



AGENDA REPORT

CITY OF SAN CLEMENTE

CITY COUNCIL MEETING

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: September 3, 2024

Agenda Item: 8B

Submitted By: Community Development
Prepared By: Jonathan Lightfoot, City Planner

Subject:

CONTINUANCE OF NO ACTION ON CONDITIONAL PERMIT 1021 RELATED TO THE PROPERTY LOCATED AT 616 DEL DIOS, ASSESSOR'S PARCEL NUMBER 690-552-05

Fiscal Impact:

There are no direct costs associated with an action on this item.

Summary:

Harborview Estates Homeowners Association ("Harborview"), American Tower Management, LLC ("ATC"), DISH Wireless and the City are actively engaged in settlement discussions regarding Conditional Permit 1021 and the telecommunications tower and associated equipment at 616 Del Dios. In light of those settlement discussions, Harborview and ATC have jointly requested and staff recommends that the City Council continue the abeyance without further action until November 19, 2024.

Background:

SCMC section 17.12.175 provides a process for the City to change or revoke approved applications when conditions of approval are violated, it is necessary to resolve a nuisance, and/or when applications contain incorrect, false, or misleading information.

At its December 5, 2023 regular meeting, the City Council adopted Resolution No. 23-159 to initiate a public hearing to consider changing or revoking Conditional Permit 1021, the Voluntary Compliance Agreement and the Wireless Screening Form WMS 23-231. That public hearing was held at the January 16, 2024 City Council meeting.

After considering the staff report, public testimony and all evidence and argument presented by the property owner, the City Council directed that the revocation of Conditional Permit 1021 be "held in abeyance" for 60 days. During discussion, the City Council encouraged the parties work to resolve the issues in the active litigation filed by Harborview related to this matter. The parties and the real parties in interest in the Harborview litigation met in confidential settlement discussions.

On March 5, 2024, the City Council further continued the abeyance to September 3, 2024. The parties and the real parties in interest in the Harborview litigation have continued their confidential settlement discussions, and staff believes that these discussions are nearing a mutually acceptable conclusion. Therefore, Harborview and ATC have jointly requested and staff is recommending that the City Council continue the abeyance period until November 19, 2024 to complete these confidential discussions.

In the time since the March 5, 2024 City Council meeting, ATC has worked with City staff to review options to secure its property from trespass to address one of the community's concerns related to the site:

- Staff received an application for a building permit (B24-1180) to allow ATC to replace the existing outer compound fence with a 6-foot tall light brown, heavy-gauge, coated mesh fence with 1-foot barbed-wire top to prevent further trespass. Staff issued the permit on August 19, 2024, and materials are currently on order to facilitate construction of the fence.
- ATC granted the City access to the property through a Site Access Agreement (Attachment 4), executed on August 6, 2024, which provides authorization to the City's Park Rangers to access the site, at the discretion of City Management, in response to complaints of trespass or vandalism.
- The City's Code Compliance Division has not received new complaints related to this facility since March 5, 2024.
- The Orange County Sheriff's Department has received two calls-for-service related to trespassing on the site and climbing the tower, one on April 20, 2024 and the other on July 15, 2024.

Council Options:

- Continue the public hearing to a date certain and extend the abeyance of the revocation of Conditional Permit 1021 until November 19, 2024 to allow time for further confidential settlement discussions to occur, which would maintain the status quo.
- Continue the public hearing to a date certain and extend the abeyance of the revocation of Conditional Permit 1021 for a date certain either before or after November 19, 2024.
- Continue the public hearing to a date certain and extend the abeyance of the revocation of Conditional Permit 1021 until October 1, 2024 (or another regular City Council meeting date), and direct staff to return with consideration of a resolution related to Conditional Permit 1021.
- Continue the item and direct staff to provide additional information.

Environmental Review/Analysis

Continuing to take no action is not a project under the California Environmental Quality Act.

Recommended Actions:

Staff Recommendation

Staff recommends that the City Council continue the abeyance of the revocation of Conditional Permit 1021 until November 19, 2024, which would maintain the status quo until that date.

Attachments:

1. City Council Agenda Report, dated January 16, 2024, entitled “Public Hearing to Consider Changing or Revoking Conditional Permit 1021/ Voluntary Compliance Agreement/ and Wireless Screening Form WMS 23-231 Related to the Property Located at 616 Del Dios, Assessor’s Parcel Number 690-552-05 and Finding the Project Categorically Exempt from the California Environmental Quality Act.” Associated attachments are available at the following links:

Part 1:

<https://www.san-clemente.org/home/showpublisheddocument/77045/638404851447630000>

Part 2:

<https://www.san-clemente.org/home/showpublisheddocument/77047/638404852233970000>

2. Minutes of the City Council Meeting of January 16, 2024, excerpted
3. Minutes of the City Council Meeting of March 5, 2024, excerpted
4. Site Access Agreement between American Tower Management and the City of San Clemente

Notification:

Public notice published in the San Clemente Times, with notice provided to American Tower Corporation on behalf of American Tower Management, LLC, and to representatives of Harborview Estates Homeowners Association.



AGENDA REPORT

CITY OF SAN CLEMENTE

CITY COUNCIL MEETING

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: January 16, 2024

Agenda Item: 8C

Department: Community Development

Prepared By Adam Atamian, Community Development Director
Jonathan Lightfoot, City Planner

Subject:

PUBLIC HEARING TO CONSIDER CHANGING OR REVOKING CONDITIONAL PERMIT 1021/ VOLUNTARY COMPLIANCE AGREEMENT/ AND WIRELESS SCREENING FORM WMS 23-231 RELATED TO THE PROPERTY LOCATED AT 616 DEL DIOS, ASSESSOR'S PARCEL NUMBER 690-552-05 AND FINDING THE PROJECT CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Fiscal Impact:

There are no direct costs associated with an action on this item. However, an action to continue the item for further discussion at additional public hearings would result in additional expenditure of City staff and City Attorney time.

Summary:

SCMC section 17.12.175 provides a process for the City to change or revoke approved applications when conditions of approval are violated, it is necessary to resolve a nuisance, and/or when applications contain incorrect, false, or misleading information. Because this matter involves a Conditional Permit issued in 1962, a public hearing with notice to the owner and applicant and an opportunity for them to present evidence is required.

At its December 5, 2023, regular meeting, the City Council adopted Resolution No. 23-159 to initiate a public hearing to consider changing or revoking Conditional Permit 1021, the Voluntary Compliance Agreement and the Wireless Screening Form WMS 23-231 and set the hearing date for its January 16, 2024 City Council meeting. In order to change or revoke an entitlement, the City Council must make one or more of the following findings:

1. Conditions of approval of the approved application(s) are being violated or are not being satisfied.
2. The site or land use is being operated in a manner that constitutes a nuisance.
3. The application contained incorrect, false, or misleading information.

Staff conducted additional research into allegations that the property has not been maintained in accordance with the terms of Conditional Permit 1021 and that the property has been managed in a manner that constitutes a nuisance. Based on the evidence provided herein, staff believes that there is credibility to these claims and recommends that the City Council change the entitlement to reduce issues of public safety and nuisance by requiring a redesign of the site that addresses the safety issues of access and prevents trespass onto the property and unauthorized climbing of the tower. This, however, can be accomplished without a full revocation of the underlying

entitlement. The recommended changes to the entitlement, including added conditions of approval, are incorporated into Attachment 1, the draft Resolution.

Background:

1962 Conditional Permit

An existing telecommunications tower at the subject site is owned by American Tower Corporation (Owner). This facility was approved under a Conditional Permit in 1962 by the County of Orange (Attachment 2). Per the Conditional Permit, the telecommunications facility was approved for an approximate 28-foot by 58-foot building and a 70-foot tall antenna tower. Per Owner representatives, the tower component of the telecommunications facility was built to a height of 137.6 feet, but was then further extended to 156 feet when the height is measured from the highest existing appurtenance affixed to the tower.

Voluntary Compliance Agreement and Collocation Requests

In 2020, the City denied a request for a wireless antenna collocation at this site when it was discovered that the height of the tower was not compliant with the terms of the 1962 Conditional Permit issued by the County of Orange prior to the annexation of this property into the City of San Clemente. This denial resulted in discussions between the Owner and the City.

The Owner ultimately agreed to voluntarily reduce the height of the existing tower to the 70-foot maximum height allowed by the 1962 Conditional Permit, which was the only violation of the Conditional Permit that the City was aware of at that time. A Voluntary Compliance Agreement was executed on July 6, 2023 between the Owner and the City to reduce the height of the existing antenna tower to the permitted height of 70 feet (Attachment 3). The City then approved building permit B23-1495 to de-stack the tower to the reduced height of 70 feet tall.

During the review of records that preceded entry into the Voluntary Compliance Agreement, legal counsel for the Owner represented that the tower is/was still used today for the wireless transmission of telephone services. This representation was maintained and repeated by Dish Wireless (Applicant) within Wireless Screening Form No. WMS 23-231 (Attachment 4), which was an Eligible Facilities Request to collocate equipment on the reduced-height tower.

Relying on these representations, staff approved the Voluntary Compliance Agreement and WMS 23-231 (which found the project met criteria for review under Section 6409(a) of the Spectrum Act, did not require discretionary review, and could proceed to building plan check). The aforementioned public meetings on October 17 and November 8, 2023, which called into question the validity of the Owner and Applicant's representations and revealed Conditional Permit violations and nuisance at the site, occurred while the building permit was under review.

Section 6 of the Voluntary Complaint Agreement provides:

The City agrees that, following the reduction in the height of the tower, the Wireless Communications Facility will be in compliance with the 1962 CUP, and specifically that (i) the 1962 CUP is vested; (ii) the 1962 CUP does not contain an expiration date; and (iii) the 1962 CUP permits the current use of the Wireless Communications Facility for wireless telecommunication purposes; and (iv) the 1962 CUP permits a 70' tower. As a result, the City shall not require a discretionary

approval, including but not limited to a new CUP or renewal of the 1962 CUP, in connection with the reduction in height and ongoing operation of the Wireless Communications Facility consistent with the 1962 CUP.

Public Testimony in November-December of 2023

With respect to public health and safety considerations, some of the most notable comments from the public made about the nuisances occurring at the site indicate that on regular occasions the tower is not secure and neighborhood children who find access to the site through the dilapidated fence, climb the tower, and throw items off the tower. This is not the case with other telecommunications facilities in the City that have different designs.

Additional comments from the public indicate an existing issue stemming from the Owner's/Applicant's access through the Harborview Estates neighborhood to deliver equipment to the site and the neighboring homeowners associations contending that the Owner/Applicant do not have the legal right to access the site in that manner and have been violating the conditions of Conditional Permit 1021 by doing so. Issues requiring a response from the Orange County Sheriff's Department deputies have arisen from this contention about the Owner's/Applicant's access to the site.

Given the public testimony, City staff requested a tolling agreement from the Applicant, which was executed on November 17, 2023 and extended the shot-clock review deadline until November 30, 2023 for the building permit to install new wireless transmission equipment on the existing tower. The City has not issued this building permit. Under FCC regulations, the failure to approve a permit for eligible facilities within the specified timeframes makes the permit "deemed approved." The Applicant was noticed, however, that if it elects to install its equipment on the tower, it would be proceeding at its own risk should the City Council decide to change or revoke Conditional Permit 1021.

The Owner has also reported to the City that trespasses onto the site have been occurring, repairs to the site fence have been damaged and that there have been instances of vandalism and damage to vehicles left on site.

Additional Research into Access, Leasing History, and Alleged Nuisances

During testimony at public meetings in November and December of 2023, members of the public asserted that:

- The facility was abandoned and non-operational for more than one year, contradicting the information provided within the Applicant and Owner's discussions and applications to the City. San Clemente Municipal Code (SCMC) section 17.12.150 provides regulations related to the expiration of approvals, which indicate that a conditionally permitted land use is considered lapsed if it is inactive for a period of at least one year;
- The facility has not been maintained in accordance with the conditions of approval included within Conditional Permit 1021; and
- The site has been operated in a manner that constitutes a public nuisance.

Following Council's December 5, 2023 action to initiate a public hearing, staff gathered additional information related to these allegations.

First, City staff requested that the Owner provide verification of their access rights to the property. The Owner commissioned a survey (Attachment 5), which identified their easement rights. The survey (dated November 1, 2023) indicates that the Owner does not have access rights to their property via Del Dios, a private road which was used in October and November by contractors of the Owner to gain access to the site in July of 2023 to de-stack the tower (per Building Permit B23-1495) and to conduct landscape maintenance in October and November of 2023 in accordance with direction provided by an OCFA inspector. Rather, the Owner and their tenants and/or contractors should be and should have been accessing the site via the 20' easement that links to the Salvador water tower site, approximately two miles south.

Second, City staff requested that the Owner provide verification of continued operation of the site. The Owner provided a lease history (Attachment 6) detailing the various tenants and the dates of their license agreements. The Owner indicates that AT&T has had continuous license agreements since ATC acquired the site from AT&T in 2000. The "Schedule 2" license agreement indicates an initial term commencing February 28, 2000 with extension options for 30 years. The Owner also indicates that there was never an intention on ATC's part to abandon the use.

It should be noted that SCMC section 17.72.060(B)(1) creates a rebuttable presumption that discontinued legal non-conforming uses have been abandoned, stating in part: "Nonconforming Uses discontinued for more than one year (365 consecutive calendar days) shall be rebuttably presumed to have been abandoned." The California Supreme Court has explained that although "[t]he term 'discontinued' in a zoning regulation dealing with a nonconforming use is sometimes deemed to be synonymous with 'abandoned,'" that is not the law. *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 569. Rather, "[c]essation of use alone does not constitute abandonment. 'Abandonment of a nonconforming use ordinarily depends upon a concurrence of two factors: (1) An intention to abandon; and (2) an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the nonconforming use.'" *Ibid.* Pursuant to SCMC section 17.72.060(B)(3), the property owner has the burden to prove how many consecutive days a use has been discontinued and/or prove a use has not been abandoned.

Staff believes that the evidence provided by ATC is sufficient for the City Council to find that ATC has met its burden to prove that the use may continue and was not abandoned consistent with SCMC section 17.72.060(B)(3).

Third, City staff reviewed complaint history received through its Code Compliance Division related to this site. There have been five nuisance cases opened since 2012, the accompanying descriptions are the complaints received which initiated the cases:

- CE2012-0536 Holes in fence
- CE2012-1479 Hole in fence surrounding cell tower
- CE2016-1519 RSC cell towers vandalized & security breached
- CE2018-0245 Transient Break-in
- CE2020-0468 Graffiti on the Ridge Trail private cell site

There have been three additional complaints received in 2023. These complaints did not result in code cases because underground cable work does not require a city permit and because the

dispute over site access did not involve City property. However, the City did request proof of access/easement rights from the Owner, and a survey confirmed that they should not be accessing this property from Del Dios. The three additional complaints in 2023 were:

- CRM2306-0148 Complainant stated: “There is work being completed to the tower on APN# 690-552-05 (might also be referenced under 616 Del Dios, San Clemente, CA 92672) that does not have a permit. I have spoken to the city to confirm that no recent permits were pulled; however, someone from Cox cable knocked on my neighbors door to indicated that Fisher (name of contractor) will be starting construction on Monday in order to run Fiber to the tower. When asked whether they are putting a cell tower and 5G at that location, Brian Hunter from Cox Cable confirmed that that was the purpose of the work.”
- CRM2306-0174 Complainant stated: “I believe there is working being done by Cox Communications subcontractor Team Fishel to move fiber from one location to another that is resulting in 3 days of boring and construction as they are taking up the sidewalk.”
- CRM2309-0201 Complainant stated: “There is construction on the tower owned by American Tower. Per their CUP, they must be accessing site via Calle Del Cerro or Salvador via the Ridgeline Trail. They are occupying, blocking and damaging our private road on Del Dios. They do not have an Encroachment Permit.”

Fourth, City staff reviewed calls for service, received between January 1, 2019 and December 14, 2023, by the Orange County Sheriff’s Department (OCSD) related to the site. There appear to be 18 calls for service related to the Owner’s property in that timeframe. All calls indicate juveniles trespassing onto Owner’s property, climbing the tower, and creating noise disturbances or throwing things from the tower. Typically, the teenagers had left the area prior to a deputy arriving for a patrol check, but in a couple of instances, deputies did make contact with the teens directing them to clear the property.

The final four calls for service occurred between November 9-10, 2023. These calls were related to a civil dispute between residents and the contractor(s) for the property Owner, with each party alleging that the other had trespassed. This occurred when Owner’s contractor was conducting landscape reduction in accordance with OCFA/CalFire standards. As previously noted, survey results (provided after November 10, 2023) indicated that the utilities easement routed from the City’s Salvador water tower property and did not include access from Del Dios.

Law Related to Public Nuisances

Under Civil Code section 3480, a public nuisance affects an entire community or neighborhood, or any considerable number of persons at the same time, although the extent of the annoyance or damage inflicted on individuals may be unequal. SCMC section 8.52.020 states: “No person shall allow, maintain or commit any public nuisance, or willfully fail to commit any legal duty relating to the removal of a public nuisance.”

While state law contains a definition of nuisance, under Government Code section 38771, cities are free to declare, by ordinance, what constitutes a nuisance. SCMC section 8.52.030 declares, in part, it “a public nuisance for any person owning, leasing, occupying or having charge or

possession of any premises in this City to maintain such premises in such manner that any of the following conditions are found to exist thereon:

P. Maintenance of premises in such condition as to be detrimental to public health, safety or general welfare or in such manner as to constitute a public nuisance as defined by Civil Code Section 3479;

W. Any building or structure which has any or all of the following conditions or defects:

8. Whenever, for any reason whatsoever, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is used,

11. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become an attractive nuisance to children who might play therein to their danger, or as to afford a harbor for vagrants, criminals or immoral persons, or as to enable persons to resort thereto for the purpose of committing nuisance or unlawful or immoral acts,

Y. A structure, improvement, property, and/or land use not in compliance with terms and/or conditions of any City of San Clemente issued permit or approval.

Additionally, pursuant to California Civil Code section 1714(a), “[e]veryone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property....”

Staff believes that recent trespasses onto the site via the dilapidated fence, climbing on and throwing objects from the tower and public health and safety concerns are sufficient for City Council to find a public nuisance occurring at the site within the meaning of SCMC section 8.52.030.

While the Owner disagrees that there is a nuisance, it has indicated that it would voluntarily agree to implement additional measures to address site security concerns resulting from trespassing and vandalization activities at the site. See Attachment 9. These measures are included in the draft Resolution.

Council Options:

Following a public hearing:

- The City Council could decline to change or revoke Conditional Permit 1021.
- The City Council could change Conditional Permit 1021 by adding/modifying conditions of approval or standards for development and operation of the site to mitigate the complaints and calls for service and make the site safer for the public and eliminate the public nuisance.

- The City Council could revoke Conditional Permit 1021. If revoked, the Owner would need to apply for a new Conditional Use Permit (CUP) in order to reestablish a telecommunications use at the property. A new CUP would require review by the Planning Commission.

Environmental Review/Analysis

Each of the Council options referenced above is eligible for an exemption under CEQA:

- Taking no action would not require a CEQA determination.
- Modifying the entitlement would be categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301 (14 CCR § 15301, Class 1: Existing Facilities), Section 15302 (14 CCR § 15302, Class 2: New Construction or Conversion of Small Structures), and/or Section 15303 (14 CCR § 15303, Class 3: New Construction or Conversion of Small Structures).
- Revoking the entitlement (CP 1021) would not be a project under CEQA.

Recommended Actions:

Staff Recommendation

Staff recommends that the City Council adopt Resolution No. 24-09, which would find the project categorically exempt under Classes 1, 2 and 3, would make public nuisance findings and would modify the entitlement (CP 1021) to incorporate the following conditions of approval:

1. The Owner, its tenants, and any contractors, shall access the property only by means of Avenida Salvador easement – unless they can demonstrate easement rights via Del Dios.
2. The Owner, their tenants, and any contractors shall require escorted access for any vehicles other than light duty pickup trucks. Any damage to the Ridgeline trail observed by City staff to have occurred as a result of access by Owner, their tenants, and any contractors shall be repaired by a contractor of the City's choosing within one (1) month of noticed damage.
3. The Owner and/or their tenant(s) shall permanently solve ongoing safety issues at the site by preventing persons from climbing the tower, which may be accomplished by replacing the lattice tower with a new monopole tower meeting the general design goals of the City's Wireless Master Plan or other feasible solution approved by the City.
4. The Owner and/or its tenant(s) shall repair and/or replace the fence with a material and style supported by the City's Code Compliance Manager and the City's police services Captain or designee for the purpose of mitigating the issue of ongoing trespass.
5. The Owner and/or its tenant(s) shall install security cameras on the Property to alert the Owner of trespass and safety issues and the Owner shall take proactive responsibility for mitigating and preventing the issue of ongoing trespass.
6. The Owner and its tenants shall operate and maintain the site in a manner that complies with all applicable laws and regulations.
7. The Owner shall defend and indemnify the City.

Attachments:

1. Resolution 24-09
2. Conditional Permit 1021
3. Voluntary Compliance Agreement dated July 6, 2023
4. Wireless Screening Form No. WMS 23-231
5. Survey of Easement Access to Site
6. History of ATC Lease/License Agreements
7. ATC redacted Lease/License Agreements
8. ATC's suggestions to improve site security
9. Public comments

Notification:

Public Hearing published in the San Clemente Times, posted near the site, mailed to Owner and all property owners within 300 feet of property, and provided electronically to Owner, Applicant, and adjacent HOAs.

CITY OF SAN CLEMENTE
 Tuesday, January 16, 2024
 City Council
 Special and Regular Meeting Minutes



910 Calle Negocio
 2nd Floor
 San Clemente, California
www.san-clemente.org
 Council Chambers

4:30 p.m. - Closed Session
 6:00 p.m. - Business Meeting

Mayor Cabral
 Mayor Pro Tem Enmeier
 Councilmember Duncan
 Councilmember Knoblock
 Councilmember Loeffler

These minutes reflect the order in which items appeared on the meeting agenda and do not necessarily reflect the order in which items were actually considered.

A Special and Regular Meeting of the San Clemente City Council was called to order by Mayor Cabral on January 16, 2024 at 4:31 p.m. in the San Clemente City Council Chambers, located at 910 Calle Negocio, 2nd Floor, San Clemente.

PRESENT: Duncan, Enmeier, Knoblock, Loeffler and Mayor Cabral

STAFF PRESENT: Andy Hall, City Manager; Elizabeth Mitchell, City Attorney; Laura Campagnolo, City Clerk; Megan Jimenez, Deputy City Clerk

CLOSED SESSION

Closed Session Item B(1)

Larry Culbertson, San Clemente Historical Society, spoke in support of the lease at the Community Center; commented on the work and value the historical society brings to San Clemente.

Jackie Dooley, San Clemente Historical Society, spoke in support of the lease at the Community Center.

Closed Session Item B(2)

Amanda Quintanilla commented on the Transportation Corridor Agency and the proposed battery storage facility; expressed concerns regarding potential litigation.

Closed Session Item B(3)

Sandra Weaver, Cabrillo Playhouse, commented on the history of the Cabrillo Playhouse; requested that Council consider potential impacts to the Cabrillo Playhouse when making decisions concerning a potential lease to Camino Real Playhouse.

Lee Tilles, Cabrillo Playhouse, expressed concerns regarding the Camino Real

Playhouse as it relates to funding by the City.

Michael Lopez, Cabrillo Playhouse, expressed concerns regarding the potential of Camino Real Playhouse being funded by the City.

Amanda Quintanilla encouraged Cabrillo Playhouse and Camino Real Playhouse to work collaboratively.

Tom Marshall opined that the City of San Clemente should release a Request for Proposals for all interested performing arts programs to apply.

Motion by Councilmember Enmeier, second by Mayor Duncan, CARRIED 5-0, to recess to Closed Session at 4:49 p.m. to discuss the following:

A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code section 54956.9(a)(d) (2)
Number of Cases: 3

1. Facts and Circumstances: American Tower Corporation alleges breach of Contract against the City for pursuing what is alleged to be enforcement action.
2. Facts and Circumstances: Notice of Intent to File Suit under the California Environmental Quality Act by Harbor View Estates Homeowners Association
3. Facts and circumstances not yet known to a potential plaintiff.

B. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Discussion concerning real property transactions in compliance with Government Code section 54956.8 regarding:

1. Real Property Negotiations: APN 058-111-55 Property: 100 Calle Seville, San Clemente, CA 92672
City Negotiators: Andy Hall, City Manager and Samantha Wylie, Beaches, Parks and Recreation Director
Negotiating Parties: San Clemente Historical Society
Under Negotiations: Price and terms
2. Real Property Negotiations: APN 701-041-62, 124-101-38, 701-041-55 and 701-041-57
Property: 1400 East Avenida Pico, San Clemente, CA 92672
City Negotiators: Andy Hall, City Manager
Negotiating Parties: Foothill/Eastern Transportation Corridor Agency
3. Real Property Negotiations: APN 688-142-35
Property: 1030 Calle Negocio, San Clemente, CA 92672 City Negotiators: Andy

Motion by Mayor Pro Tem Enmeier, second by Councilmember Loeffler, CARRIED 4-1 (Councilmember Knoblock voting NOE) to introduce Ordinance No. 1763 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTERS 10.04 AND 10.28 OF TITLE 10 (VEHICLES AND TRAFFIC) OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO THE PARKING OF COMMERCIAL, RECREATIONAL, AND WIDE VEHICLES AND TRAILERS ON PUBLIC PROPERTY AND FINDING THE ORDINANCE NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

AYE: Duncan, Enmeier, Loeffler and Mayor Cabral

NOE: Knoblock

C. PUBLIC HEARING TO CONSIDER CHANGING OR REVOKING CONDITIONAL PERMIT 1021/ VOLUNTARY COMPLIANCE AGREEMENT/ AND WIRELESS SCREENING FORM WMS 23-231 RELATED TO THE PROPERTY LOCATED AT 616 DEL DIOS, ASSESSOR'S PARCEL NUMBER 690-552-05 AND FINDING THE PROJECT CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

This item was considered earlier in the meeting, please see page 3 for a summary of action.

Mayor Cabral opened the Public Hearing.

Councilmembers disclosed the following ex-parte communications:

Councilmember Duncan disclosed that he received a number of emails concerning the property at 616 Del Dios that were similar to the emails received with the Administrative Report materials; he also disclosed a conversation with Andrew Morrow concerning the property at 616 Del Dios.

Councilmember Loeffler disclosed that he received a number of emails concerning the property at 616 Del Dios that were similar to the emails received with the Administrative Report material, disclosed a conversation with Andrew and Kortney Morrow concerning the property at 616 Del Dios; noted his attendance at the City Council/Planning Commission Joint Study Session.

Councilmember Knoblock disclosed that he received a number of emails concerning the property at 616 Del Dios that were similar to the emails received with the Administrative Report material; reported his attendance at the City Council/Planning Commission Joint Study Session.

Mayor Pro Tem Enmeier disclosed that he received a number of emails concerning the property at 616 Del Dios that were similar to the emails received with the Administrative Report material, disclosed a conversation he had with Kortney Morrow concerning the property at 616 Del Dios; reported his attendance at the City Council/Planning Commission Joint Study Session.

Mayor Cabral disclosed that he received a number of emails concerning the property at 616 Del Dios that were similar to the emails received with the Administrative Report material.

Community Development Director Atamian and City Planner Lightfoot narrated a PowerPoint presentation entitled "Public Hearing to Consider Changing or Revoking Conditional Permit 1021/Voluntary Compliance Agreement/ and Wireless Screening Form WMS 23-231 Related to the Property Located at 616 Del Dios, Assessor's Parcel Number 690-552-05" and responded to Council inquiries. A hard copy of the presentation is on file with the City Clerk.

Emily Murray, Counsel for American Tower Corporation, narrated a PowerPoint presentation entitled "American Tower Presentation to San Clemente City Council". A hard copy of the presentation is on file with the City Clerk.

Spoke in Support of the Revocation of Conditional Permit 1021/ Voluntary Compliance Agreement/ and Wireless Screening Form WMS 23-231 Related to the Property at 616 Del Dios.

Vonne Barnes narrated a PowerPoint presentation entitled "American Tower Non Compliance Access Easement". A hard copy of the presentation is on file with the City Clerk.

Amanda Quintanilla narrated a PowerPoint presentation entitled "American Tower Non Compliance Access Easement". A hard copy of the presentation is on file with the City Clerk.

Suzana Corritori, San Clemente narrated a PowerPoint presentation entitled "Electromagnetic Radiation Due to Wireless Cell Towers and Harmful Effects on Human Health". A hard copy of the presentation is on file with the City Clerk.

Carla Dack, San Clemente, narrated a PowerPoint presentation entitled "American Tower Non Compliance Chain Link Fence". A hard copy of the presentation is on file with the City Clerk.

Lyndie O'Toole, San Clemente, narrated a PowerPoint presentation entitled "American Tower Non Compliance Chain Link Fence". A hard copy of the presentation is on file with the City Clerk.

Joel Rumerman, San Clemente, narrated a PowerPoint presentation entitled "American Tower Non Compliance Crushed Rock". A hard copy of the presentation is on file with the City Clerk.

Perry Foskett, San Clemente, narrated a PowerPoint presentation entitled "American Tower Non Compliance Access Road Maintenance". A hard copy of the presentation is on file with the City Clerk.

Beth Foskett, San Clemente

Kristi Neuhausen narrated a PowerPoint presentation entitled "Attractive Nuisance". A hard copy of the presentation is on file with the City Clerk.

Kortney Morrow narrated a PowerPoint presentation entitled "Attractive Nuisance". A hard copy of the presentation is on file with the City Clerk.

David Armstrong, San Clemente, narrated a PowerPoint presentation concerning no electrical box at the site. A hard copy of the presentation is on file with the City Clerk.

Steve Lawson, San Clemente
Bert Levesque, San Clemente
Marty Dack, San Clemente
Norm Peterson, San Clemente
Mark Moran, San Clemente
Kathy Ward, San Clemente
David Schick, San Clemente
Shelley M
Henry Libdell, San Clemente

MEETING RECESSED

Council recessed the meeting at 10:16 p.m. and reconvened at 10:23 p.m. with all Councilmembers present.

Emily Murray, Counsel for American Tower Corporation, responded to public comments and Council inquiries.

There being no others desiring to speak, Mayor Cabral closed the Public Hearing.

CONTINUATION OF MEETING PAST 11:00 P.M.

Motion by Councilmember Knoblock, second by Councilmember Loeffler, CARRIED 5-0, to continue the meeting until 12:00 a.m.

AYE: Duncan, Enmeier, Knoblock, Loeffler and Mayor Cabral

NOE: None

Motion by Councilmember Knoblock, DIED for a lack of second to table the item until a current status is provided to the City concerning the pending litigation.

The motion was withdrawn.

Motion by Councilmember Duncan, second by Councilmember Loeffler, CARRIED 5-0, to find that American Tower Corporation (ATC) has not been in continual compliance with the Conditional Use Permit 1021 (CUP) and warrants revocation of the CUP. Hold the revocation in abeyance for 60 days to allow

ATC, the City and Harborview Homeowners Association to work to resolve issues and report back to Council no later than 60 days.

AYE: Duncan, Enmeier, Knoblock, Loeffler and Mayor Cabral

NOE: None

CONTINUATION OF MEETING PAST 12:00 A.M.

Motion by Councilmember Knoblock, second by Councilmember Loeffler, CARRIED 5-0, to continue the meeting to 12:30 a.m.

AYE: Duncan, Enmeier, Knoblock, Loeffler and Mayor Cabral

NOE: None

D. INTRODUCTION (FIRST READING) OF ZONING TEXT AMENDMENT TO SAN CLEMENTE MUNICIPAL CODE SECTION 17.28.206 - TEMPORARY PARKLET DINING, CONSIDERATION OF A RESOLUTION CONTINUING THE PARTICIPATION FEE AND FINDING THE ACTIONS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Mayor Cabral opened the Public Hearing.

Councilmember Loeffler disclosed that his wife is on the Planning Commission and that this item was considered by Planning Commission; noted that they did not discuss the continuation of the parklet program.

City Planner Lightfoot reviewed the contents of the Administrative Report and responded to Council inquiries.

Mikii Rathmann, San Clemente, spoke in support of the parklets during the Covid-19 pandemic; expressed concerns regarding the parklets impacts on parking and small businesses.

Kathy Ward, San Clemente, expressed concerns regarding parklets and the continuation of the program until 2026; spoke in opposition to continuing the parklet program.

Amanda Q spoke in opposition to continuing the parklet program.

There being no others desiring to speak, the Public Hearing was closed.

POINT OF ORDER

A point of order card was received questioning if the City had notified businesses that they were able to continue to utilize the parklets after December 31, 2023.

Motion by Mayor Pro Tem Enmeier, second by Councilmember Duncan, CARRIED 5-0, to:

14. Adjournment

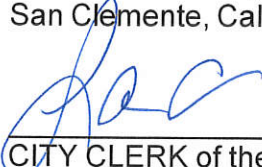
Motion by Mayor Pro Tem Enmeier, second by Councilmember Duncan, CARRIED 5-0, to adjourn in memory of Dr. Catherine "Cat" Nolan, Assistant Principal of Guidance, San Clemente High School at 1:40 a.m. The next Regular Meeting will be held on February 6, 2024. Closed Session will begin at 5:00 p.m. The Business Meeting will commence at 6:00 p.m. The meeting will take place at City Hall Council Chambers, located at 910 Calle Negocio, 2nd Floor, San Clemente.

AYE: Duncan, Enmeier, Knoblock, Loeffler and Mayor Cabral

NOE: None



MAYOR of the City of
San Clemente, California



CITY CLERK of the City of
San Clemente, California

8B. CONSIDERATION OF AUTHORIZING A GRANT IMPLEMENTATION AGREEMENT WITH THE COUNTY OF ORANGE FOR THE SOUTH ORANGE COUNTY INTEGRATED REGIONAL WATER MANAGEMENT GRANT PROPOSITION 1 ROUND 2 GRANT FUNDING PROGRAM UNDER THE CALIFORNIA DEPARTMENT OF WATER RESOURCES FOR THE RECYCLED WATER QUALITY IMPROVEMENT PROJECT

Public Works Director/City Engineer Rebensdorf narrated a PowerPoint presentation entitled "Recycled Water Quality Improvement Project" and responded to Council inquiries. A hard copy of the presentation is on file with the City Clerk.

Motion by Councilmember Duncan, second by Councilmember Knoblock, CARRIED 5-0, to:

Adopt Resolution No. 24-28, which will:

1. Approve, and authorize the City Manager to execute, Contract No. C24- 12, a Grant Implementation Agreement by and between the City of San Clemente and the County of Orange, to receive the South Orange County Integrated Regional Water Management (IRWM) Grant Proposition 1 Round 2 grant funding, in the amount of \$700,000, for the Recycled Water Quality Improvement Project and documents related thereto.
2. Authorize the City Manager or his/her designee to accept and deposit the grant funding reimbursement (\$700,000) into the Sewer Connection Fee Reserve Fund, Account No. 054-477-45300-000-13203.

AYE: Duncan, Enmeier, Knoblock, Loeffler and Mayor Cabral

NOE: None

8C. CONTINUANCE OF NO ACTION ON CONDITIONAL PERMIT 1021 RELATED TO THE PROPERTY LOCATED AT 616 DEL DIOS, ASSESSOR'S PARCEL NUMBER 690-552-05

Community Development Director Atamian reviewed the contents of the Administrative Report and responded to Council inquiries.

Bert Levesque, Harborview Homeowners Association, provided an update on meetings between Harborview and American Tower Corporation.

Tony Rubolino spoke on comments made by Councilmember Duncan.

Motion by Mayor Pro Tem Enmeier, second by Councilmember Knoblock, CARRIED 5-0, to continue the abeyance of the revocation of Conditional Permit 1021 until September 3, 2024, which would maintain the status quo until that date.

AYE: Duncan, Enmeier, Knoblock, Loeffler and Mayor Cabral

NOE: None

8D. CONSIDERATION OF COUNCILMEMBER TRAVEL AND TRAINING EXPENSES

Amanda narrated a PowerPoint presentation entitled "Duncan's DC Trip". A hard copy of the presentation is on file with the City Clerk.

Tony Rubolino narrated a PowerPoint presentation entitled "Oh, You Don't Say". A hard copy of the presentation is on file with the City Clerk.

Motion by Mayor Pro Tem Enmeier, second by Councilmember Loeffler, CARRIED 5-0, to authorize an expenditure of up to \$110 related to City Councilmember Duncan's mileage reimbursement to attend at the 2024 March Cal Cities Governance, Transparency and Labor Relations Policy Committee Meeting.

AYE: Duncan, Enmeier, Knoblock, Loeffler and Mayor Cabral

NOE: None

9. New Business

9A. CONSIDERATION OF ITEMS FOR ESTABLISHING THE ARTS & CULTURE COMMITTEE 2024 WORK PLAN

Beaches, Parks and Recreation Director Wylie reviewed the contents of the Administrative Report and responded to Council inquiries.

Amanda narrated a PowerPoint presentation entitled "A & C". A hard copy of the presentation is on file with the City Clerk.

Motion by Mayor Pro Tem Enmeier, second by Councilmember Loeffler, CARRIED 4-1 (Councilmember Duncan voting NOE) to adopt Resolution No. 24-29 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING THE ARTS AND CULTURE COMMITTEE 2024 WORK PLAN, with the addition of surf culture where appropriate.

AYE: Enmeier, Knoblock, Loeffler and Mayor Cabral

NOE: Duncan

SITE ACCESS AGREEMENT

This SITE ACCESS AGREEMENT (“Agreement”) is entered into by and between AMERICAN TOWER MANAGEMENT, LLC (“Owner”), and the CITY OF SAN CLEMENTE (the “City”). Owner and the City are sometimes referred to herein individually as a “Party” and together as the “Parties.”

RECITALS

WHEREAS, Owner owns and operates a wireless communications facility (the “Facility”) located at 616 Del Dios, Rancho San Clemente, California 92672, APN 690-552-05 (the “Property”).

WHEREAS, Owner wishes to grant the park rangers in the City’s Park Ranger Program, currently overseen by the Community Development Department, (hereinafter referred to as the “Park Rangers”) access to the Property to assist in responding to and deterring trespassing, vandalism, and other alleged unpermitted activity on the Property, on the terms and conditions set forth herein.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and promises herein, the Parties hereby agree as follows:

1. Rights Granted. Owner hereby grants to the Park Rangers a license to enter upon and access the Property to respond to calls, investigate, prevent, terminate, or otherwise appropriately respond to alleged trespassing, vandalism, and/or other alleged unpermitted activity at the Property. The foregoing activities of the Park Rangers are referred to herein collectively as the “Permitted Activities.” The City acknowledges that Owner’s grant of license under the terms of this Agreement is limited to the Property and only those portions of the Property necessary for the Park Rangers to perform and complete the Permitted Activities. The rights granted under this Agreement are limited to the Permitted Activities detailed above and do not include, *inter alia*, the entry onto the Property by any party other than the Park Rangers, including other City employees, agents, or representatives not connected to the Park Ranger Program, unless agreed to by Owner in advance. The City further acknowledges that the Permitted Activities shall be performed in a reasonable manner and with minimal disruption or damage to the Facility, surrounding environment, and community.

2. Performance of the Permitted Activities.

2.1 All Permitted Activities, if the City in its sole and absolute discretion elects to perform them, shall be performed by the Park Rangers at the City's sole cost and expense (except for the proper application of the City's Repeat Nuisance Service-Call Fee, if any, pursuant to San Clemente Municipal Code Chapter 9.20) in a prompt, safe, efficient, and workmanlike manner and in compliance with all applicable federal, state, and local laws, regulations or ordinances, and permits, approvals and conditions granted or imposed by governmental agencies.

2.2 The Park Rangers may, but are under no obligation to, enter the Property for the purpose of performing the Permitted Activities at any time so long as the Park Rangers have legitimate reason to suspect that trespassing, vandalism, and/or other alleged unpermitted activities likely to be injurious to life or property are being conducted on the Property.

2.3 Except as may be otherwise permitted by the Rancho San Clemente Master Association and/or the Harbor View Estates Homeowners Association, the Park Rangers shall not access the Property via the entrance off Del Dios. The Park Rangers shall only access the Property via the utility access roads off Avenida Salvador, as identified in the survey attached hereto as Exhibit A. The American Tower lock to access the utility access roads off Avenida Salvador is the lock in middle of the chain with a red strip of tape wrapped around it.

2.4 If and when entering the Property and performing the Permitted Activities, the Park Rangers shall use reasonable efforts to minimize interference with, or impairment or disruption of, the current use, occupancy, and/or operation of any portion of the Property by Owner. Owner acknowledges, consents to, and agrees that some interference, impairment, or disruption of uses, occupancy or operations may occur as a result of the performance of the Permitted Activities, but does not consent or agree to Park Rangers engaging in dangerous or destructive activity, including but not limited to climbing the tower or touching equipment cabinets or electric boxes.

3. Effective Date. The Effective Date of this Agreement shall be immediately after both Parties have executed the Agreement.

4. Termination. This Agreement may be terminated at any time by either party upon written notice.

5. No Other Rights Granted. This Agreement shall not in any way entitle the City, the Park Rangers, nor any other public or private entity to perform any activities at the Property other than the Permitted Activities, or as otherwise specifically authorized by this Agreement, without first obtaining Owner's prior written consent which may be granted or withheld in Owner's sole discretion.

6. Mutual Release. Owner agrees to and does hereby release the City and the Park Rangers from any and all actions, claims, costs, damages, penalties, assessments, and liability arising from any incidental damage to the Facility or Property or operations at the Property that may reasonably occur in the ordinary course of completing the Permitted Activities. The City agrees to and does hereby release Owner from any and all actions, claims, costs, damages, penalties, assessments, and liability arising from any damage or harm that may befall the Park Rangers in the course of completing any Permitted Activities except for damage or harm

intentionally caused by Owner or its agents (including but not limited to the Park Rangers). The foregoing releases shall survive any termination of this Agreement with respect to incidents occurring during the term of the Agreement.

7. Communications. The City shall notify Owner when it responds to any alleged trespassing, vandalism, and/or other alleged unpermitted activity likely to be injurious to life or property at the Property. The City shall notify Owner and provide it copies of any non-confidential written communications, including via electronic correspondence, between City and any government agency related to the fact of the Park Rangers performing any Permitted Activities. Notifications to Owner shall be provided to:

American Tower Network Operations Center (NOC)
877-51TOWER (877-518-6937)
GNOC@americantower.com

With a copy to:

Emily Lane Murray Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
865 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-2543
(213) 622-5555
emurray@allenmatkins.com

8. Applicable Law; Venue. This Agreement shall be interpreted, and any dispute arising hereunder shall be resolved, in accordance with the laws of the State of California, without reference to choice of law rules. Venue shall be exclusive in the state or federal Courts in Orange County, California and Owner waives any right that it may have under California Code of Civil Procedure section 394.

9. Integration. This document represents the entire agreement between the Parties on the subject matter contained herein. This Agreement supersedes and replaces any and all prior agreements between the Parties regarding the subject matter herein. No modification of the terms hereof shall be effective unless in writing and duly executed by the authorized representatives of the respective parties. Nothing in this Agreement shall have any effect on any other agreement or matter between the Parties.

10. Severability. If any one or more of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, that invalidity, illegality or unenforceability shall not affect any other provision herein and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been included; provided, however, in no event shall either Party be deprived of a material consideration by operation of this provision.

11. No Admission of Liability/Duty. Each of the Parties acknowledge and agree that this Agreement, the act of entering into it, and any act or omission pursuant hereto shall not be construed as an admission of any nature, nor shall anything in this Agreement be deemed to create a duty on the City's part to undertake any of the Permitted Activities.

12. Signatories. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign.

13. Counterparts/Electronic Signatures. This Agreement may be executed in any number of counterparts, which shall together shall constitute one complete agreement. This Agreement may be executed electronically with the same force and effect as an original, ink signature.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of the last date set forth below.

Dated 08/05/2024

AMERICAN TOWER MANAGEMENT, LLC

By: Margaret Robinson
Margaret Robinson (Aug 5, 2024 11:06 EDT)

Name: Margaret Robinson

Its: V.P., U.S. Tower Legal Ops.

APPROVED AS TO FORM:

By: Emily Murray
Emily Murray (Aug 5, 2024 12:17 EDT)

Name: Emily Murray

Its: Allen Matkins, Counsel

CITY OF SAN CLEMENTE

Dated 08/06/2024

By: Andy Hall
Andy Hall (Aug 6, 2024 16:32 PDT)

Andy Hall, City Manager

APPROVED AS TO FORM:

By: Elizabeth A. Mitchell

Elizabeth A. Mitchell, City Attorney

ATTEST:

By: Laura Campagnolo
Laura Campagnolo (Aug 9, 2024 16:10 PDT)

Laura Campagnolo, City Clerk