PLANNING COMMISSION

ADDITIONAL ITEM ADDED AFTER DISTRIBUTION OF PACKET

Agenda # 2

1). Letter from AT+T dated 12/18/13

Date 12/18/13
Time 4:00 PM

Kiss, Lisa

From: Brindley, Karen
Sent: Wednesday, December 18, 2013 3:30 PM
To: Kiss, Lisa
Subject: FW: AT&T preliminary comments re: proposed City wireless telecommunications ordinance
Attachments: AT&T Letter 12-18-13.pdf

Lisa,
Please ensure this comment letter is distributed to the Planning Commission and uploaded onto the website.

Thanks,
Karen

From: POWELL, KYLA C (Legal) [mailto:kc8424@att.com]
Sent: Wednesday, December 18, 2013 14:16 PM
To: Backoff, Jerry
Cc: Brindley, Karen; Scollick, Phil; OSBORNE, JOHN R
Subject: AT&T preliminary comments re: proposed City wireless telecommunications ordinance

Dear Mr. Backoff:

AT&T is conducting our legal review of the proposed revisions to the City of San Marcos Telecommunications Ordinance. Attached are preliminary comments based upon our initial review.

Thank you,

Kyla Christoffersen Powell
General Attorney
AT&T Services Inc.
1215 K Street, Suite 1800
Sacramento, CA 95814
(916) 341-3504 direct
(916) 642-5206 mobile
(916) 443-6836 fax

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Kyla C. Powell
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RECEIVED
DEC 18 2013
CITY OF SAN MARCOS
PLANNING DIVISION

December 18, 2013

Sent Via Email and Hand Delivery

Jerry Backoff, Director
Planning Division
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

Subject: Proposed Revisions to City of San Marcos Telecommunications Ordinance Chapter 20.465

Dear Mr. Backoff:

AT&T Mobility, LLC, as manager of New Cingular Wireless PCS, LLC ("AT&T"), provides some preliminary comments and objections to the City of San Marcos' draft Wireless Telecommunications Ordinance revisions. A copy of the draft Ordinance was only received by AT&T's representatives on December 10, 2013. AT&T and its consultants have not yet had an adequate opportunity fully to review and analyze the draft Ordinance during this holiday season. Accordingly, AT&T will submit additional comments and objections to the draft Ordinance in January 2014. By submitting these preliminary comments and objections, AT&T is not waiving its right to submit additional materials on the proposed City legislation later.

AT&T's preliminary objections and comments to the draft Ordinance include the following matters:

1. The requirements, regulations, restrictions and processes imposed in the draft Ordinance could impermissibly impair AT&T's rights and privileges under 47 U.S.C. section 1455(a) (the codified version of Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012), as well as the Federal Communications Commission's ("FCC") formal written guidance issued on January 25, 2013, about interpretation and implementation of the provisions of Section 6409 of the Job Creation Act.

   47 U.S.C. section 1455(a) and the referenced FCC formal written guidance require the City timely to approve co-location, replacement and/or upgraded telecommunications facilities that do not involve a substantial change in the physical dimensions of a base station. Numerous provisions of the draft Ordinance would impair AT&T's facility siting rights under 47 U.S.C. section 1455(a) and the referenced FCC formal written guidance and would therefore be preempted by applicable federal legislation and regulations.

2. The requirements, regulations, restrictions and processes imposed in the draft Ordinance could impermissibly impair AT&T's rights and privileges for timely processing and decisions for permit applications under the "shot clock" rules established by the FCC in its 2009 Shot Clock Order.

3. Sections 20.465.020A and 20.465.020B of the draft Ordinance could impermissibly impair AT&T's vested permit rights for facility modifications and upgrades relating to existing or previously approved cell sites within the City. These Sections of the draft Ordinance could also impermissibly impair AT&T's vested permit rights to activate certain types or bands of cell service related to previously approved permits and sites within the City.

4. Section 20.465.040B of the draft Ordinance could result in an effective prohibition of AT&T's services under the Federal Telecommunications Act of 1996 ("TCA")(47 U.S.C. section 151 et seq.) if a proposed cell facility is required to be placed in a location that is deemed by the City to be the "least visible to the public" or the "least disruptive to the appearance of the host property," but which deemed location(s) will not enable AT&T to fill a significant gap in service.

5. Section 20.465.040D.1 of the draft Ordinance could result in an effective prohibition of AT&T's services under the TCA based on the limitation of the maximum number of wireless telecommunications facilities that are permitted on a property within a residential or agricultural zone, as well as the minimum separation requirements for the facilities within those zones. Further, Section 20.465.040D.2 of the draft Ordinance could result in an effective prohibition of AT&T's services under the TCA based on the limitations on siting or locating a wireless telecommunications facility due to enhanced setback requirements.

6. Section 20.465.060A of the draft Ordinance could result in an effective prohibition of AT&T's services under the TCA based on onerous and irrelevant permit application requirements, including but not limited to the requirement to provide a description of the consumer features to be provided under a proposed wireless system (Section 20.465.060A.2) and the location of all existing and proposed cell facilities maintained by AT&T within the City (Section 20.465.060A.4).

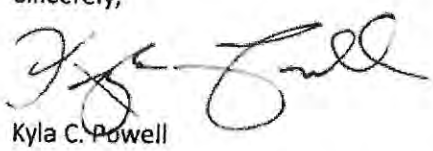
7. Section 20.465.070A of the draft Ordinance could result in an effective prohibition of AT&T's services under the TCA based on onerous and irrelevant permit design and development standards.

Again, these are only preliminary comments and objections to the draft Ordinance. AT&T will submit additional materials to the City about this legislation in January 2014.

AT&T respectfully requests that the City modify the draft Ordinance to address AT&T's comments stated above. AT&T also requests that is message be placed in the administrative record regarding the City's consideration of the draft Ordinance.

Thank you for your consideration of our concerns. We are happy to further discuss the issues we have raised and answer any questions you may have.

Sincerely,



Kyla C. Powell

cc: Phil Scollick, City of San Marcos City Clerk
Karen Brindley, City of San Marcos Principal Planner