



# MINUTES

## Special Meeting of the Planning Commission

**MONDAY, JUNE 30, 2014**

City Council Chambers

1 Civic Center Drive, San Marcos, CA 92069

### CALL TO ORDER

At 6:32 p.m. Chairman Flodine called the meeting to order.

### PLEDGE OF ALLEGIANCE

Commissioner Jones led the Pledge of Allegiance to the Flag.

### ROLL CALL

The Secretary called the roll:

PRESENT: COMMISSIONERS: FLODINE, JACOBY, JONES, KILDOO, MAAS, NORRIS, PENNOCK

ALTERNATE COMMISSIONERS IN AUDIENCE: SCHAIBLE

ABSENT: MINNERY

Also present were: Planning Division Director, Jerry Backoff; Deputy City Attorney, Avneet Sidhu; Principal Planner, Karen Brindley; Office Specialist III, Lisa Kiss; City Consultants, Jonathan Kramer & Robert May III, Kramer Firm

### ORAL AND WRITTEN COMMUNICATIONS

None.

### CONSENT CALENDAR

#### 1. APPROVAL OF MINUTES, 6/2/14

Action:

COMMISSIONER KILDOO MOVED TO APPROVE CONSENT CALENDAR AS PRESENTED; SECONDED BY COMMISSIONER JACOBY AND CARRIED BY A UNANIMOUS VOTE.



## **PUBLIC HEARINGS**

2. **Case No:** P13-0065: TA 13-001 (Text Amendment)

**Application of:** City of San Marcos

*(continued from 6/26/14)*

**Request:** Proposed Modification to the San Marcos Municipal Code ("SMMC") that would supersede and replace the Telecommunications Ordinance in its entirety (Chapter 20.465 of the SMMC), as well as affected sections of SMMC Title 20, and adopt the Addendum to the General Plan Program FEIR that was prepared for the update to SMMC Chapter 20.465.

**Location of Property:** City-wide

Backoff: Commented that the presentation will be three-part, starting with City consultant Jonathan Kramer discussing the Distributed Antennae System (DAS), followed by Karen Brindley with an overview of the revised ordinance & proposed changes and addressing public comments, then Robert May III, with Kramer Firm, addressing particular cell provider & attorney comment letters, followed by staff's recommendation.

Jonathan Kramer, Kramer Telecom Law Firm, City's outside expert and Special Counsel on wireless matters: PowerPoint presentation shown regarding DAS. Indicated there's been interest in DAS from the public and City Council. The City is not endorsing it as a particular technology, its just information that has been requested. Discussed specialized DAS Terms of Art: DAS, Fiber, HUB, Node, Protocol Agnostic. Explained the way DAS works. HUB is where wireless carrier's signals are handed off to the DAS equipment. DAS Nodes can be installed on light standards, wood utility poles & traffic signals. They are often 22-25' above ground and can have limited coverage. Explained how Base Stations work, an example is at Twin Oaks Golf Course. They provide a large coverage area around it. A DAS Network may require 8-12 DAS Nodes to achieve similar RF signal coverage from a single Marcocell Base Station. It's connected to the HUB, and transported through fiber optic cables to the DAS Nodes. They can provide a similar level of coverage but not quite identical. There will be some holes in coverage as compared to a macrocell system. Main benefits: Much smaller foot print; Advertised ability to serve multiple wireless carriers from a single node - although it doesn't traditionally happen; Increased signal strength in the immediate area of each DAS node, including interior rooms. Detriments: It's not a replacement for a macrocell, it doesn't provide the same level of coverage; It must connect to an existing or new base station to hand off its signal; Many DAS facilities are closer to end users; Incomplete signal coverage compared with a macrocell (30-35' for macrocells) due to lower antenna height; It's unlikely that DAS network will be shared between different carriers; Substantial new installation of fiber optic cables, new street scarring & pole-to-pole cables; Multiple DAS nodes, antennas installed on the same pole; DAS nodes are rarely camouflaged or undergrounded, although they can be; DAS antennas are rarely camouflaged; They usually require a separate SDG&E meter/breaker box to provide electrical power. (Photo samples shown & discussed).

Staff Presentation (Karen Brindley):

PowerPoint presentation shown. Discussed background. The City prepared draft revisions and presented the Ordinance at a workshop in December '13. Later that month, the Planning Commission recommended it for approval to City Council. At the 1/14/14 City Council hearing, public testimony was taken & Council directed staff to modify the draft ordinance. On 1/28/14, the Council adopted an urgency moratorium and extended it on 3/11/14. If not further extended, the moratorium remains in place until a new ordinance is adopted or 1/21/15, whichever occurs first. Staff was asked by Council to re-evaluate several provisions: Max number of Wireless Telecommunications Facilities (WTFs) allowed





on a parcel; Consider allowing more than 1 WTF in Agricultural/Residential areas based on lot size; Eliminate the minimum 1,000' separation between existing & proposed WTF within Agricultural/Residential zones and to allow clustering; Include regulations for smaller equipment "DAS." Public workshop was held on 4/2/14. Staff further modified the revised draft. On 5/22/14 the draft was published to City website to allow a 30-day public review. Public comments were received and are part of the packet. Recap of existing City zoning regulations discussed. Existing regulations are designed to encourage facilities to be located on City property, on commercial/industrial and to incorporate a camouflaged design. If a proposed facility is allowed "by right," the application is processed administratively; otherwise a CUP is required. Discussed Federal law. There are restrictions according to Telecommunications Act of 1996, 6409(a) Middle Class Tax Relief and Job Creation Act of 2012 & FCC rules. The City may not unreasonably discriminate against providers, may not prevent completion of carrier's network, must process applications in a reasonable timeframe, "shot clock" processing limitations imposed, and cannot deny based on perceived health risks associated with RF emissions. The 6409 Job Creation Act says a state or local government may not deny and shall approve any eligible facilities request for modification of existing wireless tower or base station that doesn't substantially change the physical dimensions of such tower or station. The revisions to the 1/14/14 draft have been identified in red, underlined text. The majority remains consistent with the previous version submitted to Commission/Council, except as discussed. Discussed broad overview of Ordinance. Permit tier remains intact. Encourages WTFs to locate outside residential and other sensitive areas and to camouflage. Encourages the use of Compact Cell facilities when feasible. Revised the max number of allowable WTFs on a single parcel of Agricultural & Residential zone, depending on lot size. If a carrier provides proof that there's a significant gap and there are no less intrusive alternative means, then an additional facility can be allowed. The "safety valve" is required by court decisions. Administrative Permit required for "preferred locations," and a CUP is required in "discouraged locations." Discussed public comments received and staff's response. Staff analyzed the quantity of Agricultural zoned parcels on a City-wide basis. Staff supports retaining a maximum of three towers. Ordinance is revised to encourage & allow co-location and clustering and eliminate 1,000' separation. WTF must use least visible and smallest antennas possible. The public's proposed distance setbacks could be construed as or result in a prohibition, which is prohibited. Modified Ordinance encourages the use of smaller equipment to supplement larger facilities. Modified "DAS" term with "compact cell," to retain flexibility over time as equipment size changes. Applicant must warrant and represent that it has written agreement for legal access to & from and to any utilities necessary to operate & maintain facility. To encourage smaller WTFs, the order of preference was modified. Discussed public Right-of-Way (R-O-W) installations. City's independent consultant fees must be paid in full by applicant prior to public hearing or decision. Modified and added definitions. Retained all other provisions of the 1/14/14 draft. All comments were circulated including those received after packet was distributed. Federal shot clock processing time is 90 days for collocation and 150 days for new site. Maintenance hours are 8 am – 5 pm, M-F.

Robert May III, Kramer Telecom Law Firm, Outside Counsel: Indicated he reviewed the letters from AT&T, Crown Castle and Verizon. The ordinance is comprehensive, but nothing in it directly violates the Telecom Act, CA law or conflicts with court decisions that he's reviewed. The letters received are typical of what's received by many Cities when they revise their ordinance. Concerns include: 1. It erects unreasonable burdens & hurdles that prohibit wireless services in violation of the Telecom Act; 2. It treats facilities in R-O-W's different from other users, such as telephone/electric wires, and so it unreasonably discriminates against them; 3. It regulates on the basis of RF. Even though it doesn't say





it, setback requirements, aesthetics and location preferences are really “smokescreens” for RF regulation. In this case, there was a lot of discussion about regulation of co-locations and modifications. Response that it’s prohibitive: If the carrier can show with conclusive proof that they have a significant gap, and proposal is the least intrusive means, even if not a preferred location/design, the City’s ordinance would allow it. That is required by Federal law. The case cited was in NY and didn’t have a safety value and used a point system that made it impossible for a carrier to locate in other than a preferred zone. Conclusive proof: Objective, technical data is required that could be verified. The City’s ordinance takes one smaller step and says verify it. It should not violate the Telecom Act and was upheld in one other CA city that he’s aware of. Unreasonable discrimination: Argument is that there are different and new regulations for wireless sites in public R-O-W’s, that they’re being discriminated against as different from other users such as public utilities. But, the regulations are different because their facilities are different with different needs. CA courts have recognized you can regulate wireless sites in the R-O-W’s different from other type utilities so long as they’re within reason. You can also regulate aesthetics in the R-O-W. (Sprint vs. Palos Verdes Estates). RF Emissions: The Telecom Act is very clear that local/state governments cannot regulate on basis of RF emissions. Complaints in letters said the setbacks & preferred locations looked like smokescreens for RF. There were specific efforts taken to make sure that they’re related to aesthetics and safety, not RF. The City Ordinance doesn’t regulate on the basis of RF. Co-locations & Modifications: Section 6409(a) of the Middle Class Tax Relief Act requires approvals on eligible facilities existing towers/base stations when it won’t result in a substantial change to the physical dimensions. Currently, there is no definition of a substantial change. Local governments can interpret so long as reasonable. There’s a current FCC proceeding to interpret that statute. If there are new interpretations that would change the way the ordinance governs the modifications or co-locations, there would need to be modifications later, but as it stands now it does not violate statute.

Brindley: Staff recommends approval to City Council to supersede and replace Chapter 20.465 of the SMMC in its entirety as well as sections of the SMMC Title 20, and approving an Addendum to the General Plan Program EIR. Pointed out two typos to correct on page 1 and 2 of the Resolution, December dates should be 2013.

Kildoo: The legal discussion talked about the Telecom Act related to existing cell towers and co-locating. Asked about proposed new towers and if it requires co-location?

Kramer: Co-location definition is confusing now because it was changed by Federal Law. Section 6409 doesn’t apply to new sites. Once it’s constructed, then 6409 automatically attaches. It’s currently a notice of rule making issue before the FCC.

Kildoo: It does apply to new sites, but if they want to add a second or third, they have to wait until the first one is built?

Kramer: They have to wait until their rights are vested to build the first site. In some scenario’s, it’s conceivable for a carrier to not build it, but yet come in to modify it. It’s very tricky and is a whole area of law that has virtually no court decisions behind it. There are constitutional issues in terms of the entire section. Indicated they’re about five years away from getting a good understanding of what 6409 is, but in the meantime, it can’t be avoided & must be complied with. When FCC acts later this year,



staff will likely bring forward a true up Ordinance to conform to whatever the FCC comes up with. City is obligated to follow Federal law.

Pennock: Asked if there's a cost benefit, DAS vs. macro?

Kramer: Commented that he specifically didn't discuss cost, because they don't care about cost. Local governments care about aesthetics and their compliance with code sections. Cost is not the City's issue, so it's not discussed.

Pennock: It's the carrier's concern.

Kramer: If a City were to specify something outrageous and so expensive, a wireless carrier could assert an affective prohibition claim. Gave a hypothetical example. Staff must look at the best way to improve and preserve the aesthetics of the community, preferred zones, two sites vs. one, etc.

Pennock: Asked about three towers on one site?

Kramer: Potentially Section 6409 could allow more carriers to come to that site as co-location. With the pending merger of Sprint and T Mobile, there are four principal carriers. Co-location is not restricted to wireless carriers, could be paging company or taxi service. Federal law encourages co-location. Must wait for courts to tell what it all means.

Maas: Inquired if other City's have mandated DAS?

Kramer: None have mandated it.

Flodine: Asked how the proposed Ordinance compares with other cities in County?

Brindley: When process was first initiated, staff did a lot of research within San Diego County as well as outside and later looked at DAS. Staff drafted an Ordinance consistent with San Marcos standards and preservation of community character.

Norris: Asked if Ordinance has implications to existing sites?

Kramer: Yes, if an existing site comes in for modification, it would bring it back within the scope of the new Ordinance. A "legal and nonconforming" tower is allowed to continue its existence if it's not materially changed. Gave example of tower built under old standard, and carrier proposes a co-location that would not be permitted under the current code but is under Section 6409. This is the problem where you have a Federal law that could preempt portions. Discussed "zombie" towers, legal 20 years ago, illegal 15 years ago and couldn't be touched, but now under 6409, carrier's are requesting modification.

Norris: Asked if they can do that?

Kramer: A carrier sued and settled with a Northern CA city. The law is so new there aren't a lot of court interpretations to guide them.





Jacoby: Asked about acreage, 1-5 acres is allowed one, 5.1-10 acres is allowed two. If you purchase additional 1/10 of acre, you could then get two?

Kramer: If someone buys an adjacent parcel, those are two parcels. They would not be combined to allow for greater density.

### **OPEN PUBLIC HEARING**

Flodine: Asked that everyone show respect. Have nine speaker slips and no one indicated they are part of a group.

John Signorino: Indicated he would be spokesperson for their group.

Flodine: Asked if anyone else is in the group?

Signorino: Yes. Ms. Signorino conceded her time.

Flodine: Announced that the recognized group, "Questhaven Hills Smart Cell," will have 15 minutes and everyone else will have 3 minutes.

John Signorino, resident, representing "Questhaven Hills Smart Cell" (QHSC): (PowerPoint shown). Reminded Commissioners that he attended the Planning Commission and January Council meetings and asked then that they approve that Ordinance. They worked with the City and although they didn't like everything in the previous Draft Ordinance, they thought it was reasonable. They are asking that the Council not approve the current draft. Indicated almost 300 residents have asked that it not be approved and San Marcos doesn't want this Ordinance. They feel it's not logical and won't stand. Asked how it's logical to base it on how many acres someone owns? It allows someone to put a tower at the end of their property next to their neighbor's home. Why deny property owners and carriers a good site just because they aren't a big land owner? The acreage requirements don't make sense, are indefensible and set a precedence the cell companies can't abide by. The AT&T tower impacts the adjacent area and character of the community. Asked why they're putting three towers off Golden Eagle near homes? Cell companies didn't want to go there. There is so much other open space away from people's homes. Indicated they did a quantitative visual analysis to determine where visual blight moves from objectionable to marginable to acceptable and it was between 800 - 1,500 feet. It was indicated that Irvine has a 200' setback and Calabasas has 1,000' from schools. Asked why there's no set back in City's Ordinance? Discussed/read City's Mission Statement. It doesn't improve the quality of life or provide a safe family atmosphere. It's inconsistent with City's mission, vision & values. It doesn't protect residents, it lacks responsible distance requirements, adds visual blight to community and it's unenforceable. There's no third party independent site analysis if a carrier is proposing towers next to homes and schools. The cell companies didn't get 311,000 towers in the U.S. by providing the City's the data they need to reject them. Discussed corporate responsibility and AT&T's 2011 presentation to Palo Alto. AT&T said Palo Alto is a center of innovation and deserves state-of-the-art, next generation broadband network. Their topography and hills present a challenge so they're developing a DAS network to provide greater coverage throughout Palo Alto. Continued to read AT&T presentation. Asked why Palo Alto deserves DAS and San Marcos doesn't? In Palo Alto, AT&T submits a statement of aesthetic quality and is holding open houses. Why should San Marcos be treated less? If Commission





doesn't make the demands, we'll get what we'll get. Discussed three macrocell towers at one site in San Elijo Hills that are being put 300' from homes. It's not necessary. AT&T wanted to go on Deadwood, not Golden Eagle. Why? City made them go there. Last year, he was told that no one cared. That's because the City didn't tell them. The application sign was not posted in a proper location. It was at a private, dead end County road marked "No Trespassing." That's why no one objected. The towers will transmit 40 miles, serving Carlsbad, Encinitas and the County. They are here because the City has weak Ordinances and this version is weaker than what City already has. Indicated they told the Commission & Council last year that the decision was setting a bad precedence. When the permits expire, they want macro towers replaced with a DAS system. The new high school has an AT&T macro cell tower. (Photo shown). Wouldn't most residents want DAS here? AT&T's site analysis said the following: 1. San Elijo site was far too low. 2. It would require at least one other macro tower in the community. 3. It would add significant cost to AT&T. 4. It would add environmental & aesthetic impacts to the area. 5. It was rejected as infeasible. 6. It would not provide RF coverage area, too small for what they needed. They didn't want to go there. He asked why it's there and why City is writing an ordinance that puts three towers there? He feels the ordinance was written for the cell companies not the residents. To have three cell towers, you must have 10.1 acres, subject property has 10.2. The Ordinance also allows them to locate at the end of their property, and they are, closest to other homes. Distance from homes & schools should be the basis for cell tower placement, not lot size. It will affect over 200 homes vs. 10 where they originally wanted to go. DAS system has no visual blight and no safety or fire hazards. The City is mandating planting highly combustible pine trees next to the towers to hide them and that will add fire risks to nearby homes. Asked why? They want a DAS system.

Kramer: Advised Commissioner's to refrain from talking about a specific location and just discuss the Ordinance.

Signorino: Asked how many 10.2 parcels are in the City? He hopes other speakers will get more than 3 minutes since the Commissioner's wouldn't meet with them. Indicated they'd work with the City and cell companies. The Ordinance is seriously flawed and worse than Ordinance it was to remedy.

Eric Clifton, resident: Indicated he has a background in land development and low wireless communications manufacturing software engineering. If someone buys an adjacent parcel, you can do a lot line adjustment and do exactly what Jacoby mentioned. An example between macro and micro for context: If you look at electrical grid, you have centralized generation, power plants in the desert, transmission lines, and distribution, wood power poles in underdeveloped areas and underground services. With telecom, the larger facilities are the transmission lines, and the distribution is the wood poles/DAS and that's what needs to be developed. They're asking for protection from clustering of three or more. There are only nine parcels that are 15 acres. Asked how many areas have more than three towers? It doesn't make sense to put one in someone's backyard. If it's anything other than the 100' setback, it has the aura of RF concern. It has everything to do with line-of-sight so it doesn't impact property values. (Read what Helen Peak wrote). Carlsbad, Escondido & Encinitas characterize Residential/Agricultural zones as residential, discourage them and are putting them further away from these areas. Irvine has 2,000' setback and Calabasas has 1,000' setback from schools, dwellings and parks. Understand staff has done a ton of work. If it doesn't have a 1,000' setback, homeowners are not protected. They have no way to refute having one next door to them. The 15 acre minimum for clustering should be to help finish the last transmission line. Height should be to what the environment





is around them, trees & things that can hide them. Urged Commission to rethink and throw it out, otherwise, without the revisions, it's just a burden to the community and telecoms.

Milan Brandon, resident: Commented that the opponents overarching goal has not changed. Despite the Council's direction that the Ordinance not be directed at a single property, that is still what drives their opponent's moves and requests. Not sure what Mr. Signorino is asking for now. They keep coming up with arbitrary limits and restrictions that change by the day. Prior to today, they were asking for a 15 acre setback requirement. They keep flip flopping. The whole thing seems to be based off of RF concerns and always has been. Focus has been on the Brandon property. Indicated their site is well over a football field away from the nearest house. RF readings have been provided at no small expense and were so low they couldn't be quantified. The new draft Ordinance is an improvement over the initial draft, but is still too restrictive, will hinder progress, put community at an economic disadvantage to other cities and hurt residents. The City has had poor wireless coverage for the entire 24 years that their family has lived on Golden Eagle Trail. The improvements have come painfully slow. If a carrier is willing to invest in the community, their efforts should be encouraged, not discouraged. The Ordinance process was ill conceived from the start and will lead to many unintended consequences. Under current Ordinance, the Planning Division has done a great job protecting aesthetics from unsightly development. He feels the City must not delay the wireless build out any longer. It's an issue of convenience, commerce & public safety that far outweighs other considerations. Thanked staff for their hard work and ensuring City has an effective and enforceable by law Ordinance.

Leslie Daigle, representing Verizon Wireless: Commented that they're concerned about proposed Ordinance. 1. It doesn't adequately address the 6409 Tax Relief Act as to when they can co-locate administratively. If R-1, they could add panels and provide no substantial change. The City wants to limit it to one facility, so it's really more a health consideration than aesthetics. It's a zero impact situation. Limits per parcel are being driven by health. 2. They're a public utility, with same rights as AT&T & cable companies. Concerned about City's application under 7901 state law. Most cities bifurcate a public R-O-W from the zoning. Encroachment permits are administered by Public Works Director and go up to City Council. R-O-W's is a separate ordinance. 3. Definitions of significant gap and least intrusive are Federal definitions, not intended to be reinvented and reapplied at local level. After land use decision is made, the carrier can then demonstrate through the court process. Feels it has been turned on its head, and what is supposed to be a benefit is being applied at the front end as a hurdle for them. 4. Any efforts by the City to engineer carrier's network. The focus should be on aesthetics and location. The sites go in every day all over the country with no issues. The problems come when people become aware of something near their property.

Suzanne Anderson, resident: Her concerns are not RF. The existing tower on the adjacent property is not a football field away. Interested in knowing if the violations and enforcements are concurrent with policies and procedures in effect now? The T Mobile tower adjacent to her property has been operating for 15 months on an expired CUP. Additionally, they are non-compliant for 8 months and were ordered to plant some trees and there are no trees to camouflage. Concerned about putting more trees where other trees are non-compliant and in violation. Asked where they got information that a 15-acre parcel prohibits the ability to compete and be in a network? A 35' tower can be erected 100 feet from her backyard fence and would affect her property values. Ordinance doesn't protect her home value or aesthetics of the community. There are over 300 signatures opposed and more getting involved from San Elijo Hills.





Elliot Herman, resident: Photo shown, "Years of Progress," showing overhead wires from old technology in 1887 in NY City. Asked who believes the large, traditional WTFs will be the preferred technology 10 years from now? He doesn't. He believes it will look as cluttered and outdated as the wires over NY. Internet searches on cell tower litigation show hundreds of lawsuits. Most are because towers were put too close to a neighbor. They are an eyesore, visual blight. Stealth Company makes camouflage for these sites. There will be new technology coming. DAS is new and proven in others areas to work. It doesn't give you the NY effect. Indicated he asked the AT&T people at the workshop about the preferred Deadwood site and how close it would have been to neighbors. It was relatively close. He asked AT&T how far should it be from neighbors? No one even attempted to answer because they don't care. He wants a reasonable distance and thinks that is 1,000 feet. Another site talks about what is generally used, 2 feet for every 1 foot of height. A 35' tower would be 700' from property line. Feels it is unreasonable that a tower can impact your property more than the property it's located on.

Paul O'Boyle, Crown Castle, Attorney: Indicated they are DAS providers. Staff did a nice job explaining what DAS does. It won't eliminate the need for macros completely. They need to be intertwined. Staff has a thankless job, because no one will be happy. He discussed the annual reports that are required. They are job creation. When cell site is completed, they supply As Built's and photo survey. If there's a question, you have what was approved. If there's a need for a RF Report, it should be at discretion of the Planning Director. They are \$2,000-\$3,000 per report. DAS usually goes on wood utility poles. He doesn't understand why there needs to be two existing utilities to qualify as a utility pool. It is what it is and that should be changed. There are issues where you have an existing legal, nonconforming use. A residential use in non-residential area, now it precludes wireless going in because of the home. That is not good planning. It should be done on planning, not on non-conforming, existing land uses. Courts have upheld the 10 year term of permit. It's based upon impacts to adjacent neighbors, but it needs to be broader than that and include benefits provided to community. Wood utility poles have to be replaced quite often and sometimes the diameter can increase. In the Ordinance, an increase of 10% or less is considered an existing use. The same standard should be used for replacement poles. Section 20.465.60, E., there's a preference for City facilities, which is fine, however, if that's the only facility located there and City wants to charge outrageous rent, it's unreasonable that the carrier can't compete. They should be forced to be competitive if not allowing for another pole.

John Osborne, representing AT&T: There are about 85,000 residents in City and a third of them are AT&T customers. Verizon is slightly higher. More coverage & density will be needed. People have iPads, using data, facilities need to be updated continuously and need LTE coverage. AT&T has concerns and they've expressed them in writing on multiple occasions. They cited 35 items in Jan 10<sup>th</sup> letter and 47 items in June 26<sup>th</sup> letter. They don't want to see a government taking of rights from the carrier's point of view. Carriers are entitled to certain provisions and methodologies in terms of how they provision their facilities. The Ordinance as written usurps those rights. There is a difference of opinion from the Telecom Law Firm. When there's taking of corporate rights, somebody has to decide who is right or wrong. AT&T doesn't want to get into litigation with City. They prefer that Commission directs staff to meet with carriers, go through items and find a solution for both sides. They want to provide the best service and make as aesthetically pleasing as possible. He was surprised by focus on DAS as being the new be all end all. There are also micro cells that AT&T is deploying nationally. They are dependent on base station/macro sites. They're deployed where they make sense. It doesn't make sense for a





government entity to mandate DAS. The carriers have to determine what works best with their networks. Those are the main issues; others are in writing in the packet.

### **CLOSE PUBLIC HEARING**

Kramer: Mr. Signorino talked about Palo Alto. The City can't specify technology and has been careful not to specify. AT&T went to City of Palo Alto to discuss. City of San Marcos would be happy to discuss, but can't require DAS or small cell. City must look at applications received & look at aesthetics because that's what is allowed under Federal law. Mr. Clifton asked for 1,000' setback. Staff tried to conform numbers to existing City regulations and is trying to treat as many people for land use purposes, as best they can within the constraints of the proposed use. Leslie/Verizon commented the Ordinance doesn't address Section 6409, the co-location law, and asked for an Administrative process. Mr. May talked about it and said it's still a moving target. FCC will be issuing its opinion and put out a proposed rule making. The City will bring back a conforming modification to whatever Ordinance is adopted once the rule is released. Section 6409 discusses an outcome, it says, "may not deny, and shall approve," but there's nothing in the 149 words that says, "may not deny and shall approve by administrative permit." Continued to discuss. City has proposed an Ordinance consistent with 6409. Verizon said wireless has same rights as cable TV companies. In some cases there is overlap. You have to look at the use and occupancy of the ROW. An underground gas line isn't treated the same. That's not the status of the law. Everyone who is the same in the ROW is treated equally. Leslie talked about the City creating a definition of significant gap and least intrusive. There are no federal definitions of those terms. Those are court made rules. Discussed Metro PCS vs. City/County of San Francisco. San Marcos Ordinance says you must come in with sufficient information. If carrier is making a significant gap claim, they need to show what the gap is & how they came up with it so it can be evaluated by City. City must figure out what least intrusive means, typically its aesthetics. Instead of one large site, maybe it would be two smaller sites that conform to code. The City is not trying to engineer anyone's system. City is trying to promote and protect aesthetics. Ms. Anderson brought up T Mobile. There is an on-going enforcement action. It's not part of this hearing. The City Council will be getting updated information. This is not the forum, time or place for that discussion. Mr. O'Boyle/Crown Castle attorney, raised comments regarding the cost of site inspections and whether it should be at discretion of Planning Director. If Commission thinks it's appropriate they can make a recommendation to Council. The 10 year term is the minimum for a normal permit under State law. Some can be less. Wireless industry is trying to change that. Whatever is adopted by state law would apply here. There is a preference for City property, however, if it doesn't work, show why and they can go somewhere else. State law prohibits specifying a cell site may only go on a particular property. Ordinance has been carefully crafted so as to create a preference but not a mandatory requirement. It's consistent with other jurisdictions and there's no reason to modify. Mr. Osborne/AT&T, talked about City not being able to specify technology. He is correct and the City does not. City talks about size and aesthetics of equipment. City is trying to stay within the constraints of State and Federal law, while not advocating aesthetic control of the City to corporations.

**\*\*\*5 MINUTE BREAK\*\*\***

Kramer: Clarified that Irvine doesn't have a 2,000' setback. If there's another cell site within 2,000' of the proposed site, carrier must show why they can't go to other site and co-locate. Calabasas has 1,000' rule, but has a safety valve. If carrier shows it being necessary, (in this case topography), then less than





1,000' was approved. By having a basic rule with a safety value, you'd don't run afoul of the Federal law.

Brindley: Discussed how staff established lot size criteria. Staff was asked to re-evaluate locating more than one facility on larger size parcels. Staff looked at Agricultural zones and where there'd be natural breaks. It's not entirely consistent with minimum lot sizes in Agricultural zones, those are based on 2-acre increments, but staff felt using a 5-acre increment would be appropriate. There are 610 parcels zoned A1 or A2, and the City's total number of parcels is about 25,700. Only 9 parcels are over 15 acres and 26 are 10.1 or more. Regarding establishment of a setback standard, staff arrived at a 100' setback because it's based on a planning principal from a property line and not from adjacent land use. Agricultural zone has an existing standard in place for structures that exceed allowable height if it's a non-residential structure such as a barn, etc. It can exceed height if its 100' > setback from property line. Discussed standard setbacks in Ag zone.

Norris: The Ordinance doesn't eliminate DAS?

Backoff: It's on the preferred list. It's encouraged and City would like to see it, but can't mandate technology.

Kramer: The carriers can offer it if they wish.

Norris: T Mobile has an expired CUP. Asked if there's anything in the Ordinance the City can do to mandate that CUP's are kept current?

Kramer: In general, processes have been improved internally to better track expirations. It's part of Code Enforcement, not the Ordinance.

Backoff: The provider puts in a facility; then they have a subcontractor do modifications and they don't know the conditions. That's why reporting and photographs from the carriers are required.

Flodine: Residential and Agricultural are discouraged and require a CUP. If a public hearing is required, the max number of WTFs shows a certain number on the table. He wants to be sure the Ordinance is not misunderstood and carriers think the max number is by right. He'd like the Commission to make the decision because there could be other parameters.

Backoff: Staff would look at whether the discouraged site is where they have to be. The providers need to show why they can't go to a preferred location and prove & document technologically why they can't. If they've done that and someone like Mr. Kramer validates the information, then staff would look at the discouraged site.

Flodine: Commented that he doesn't want the Commissioner's to be forced to approve because the table says three.

Kramer: For clarity, the number is not by right.

Pennock: Asked for clarification of the timeframe for adoption.





Kramer: The Commissioner's are asked to provide input to the City Council, not adopt. The City is operating under a Moratorium that expires Jan. '15, if not extended. The purpose of the Moratorium is to give a City time to gather its evidence and put together an Ordinance. State law encourages it to be an efficient process, so want to get to City Council as quickly as possible, so they can take action and terminate Moratorium.

Sidhu: Once Council adopts Ordinance, the Moratorium automatically expires.

Jacoby: Gaps and sites have been identified. Indicated there's nothing in the Ordinance that he would not approve.

Norris: Commented that a lot of homework has been done on both sides. If a site is not a good location, the carrier won't put it there. He'd like to get towers out of people's back door. They can be addressed later through a CUP. Not much else Commission can do. Would prefer DAS, but can't mandate. Don't know what other legal options there are.

Pennock: Asked what can be done to incentivize?

Backoff: The preferred list is a non-CUP application and can go through an Administrative review process and approval. No carrier wants to go through a long CUP process and deal with surrounding property owners. They can locate at a fire station, park, school, or open space. They only go to a residential site if they have a coverage problem in that area.

Brindley: Language has been added to encourage compact cell equipment where feasible.

Norris: Asked about height?

Brindley: Draft Ordinance indicates WTF shall comply with underlying zones height; however, there is an exception that the Commission, through a CUP process, can evaluate a facility that would exceed height. In Ag/Res zones, the default max height is 35'. There may be occasions where it's less of a visible impact to allow a WTF somewhat higher. It would be evaluated on case-by-case basis and carrier would have to prove it's the least visibly intrusive and the smallest possible antennas have been proposed.

Norris: Inquired if it would be smaller if closer to homes?

Brindley: It doesn't address. The carrier must justify why they need a certain height.

Norris: The fight is with the cell providers.

Maas: Both sides will be unhappy with results. It's a difficult position to be in.

Kildoo: Agreed with Maas. Staff has worked with the challenges that they've always had with cell towers, they're mandated in so many ways by Federal law. The Commission is limited. Have been through this once and it might come back again. The final decision is made by Council.





Flodine: Compromise is when nobody is happy. The Ordinance is establishing a minimum and maximum. The conflict and emotion from the residents will come back when the CUP's come before the Commission. He commended the residents for their time and effort. You can see the passion and amount of work they put in. He's comfortable moving forward knowing they'll see the future CUP's.

**Action:**

COMMISSIONER KILDOO MOVED TO RECOMMEND APPROVAL TO CITY COUNCIL OF TA 13-001 AS SET FORTH IN RESOLUTION PC 14-4422 WITH MODIFICATIONS TO CORRECT TWO TYPO's ON PAGE 2 & 3: WHEREAS, on December 11, 2014~~3~~, a public workshop was held on the proposed changes to Chapter 20.465; and; WHEREAS, on December 18, 2014~~3~~, the Planning Commission recommended approval of the . . . ; SECONDED BY COMMISSIONER JACOBY AND CARRIED BY THE FOLLOWING ELECTRONIC VOTE:

AYES: COMMISSIONERS: FLODINE, JACOBY, JONES, KILDOO, MAAS, NORRIS, PENNOCK

NOES: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: NONE

ABSTAIN: COMMISSIONERS: NONE

**PLANNING DIRECTOR COMMENTS**

Backoff: Reminded Commissioner's of the July 7<sup>th</sup> meeting for a Tentative Subdivision Map on the east side of University District. Thanked Karen for her hard work during last 8 months. This was a long process, a lot of research, working with the public and legal counsel, and she came up with good recommendations.

**PLANNING COMMISSIONERS COMMENTS**

Kildoo: Agreed. It's been very time consuming and challenging.

**ADJOURNMENT**

At 9:21 p.m. Chairman Flodine adjourned the meeting.

  
ERIC FLODINE, CHAIRMAN  
CITY OF SAN MARCOS

**ATTEST:**

  
LISA KISS, OFFICE SPECIALIST III  
SAN MARCOS PLANNING COMMISSION