in order to avoid potential interference with the luminaire. The City needs to build more flexibility into the Proposed Design and Development Standards.

Conclusion

AT&T appreciates the City's initial efforts to develop wireless facility siting regulations to accommodate new and emerging technologies and changes in law but urges the City to take time to revise the Design and Development Standards to avoid violating the law. By addressing the items we raise here, the City will go a long way toward encouraging deployments consistent with state and federal policies and to the great benefit of the City's residents and businesses.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Mouroux".

Gregory B. Mouroux

cc: Katie Crockett, Associate Planner

Crockett, Katie

From: Kortney Morrow <kortneymorrow@gmail.com>
Sent: Friday, October 11, 2019 3:33 PM
To: Crockett, Katie
Cc: Kristy Neuhausen; Gallardo-Daly, Cecilia; CityCouncil Mail; Makshanoff, James; Planning Mail
Subject: Ordinance Items for Small Wireless Facilities in Public ROW
Attachments: Verizon-CEO-On-The-Future-Of-5G-CNBC_Trimmed-1.mp4

Follow Up Flag: Follow up
Flag Status: Completed

Hi Katie (as well as Cecilia and Mayor Pro Tem),

Thank you for taking the time to meet with Kristy and I on Monday and helping provide some clarification regarding the public hearings at the City Council meeting for the small wireless facilities in the public right of way as well as taking into consideration our concerns as citizens here in San Clemente hoping to keep our town beautiful and safe for our families. It has been a crazy week so I apologize for the delay in responding back with items as discussed in our meeting.

Thought you might find this clip interesting of the CEO of Verizon clarifying myths regarding 5G technology as I've heard some of these same myths repeated by our own officials as means to justify and support AT&T's claims for placement of their proposed small cell sites:

As discussed in our meeting and to further elaborate on the model Ordinances that I have previously emailed you, here is language to consider including when devising our Ordinance:

Burlington, MA - Ordinance

2. Content of Application

m. An Affidavit from the applicant which certifies that it will main the installations in good repair and according to FCC standards, and will remove any installation not in such good repair, or not in use, within 60 days of being no longer in good repair or no longer in use. *(This is of particular importance for AT&T specifically who has failed to remove their equipment here in San Clemente - the visual nuisance that they already left in Rancho San Clemente is proof that they have not acted in good faith for our city after their microwave tower was decommissioned years ago. Despite numerous attempts, they have refused to remove this visual nuisance and safety liability as evidenced by this picture)*

o. Surety bonds on which (San Clemente) is obligee, in an amount equal to the cost of installation, to ensure removal of equipment.

3. Annual Re-Certification and Affidavit

- ENTIRE SECTION -

4. Prohibitions

c. No small cell wireless installations shall remain within the (public) right of way or on (public) property which has not been certified as in use in the annual decertification affidavit.

- d. No small cell wireless installation equipment shall be replaced or altered without re-application, hearing, and approval from the (City Council) unless the equipment is no longer properly functioning, and it is being replaced with the same.
- e. No Application may seek approval of more than five (5) proposed facilities.
- f. No applicant or closely held applicant may file more than two (2) applications within 60 days of another.

Calabasas, CA - Ordinance

SECTION 3.

2. Wireless Facility Permit Application Content

(d) A master plan which identifies the location of the proposed facility in relation to all existing and potential facilities maintained by the operator intended to serve the city. The master plan shall reflect all potential locations that are reasonably anticipated for construction within two years of submittal of the application.

4. Design and Developmental Standards (including small wireless facilities)

(a) All new personal wireless telecommunication facilities that do not meet the findings of approval for a small wireless facility permit as specified in Section 17.12.050(G), shall be set back a least one thousand t [*we would like 1500*] feet from schools, dwelling units and parks, as measured from the closest point of the personal wireless telecommunication facility (including accessory equipment) to the applicable **property line**, ...

5. Independent Expert Review

- ENTIRE SECTION -

6. Conditions of Approval

b. Abandonment:

1) Personal wireless telecommunication facilities (this includes small wireless facilities) that are no longer operating shall be removed at the expense of the applicant, operator, or owner no later than ninety (90) days after the discontinuation of use. Disuse for ninety (90) days or more shall also constitute a voluntary termination by the applicant of any land use entitlement under this code or any predecessor to this code.

d. Removal of Unsafe Facilities

... any personal wireless telecommunication facility becomes incompatible with public health, safety or welfare, the applicant or operator of the facility shall, upon notice from the city and at the applicant's or operator's own expense, remove that facility.

f. Prior to the issuance of a building permit or encroachment permit, the applicant or owner/operator of the facility shall pay for and provide a performance bond, which sell be in effect until all facilities are fully and completely removed and the site reasonably returned to its original condition.

7. Wireless Facility Permit Findings.

- ENTIRE SECTION -

*Particular attention to the **applicant demonstrating clear and convincing evidence that the facility is necessary to close a significant gap in the operator's service coverage - "such evidence shall include in-kind call testing of existing facilities with the area the applicant contends is a significant gap in coverage to be served by the facility."***

SECTION 5.

3. Guidelines.

g. Facilities shall not be located within [1500 feet of another wireless facility on the same side of a street.

h. No facility shall be built so as to cause the right-of-way in which the facility is located to fail to comply with the Americans with Disabilities Act.

SECTION 6. ***

- ENTIRE SECTION -

This section has been recently added to the municipal code specifically in response to Small Wireless Facilities

3. Application Content

h. Affirmation of Radio Frequency Standards Compliance

k. Site Survey

4. Application Review (*outlines 'Batching' requirements*)

7. Conditions of Approval for Small Wireless Facility Permits

h. In the event that court of competent jurisdiction invalidates or limits, in part or in whole, Title 47, United States Code, section 1455, such that such statute would not mandate approval for the collocation or deployment granted or deemed granted under a small wireless facility permit, such permit shall automatically expire twelve (12) months from the date of that opinion.

Thanks for your time and attention to this matter. Please let me know if there is anything else that we discussed that I you wanted me to send to you that I may have forgotten to include.

Best regards,
Kortney Morrow

Crockett, Katie

From: Kortney Morrow <kortneymorrow@gmail.com>
Sent: Monday, October 7, 2019 10:29 AM
To: Crockett, Katie
Cc: kurtkristy@hotmail.com; fischerfamily2@me.com; tiffanyjohansson808@gmail.com
Subject: Re: Applications and Shot Clocks
Attachments: 2 BU STM 5.20.19 SWF Policy Amended.clean.pdf

Hi Katie,

Thank you so much for your reply and for adding me to the list for future notifications. Also, just to clarify, my request in item 2 was pertaining to more recent applications 2018-present.

For your consideration, an ordinance that establishes setbacks from schools, homes, and parks is imperative, and should be no less than 1500ft from these locations. In addition, our ordinance should also establish all or some of the following:

- Small cell wireless facilities and wireless support structures shall be located a manner that does not violate the federal Americans with Disabilities Act (ADA).
- Ordinance should stipulate distance between carriers as 1000ft.
- Request from 3rd party insurers for each of their small cell sites:
 - Insurance certificate evidencing workers' compensation coverage, and comprehensive general liability coverage for the installation.
- These small cell sites should be required to an Annual Certification.

When devising our City's Ordinance, can you please review and consider the recent Ordinance passed by Calabasas, CA or that of Burlington, MA whose city require's 3rd party insurance for each of the applicants small cell sites as well as Annual Recertification requirements (linked and attached)?

Thank you Katie for your care and attention to this very important matter of the public's interest. I think the public hearing at the last City Council meeting clearly demonstrated the public's desire to think critically and logically about how you approach these applications and the importance of an ordinance to protect our beautiful coastal city.

Best,
Kortney

On Oct 7, 2019, at 8:41 AM, Crockett, Katie <CrockettK@san-clemente.org> wrote:

Good morning Kortney -

1. I am handling all small cell applications at this time. I am the primary City contact for all wireless submittals at this time; however, other staff are sometimes assigned non-small cell wireless projects as

Crockett, Katie

From: Vanessa <vanessa250@hotmail.com>
Sent: Monday, August 19, 2019 10:35 PM
To: Crockett, Katie
Subject: Information about City Ordinances for Small Wireless Communications (small cells)

From: Vanessa <vanessa250@hotmail.com>
Sent: Sunday, August 18, 2019 5:00 PM
To: crockettK@sanclemente.org <crockettK@sanclemente.org>
Subject: Information about City Ordinances for Small Wireless Communications (small cells)

Hi Katie,

The City of San Clemente needs ordinances, like other cities have done, that limit the proximity of these "small cells" to homes and schools. I believe this needs to happen in order to maintain what the City strives for in its Mission Statement to "Maintain a safe, healthy atmosphere in which to live, work, and play." I've been researching what other cities are doing to create ordinances for small cells. Please see the following information that will hopefully help to educate and inform the members at the City Council meeting on Tuesday for Agenda item W.

The City of San Clemente needs siting guidelines and standards to protect and promote public health, safety, and welfare. Residential areas, schools, and parks should be considered sensitive areas and RF exposure should be limited as much as possible. The City can regulate certain aspects of location and placement. The following are some examples of Ordinances other cities currently have:

***Marin County California** Draft as of June 21, 2019

Marin drafts preferences for 5G rollout, Point Reyes Light

- "Marin's draft rules select industrial, commercial or agricultural sites, or sites near public facilities, as preferred locations for the antennas; residential and mixed-use sites and areas within 1,500 feet of schools and daycare centers are the least-preferred locations. It also includes aesthetic requirements that aim to blend equipment, and prohibits equipment on historic buildings."

***San Diego County, California**

Draft ordinance (5-31-2019) for small cell antenna sites in San Diego County has the following requirement:

"SCWs shall not be located within 1,000 feet of schools, child care centers, hospitals, or churches. Distance, without regard to intervening structures, shall be a straight line measured from the closest property lines."

San Diego County Ordinance

***Petaluma, California: Ordinance of the City Council of Petaluma**

- Protect environmental resources; protect residents against adverse health effects
- Protect visual character; don't create visual blight
- Protect environmental resources; protect residents against adverse health effects
- Commercial or industrial zones
- 1,500 feet minimum between each Small Cell facility.
- No Small Cell shall be within 500 feet of any residence.
- An encroachment permit must be obtained for any work in the right-of-way.

Petaluma, California: Ordinance of the City Council of Petaluma PDF

***Palos Verdes, California**

*Palos Vardes, California Ordinance Chapter 12.18 – WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Design and Development Standards. All wireless telecommunications facilities that are located within the public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:

To minimize significant view impacts from surrounding properties all in a manner that achieves compatibility with the community and in compliance with Section 17.02.040 (View Preservation and Restoration) of this code.b.

Facilities shall be located such that views from a residential structure are not significantly impaired. Facilities shall also be located in a manner that protects public views over city view corridors, as defined in the city's general plan, so that no significant view impairment results in accordance with this code.

***Palo Alto California**

City Council voted unanimously to approve a Resolution and amended Wireless Ordinance that City Staff had proposed. Council also voted unanimously in favor of a motion to direct City Staff "to come back as soon as possible but [in] no more than [one year], with an updated Ordinance/Resolution that considers" (and e summarizing):

1. Disfavoring the placement of cell towers in residential zones and near schools;
2. Minimum setbacks for cell towers from homes and schools, and minimum distances between cell towers;
3. Creating a list of city-owned buildings that would be appropriate sites for macro cell towers (i.e., as an alternative to small cell node cell towers next to people's homes);

Council also voted to direct City Staff to return to Council with a recommendation for "best practices" with respect to inspecting antennas.

"Seeking to strike a balance between federal requirements and resident concerns, Palo Alto approved on Monday night new rules for reviewing the flurry of applications that the city has been receiving from telecommunication companies seeking to install antennas on local streetlights and utility poles. By a 6-0 vote, with Councilman Greg Tanaka absent, the council adopted a set of "objective standards" for wireless communication facilities, including a menu of preferred design alternatives for radio equipment and antennas. And in a nod to the dozens of residents who have raised alarms about the proliferation of cellular facilities on their blocks, the council launched a new effort to further restrict where such technology can be installed and to explore "minimum distance" requirements for wireless equipment in relation to local schools and homes."

https://www.paloaltoonline.com/news/2019/06/19/palo-alto-bans-new-cell-towers-next-to-public-schools?utm_campaign=magnet&utm_source=article_page&utm_medium=related_articles

***Walnut City, California**

"Telecommunication towers and antennas shall not be located within 1,500 feet of any school (nursery, elementary, junior high, and high school), trail, park or outdoor recreation area, sporting venues, and residential zones."

Thank you for your time, Katie! Hope this helps and I will see you at the meeting.

Vanessa Barr