



ATTACHMENT F
PUBLIC COMMENTS (RECEIVED BETWEEN JANUARY 15, 2015 AND JUNE 19, 2014)

Chapter 20.465 Draft Telecommunications Ordinance

Public Comment received between January 15, 2014 and June 19, 2014:

Letters

ATT (2)

Mr. Signorino

Mr. Clifton (2)

Mr. and Mrs. Brandon (2)

Mr. O'Boyle (Crown Castle Attorney)

Ms. Daigle (Verizon Representative)



Kyla C. Powell
General Attorney

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March 11, 2014

Sent Via Email

JBackoff@san-marcos.net

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

Subject: Proposed Adoption of City of San Marcos Urgency Ordinance No. 2014-1390, Extending the Moratorium on the Issuance of Permits for Wireless Communication Facilities in Certain Specified Locations.

Dear Mr. Backoff:

AT&T Mobility, LLC, as manager of New Cingular Wireless PCS, LLC ("AT&T"), provides the following objections and comments to the City of San Marcos' proposed adoption of Urgency Ordinance No. 2014-1390 – *Urgency Ordinance Extending the Moratorium on the Issuance of Permits for Wireless Communication Facilities in Certain Specified Locations*. Overall, AT&T is concerned that the proposed extended moratorium clearly runs afoul of mandatory deadlines for City actions on permits under federal law and wholly fails to meet the standards required for the proper adoption of urgency ordinances under state law:

1. Adoption of the Ordinance and the extended moratorium for over an additional 10 months will violate 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 ("Section 6409")), as well as the Federal Communications Commission's ("FCC") formal written guidance (DA 12-2047, January 25, 2013), about interpretation and implementation of the provisions of Section 6409, if AT&T submitted an application within the moratorium period.

Section 6409 and the referenced FCC formal written guidance require the City timely to approve co-location, replacement and/or upgraded wireless telecommunications facilities that do not involve a substantial change in the physical dimensions of a base station. Such mandatory approval of certain "eligible facilities" must occur within 90 days of submittal of an application consistent with the FCC formal written guidance. As such, any purported provisions in the extended moratorium that are contrary to the express direction under Section 6409 to process and approve applications for eligible facilities within 90 days are preempted and unenforceable.

2. Adoption of the Ordinance and the extended moratorium will violate AT&T's rights and privileges to have a possible application processed and an approval hearing held within the 90 and 150 day timeframes following an application submittal that are required by the FCC in its

2009 Declaratory Ruling (FCC 09-09, November 18, 2009) ("Shot Clock Order") if AT&T submits an application within the moratorium period. The FCC Shot Clock Order rules and time periods were upheld in *City of Arlington v. Federal Communications Commission*, 133 S.Ct. 1863 (2013).

3. Adoption of the Ordinance and the extended moratorium fails to meet the requirements of Government Code section 65858(c), which allows an urgency measure only if it contains findings: (1) that there is a current and immediate threat to the public health, safety and welfare and (2) that approval of any additional permits would result in a threat to the public health, safety and welfare.

Here, the City's proposed Ordinance makes only speculative and conclusory statements about such required threats. The City still fails to list any facts, let alone any substantial evidence, to support the alleged threats listed in the Ordinance at section 1(d), and no known facts exist. For example, no reasonable claim of a threat to public safety or health was known to exist as to the dozens of telecom facility permits that have been approved by the City in the last 10 or more years. And there is no known or documented rush of pending applications that have been received by the City that may trigger any supposed enhanced concern about public health, safety and welfare due to some sort of allegedly "threatening" issues related to those applications. Therefore, the draft Ordinance and extended lengthy moratorium does not come close to meeting the "current and immediate threat" requirements for passage under California law.

4. The City has an existing Telecommunications Facilities Ordinance, which it has successfully applied for many years, that provides all of the reasonable and necessary zoning tools to protect residential neighborhoods and agricultural areas with respect to wireless telecom facility applications. That existing Telecommunications Facilities Ordinance must continue to be applied by the City in the public interest (and subject to federal law) while a revised Telecommunications Facilities Ordinance is being refined.
5. The proposed lengthy extended moratorium itself could adversely impact the public health, safety and welfare to the extent it delays implementation of and upgrades to wireless telecom facility networks that provide 911 emergency service call capabilities and/or general communications capabilities for City residents and others traveling through the City. These networks are deemed to be national critical infrastructure by the U.S. Government. (See, 42 U.S.C. section 5195c(b)(2).) Thus, the proposed extended moratorium could adversely impact national critical infrastructure and the related emergency response and notification system. Such disruption would be inconsistent with national policy. Further, according to the FCC, more than 240 million 911 calls, or about two-thirds of all calls received by 911 centers nationwide, are made annually from mobile handheld devices in the U.S. (See FCC Press Release, entitled FCC Takes Action to Improve Wireless 9-1-1 Services, dated September 23, 2010.) Wireless infrastructure is required to respond to the City's public safety needs through facility installations and upgrades that will be now clearly be delayed by the proposed lengthy moratorium as described in Section 7 of this letter below.
6. The Ordinance's reference at Section 1(c) to the non-binding *Sprint Spectrum, L.P. v. City of Medina*, 924 F.Supp. 1036, 1040 (W.D. Wash.1996) case as support for an emergency moratorium ordinance here is off the mark. The *Sprint Spectrum* case involved an emergency moratorium adopted by a city just a few days after the Federal Telecommunications Act of 1996

("TCA"), (47 U.S.C. section 151 *et. seq.*), was passed back in 1996. The subject city, unlike the City of San Marcos, did not have an existing wireless telecommunications facility ordinance in place to regulate telecom facility applications. Under those circumstances, the Court found that the city reasonably adopted an interim emergency moratorium to address the new TCA and to allow it "to act carefully in a field with rapidly evolving technology." (*Id.* at 1040). No similar rationale supporting an interim moratorium applies to the City of San Marcos, which has had, and has successfully applied, a Telecommunications Facilities Ordinance for the last 17 or so years. Under these circumstances, the proposed extended moratorium is inconsistent with numerous court holdings that have struck down similar moratoria. *See, e.g., Masterpage Communications v. Town of Olive*, 418 F.Supp.2d 66, 78 (N.D.N.Y 2005); *Sprint Spectrum, L.P. v. Jefferson County*, 968 F.Supp. 1457, 1466-1467 (N.D. Ala. 1997); *Sprint Spectrum, L.P. v. Town of Farmington*, 1997 WL 631104, *6 (D. Conn. 1997).

7. Adoption of the ordinance and the extended moratorium will violate TCA section 332(c)(7)(B)(ii) regarding the City's requirement to act on a permit application "within a reasonable period of time." In addition, adoption of the ordinance and the extended moratorium will violate TCA section 332(c)(7)(B)(i)(II), which states that local land use controls "shall not prohibit or have the effect of prohibiting the provision of personal wireless services." Here, because the City has not yet developed a unified, final amended Telecommunications Facility Ordinance, and admittedly won't do so for many months, the City effectively doesn't have any currently operable zoning standards to apply to the processing of any existing telecom facility applications – even if the City determined to process a pending application during the moratorium period up to the point of a hearing for approval. Section 5(b) of the proposed Ordinance and extended moratorium states that "any new standards for Wireless Facilities and the permitting thereof that are adopted during the moratorium ... shall apply to all applications that have already been accepted by the City." (Emphasis supplied.) Given this language, City Staff will not be able to process a pending telecom facility application up to the point of a hearing when Staff knows that the zoning standards for telecommunications projects will be significantly changed within the next year. Therefore, any purported provisions in the Ordinance allegedly providing exemptions from the moratorium and allowing for the processing of some applications are illusory. The effect of the Ordinance and the extended moratorium will stop even the processing of all applications for telecommunications facilities to be located anywhere in the City.
8. The reference in Section 1(d)(3) of the proposed ordinance about justification for the extended moratorium based on the alleged need to investigate "alternative technologies" violates federal law. In *New Cingular Wireless PCS, LLC et al v. Town of Clarkstown*, 2010 U.S. App. Lexis 13364, *18-21 (2nd Cir 2010), the Court struck down local land use regulations that sought to provide an improper preference in city application processing and permitting decisions for DAS and microcell systems. Such a preference for the "alternative technologies" was held to violate TCA sections 332(c)(7)(B)(I)-(II), which prohibit discrimination among providers of functionally equivalent services, as well as proscribe actions that prohibit or effectively prohibit the provision of personal wireless services. Because the justification for the City's extended moratorium here is heavily based on the improper investigation of alternative technologies and the likely establishment of unlawful preferences for them, then the primary rationale for the moratorium fails.

March 11, 2014

Page 4

For the above-stated reasons, we respectfully request the City Council reject this proposed urgency Ordinance and the extended moratorium. Thank you for considering our comments. Please do not hesitate to contact me if you have any questions or need further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Kyla C. Powell". The signature is fluid and cursive, with the first name "Kyla" and last name "Powell" clearly distinguishable.

Kyla C. Powell

cc: Phil Scollick, City of San Marcos City Clerk, PScollick@san-marcos.net
Karen Brindley, City of San Marcos Principal Planner, KBrindley@san-marcos.net
Helen Holmes Peak, City Attorney, hhp@lfap.com



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April 21, 2014

Sent Via Email

JBackoff@san-marcos.net

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

Subject: *City Workshop of April 2, 2014 on Revisions to City Of San Marcos Wireless Telecommunications Facility Regulations, Chapter 20.465 of the City Zoning Ordinance*

Dear Mr. Backoff:

AT&T Mobility, LLC, as manager of New Cingular Wireless PCS, LLC ("AT&T"), appreciates the City's willingness to hold a Workshop on April 2, 2014, regarding the proposed revisions to the City's Wireless Telecommunications Facility ("WTF") Ordinance that is contained in Chapter 20.465 of the City's Zoning Code.

AT&T's representatives attended the entire City Workshop, and we have concerns about some of the issues that were raised, which we have delineated below. AT&T will also soon provide comments in response to the latest revised WTF Ordinance.

AT&T's comments about issues raised during to the City Workshop on April 2 are as follows:

1. **Concern over the apparent City preference for DAS technology.** Materials presented and comments by City representatives at the Workshop, including a lengthy PowerPoint and comments that the City is "promoting" DAS networks above other wireless telecommunications systems, indicate that the City intends to regulate and prefer certain technologies such as DAS under the pretext of reviewing aesthetics and other zoning-related matters.

A locality's preference for one form of wireless technology over another is improper and should be avoided in the revised City WTF Ordinance. In *New Cingular Wireless PCS, LLC et al v. Town of Clarkstown*, 2010 U.S. App. Lexis 13364, *18-21 (2nd Cir 2010), the Court

struck down local land use regulations that sought to provide an improper preference in city application processing and permitting decisions for DAS and microcell systems. Such a preference for those “alternative technologies” was held to violate Federal Telecommunications Act of 1996 (“TCA”), (47 U.S.C. section 151 *et. seq.*) sections 332(c)(7)(B)(I)-(II), which prohibit discrimination among providers of functionally equivalent services, as well as proscribe actions that prohibit or effectively prohibit the provision of personal wireless services.

2. **Proposal to mandate “DAS only” networks in certain areas of the City.** The small number of cell site opponents in attendance at the Workshop proposed that the revised City WTF Ordinance should mandate exclusive DAS network coverage within at least certain areas of the City, presumably residential areas. As discussed above, such requested regulations would improperly promote or prefer certain wireless technologies over others. In addition, such regulations would impermissibly seek to control AT&T’s business decisions about what technology is best suited and appropriate to address its customers’ service needs in an area.
3. **Costs associated with implementing a City-mandated solution to fill a significant coverage gap.** City representatives also stated during the Workshop that cost increases associated with installing, for instance, a DAS network rather than a macro cell site would not be an acceptable basis for a carrier decision not to use DAS technology. This is contrary to the law. The *City of Anacortes* decision by the Ninth Circuit in 2009 specifically identified increased costs associated with project alternatives as one valid justification for the carrier to implement a single macro cell site solution to close a significant coverage gap. *T-Mobile USA Inc. v City of Anacortes* 572 F.3d 987, 998 (9th Cir. 2009).
4. **Alleged “radiation,” community character, and property value impacts.** The cell site opponents made repeated and lengthy comments during the Workshop about alleged adverse impacts from wireless telecommunications facilities relating to “radiation,” community character, and property values. Again, no credible support for these statements was provided, and none exists. Moreover, such comments and concerns are improper. Localities are federally-preempted from regulating wireless facilities based on radio frequency emissions. 47 U.S.C. §332(c)(7)(B)(iv). Concerns over supposed impacts to property values based on the fear of health effects of RF emissions also are improper and unavailing. *AT&T Wireless Services of California LLC v. City of Carlsbad*, 308 F.Supp.2d 1143, 1159 (S.D. Cal. 2003). And generalized aesthetic complaints raised by cell site opponents are not sufficient to create a viable claim under environmental review regulations. *Porterville Citizens for Responsible Hillside Dev’t v. City of Porterville* (2007) 157 Cal. App. 4th 885, 903 (“‘expressions of concern’... about a possible impact on the overall aesthetics ... do not rise to the level of substantial evidence supporting a fair argument that [a] project may have a significant adverse aesthetic impact.”); see *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1352.

5. Proposal for significant minimum setbacks between cell sites and adjacent residences.

Cell site opponents proposed during the Workshop that the City Ordinance include minimum setbacks between cell facilities and adjacent homes of 1,200 feet, or nearly a quarter mile.

There is no basis for any form of increased setback regulations for a cell facility beyond those that are generally applicable to any structure. A cell facility must necessarily already comply with the height limits in a zone, be reasonably stealthed, and meet all FCC, noise and building code standards to be approved. Therefore, the proposed sizeable minimum setback requirements are arbitrary and unreasonable and appear to be based on the unfounded fears of RF emissions or "radiation," which is not a valid basis for local regulation, as noted above.

Further, significant setback regulations will make it much more difficult for carriers to fill significant gaps in customer service coverage, and thus will have the effect of prohibiting the provision of personal wireless services in violation of 47 U.S.C. §332(c)(7)(B)(i)(II).

6. Suggestions for onerous and unnecessary studies by third parties. Cell site opponents asked the City during the Workshop to include a provision in the new Ordinance to mandate that the carriers pay for independent and de novo third party studies about claimed coverage gaps and about alternative site analyses for any site in a non-preferred location. This burdensome and costly analysis would be above and beyond the traditional practice for the City to have its consultant generally review the carrier's information on those matters.

Mandated performance of such studies by third party consultants would violate federal law. Determination about the significance in a gap in service is fact-specific and is not subject to a uniform standard. *See, Metro PCS, Inc. v. City and County of San Francisco*, 400 F.3d 715 (9th Cir. 2005). It is also largely dependent on the customers' service needs within a carrier's integrated network. Likewise, a "least intrusive means" determination is made on a case-by-case analysis that also significantly depends on the customers' service needs and the costs to the carrier to meet them. Mandating the type of third party consultant studies suggested at the Workshop would require the carriers to divulge to a third party a large amount of proprietary and confidential business information about its operational technologies and its customers' service demands. This would violate a number of standards for the protection of private business data. The studies would also usurp the responsibility of City hearing bodies to make determinations on these matters and would impermissibly replace it with a decision made by a consultant.

7. **Cell facility network plans and further permit review requirements.** Cell site opponents suggested during the Workshop that the City should establish a separate "Citizens' Council" for cell sites, and that the City should develop 1, 3 and 5-year City-wide plans for cell facilities. Such suggested City central planning structure is unnecessary.

First, the "Citizen's Council" is presumably another planning body that would review applications for cell facility permits. This would be in addition to existing review processes performed by the Planning Department, the Planning Commission, and the City Council on certain sites. The added layer of review would even further delay the processing of cell facility permit applications in potential violation of FCC Shot Clock deadlines for timely decisions on cell facility permits.

Second, providing maps or data about AT&T's multi-year network plans within the City would require the public disclosure of proprietary business information. It would also be impractical and useless. Both cell facility technologies and customers' service needs are frequently changing. Consequently, the network maps for supposed future cell sites would be of little practical value. Further, requiring the public disclosure of maps showing the location of all of the carrier's current and future cell facilities would jeopardize the security of the carriers' networks, which also support the E911 system within the City.

AT&T respectfully requests the City consider these comments as it continues to prepare the version of the new WTF Ordinance that will be considered by the City Planning Commission. We welcome the opportunity to work with the City staff to discuss the legal and practical concerns raised in this letter.

AT&T also requests that this letter be placed in the administrative record relating to the new City WTF Ordinance.

Sincerely,



Kyla C. Powell

cc: Phil Scollick, City of San Marcos City Clerk, PScollick@san-marcos.net
Karen Brindley, City of San Marcos Principal Planner, KBrindley@san-marcos.net
Helen Holmes Peak, City Attorney, hhp@lfap.com

From: Kiss, Lisa
Sent: Thursday, April 03, 2014 9:24
To: Peak, Helen; 'aks@lfap.com'; Helen Peak (Outside Mail); Backoff, Jerry;
Brindley, Karen; 'kramer@telecomlawfirm.com'
Subject: Cell Ord. - Handout from Mr. Signorino .

Mr. Signorino provided this handout/recommendations at last night's workshop:



Cell Ord Signorino
Handout 04...

Lisa Kiss

Office Specialist III (Planning Division)
City of San Marcos | 1 Civic Center Drive, San Marcos CA 92069
(760) 744-1050 x. 3233 | lkiss@san-marcos.net

FREQUENTLY REQUESTED INFORMATION:

[Zoning Map](#) | [Municipal Code](#) | [Website](#)

RECEIVED

APR 02 2014

CITY OF SAN MARCOS
PLANNING DIVISION

Cell Ordinance Residents Recommendations Section 20.465

Overall Recommendations

- I. The City conduct a third party independent site analysis* if the carrier is proposing:
 - A tower in a non-preferred location
 - A Macro tower within a minimum of 1200 feet of resident(s)**
 - *Without this you do not have an enforceable ordinance*
- II. Maintain the residents protections in the January Ordinance... height, non-preferred designation, no clustering – Cell Farms – limits on towers per site, distance between towers....
- III. Mandate utilization of Small Cell and DAS technology*
- IV. In the "Purpose of Chapter" .010 "B" should say "protect the public health, safety, and welfare by reducing the size and visibility of telecommunication facilities...." Include the word "size".
- V. Establish a Citizen Council and an Integrated San Marcos 1, 3 and 5 year plan for responsible community cell coverage

*As in Delmar, require an independent analysis in addition to the carrier's site analysis at the carriers' expense and allow only DAS systems. ** If a home(s) is within this 1200 foot zone it must be mitigated with the home owners, if homeowner approve in would be permitted. AT 1200 feet the tower's noticeability is diminished – they note a singular noticeable object.

Specific Recommendations:

.030 B -1 the applicant must provide "technically sufficient and conclusive proof ... location is necessary" and include the "applicant must pay for the City's independent site analysis to confirm it is necessary and no better site exists and DAS systems cannot close the void within the City or surrounding area"

.040

"A" should state "Encouraged the use of DAS systems or the use of existing structures.....

"B" Remove height exception

"D" Modifications include applicant must pay for independent site analysis January ordinance

- Keep in the copy from the January City Ordinance
- Change matrix to Between 1 and 10 acres 1 WTF.... Between 10.1 and 20 Acres 2 WTF > 20.1 acres 3 WTF
- 4.2 Setback a minimum 20X (target 40X) the height of the tower this can be waived if they receive homeowner(s) approval

"F" Legal Access..... applicant/operator must show the applicant and owner(S)of the property and the road and easement owner(s) to the property... have granted legal access....

.050

6. Should include Double Peak Regional Park (not near DTRP)

12. Developed major multi-carrier sited include except if in an non preferred zone

"B" Insert "applicant must pay for the City's independent site analysis to confirm it is necessary and no better site exists and DAS systems cannot close the void make point (b) "that the void cannot be filled by DAS"

.060

" Insert "applicant must pay for the City's independent site analysis to confirm it is necessary, a DAS systems cannot close the void and no better site(s) exists" if in a non-preferred zone. This should be upfront and overall and in sections 1, 2, 15, 16

Point 1 DAS within first but not limited to a public right, second private non preferred zone

"7" Should include and analysis after completion confirming the estimates were not exceeded

"8" "multi DAS or sties can accomplish network coverage"

"12" Applicant must submit... legal access ... if private road or easements are necessary to reach the site the applicant must demonstrate that the other owner(s) have provided access

070

"A" first point should state the "design must be within the smallest least intrusive means possible to close the void within the City of San Marcos"

Paragraphs 2 and 3 should come before 1 and in point 3 "encouraged" should be "required"

Public Right of way section:

- Why prohibit medians and point 19 (may discourage DAS and provide rationale for a Marco tower).
- Point 9 and 10 "under no circumstance" language may force carriers to erect Macro Towers and reduce their ability to close voids with DAS systems... why do you promote colocation in one area and not in another. This "under no circumstance" language should be replaced with preferred one installation to a facility non-preferred two...

080

- Maintenance hour within 500 feet of residential and agricultural zones between 8:00 and 5:00
- Operators should provide the city every 12 months a report showing their site and surrounding sites (cumulative effect) have not exceeded the FCC's RF regulations for any areas around these sites.

090

Duration of Permit

"B" Should state "no longer needed or operating" must be removed

Carriers should provide an annual report to the city demonstrating their existing sites are still necessary and

There is no section in the ordinance on "Violations and Remedies"... this section and it should include:

- Fines for permit violations if not remedied within 30 days.
- Any misrepresentation of the permit process or reports to the city or significant violations will be remedied via fines and up to and including a withdrawal of the operating permit.

Wednesday, April 9, 2014

To: Mayor Jim Desmond
The City Council
The Planning Commission
Jerry Backoff,

The purpose of the San Marcos Cellular Ordinance is twofold. The first is to protect our city from the unsightly antenna arrays that cellular providers desire. If left unchecked, cellular providers will adorn every building, every corner, and every community with the most unsightly examples of "technology" because, quite simply, they can. A perfect example of this is the recently unregulated installation that is unshielded, unmasked, and located at the front entrance to our beautiful new high school.

The second is to protect our community (San Elijo/Questhaven Hills), as well as the next community down the road from becoming the site of a cell tower farm. The city and the residents need a mechanism in place that will enable a means to direct cellular providers to what is acceptable in our city and, specifically, near our homes.

The past failed ordinance attempted to, at the very least, address the latter point. This proposed/updated ordinance, if left unchanged, enables the cellular providers to locate facilities without any regard to property values and ultimately the look of our community.

It was mentioned several times during the Planning Commission meetings, as well as the City Council meetings, that the cellular providers are also part of our community. I liken this to the neighbor that rarely occupies their home, does not heed the CC&R's, doesn't maintain their house or yard (T-Mobile tower located at 2080 Golden Eagle Trail), and has a yard full of rusty cars on blocks. You can argue that it doesn't really impact property values, but the reality is that the closest homes to this particular neighbor will have a difficult time finding a buyer that doesn't care about this unsightly eyesore. This ordinance needs to enforce a plan for land use that is conducive to our community character. It should give guidance to the cellular providers as to what is acceptable in our community, and should be very clear; finding the most unobtrusive means to fill the gaps left in the current infrastructure.

The argument by the cellular providers is that we need more macro (large scale) infrastructure. Please take a moment to really think that through. Drive around and discover where the small gaps exist. They are few and far between. Although inconvenient, they need to be addressed by micro (small scale) solutions. The need for macro sites has, for the most part, passed, and therefore should be a last resort in San Marcos. Please take a drive up toward Riverside and note all the unsightly towers along the freeway. It is easy to imagine what our city will look like if this poor choice for land use is enabled to continue.

During the workshop, Jonathan Kramer stated that the DAS technology wasn't suited for our hilly community, when in fact, it was designed specifically to address hard to reach coverage sites that the macro (large scale) towers cannot serve. DAS technology was designed to flood corridors, serving as a type of repeater to fill in the "last mile" of coverage that we are trying to address here. This type of misleading council seemed to be aimed, once again, at increasing the case for additional macro (large scale) sites in our community.

Below are my suggestions as to how this ordinance can be amended to reflect the intent of our community.

.040

- It should state "Encourage the use of DAS or similar, micro (small cell) technology to supplement the existing macro (large scale) tower technology...."

.040

- It should not address acres specifically, but rather "setback from residential homes". Macro (large scale) cell towers or commercial facilities should not be allowed any closer than 600ft from any residence to keep from negatively impacting home values. The current lot size language and acreage chart enables a homeowner to locate the tower facilities up against a neighboring home site without any restriction. Current building code setbacks can be as little as 10 feet from property lines. This would mean a 10acre parcel could locate towers on the outskirts, effectively putting facilities within 20 feet of neighboring homes!
- The height restriction should not be debatable. What is acceptable by cellular carriers or the one neighbor (getting paid for the site) and the surrounding community will be totally different. Remember, once installed our community character is now changed forever! With the added height option, towers can be "Super Sized" to hold many carriers and cannot be effectively camouflaged. Tree heights need to be limited to the size of what locally grown (surrounding the site) trees will be at full maturity. This will limit the negative visual impact over time.
- All sections should not specifically call out DAS but "small cell" technology. Technology is rapidly changing and we want this ordinance to remain relevant.

.070

- The first point should state the "design must be within the smallest, least intrusive means possible to close the coverage gap".

On behalf of those in our community that are time constrained and cannot make these tedious meetings, I implore our Planning Commission and City Council to consider the future of our city. We can only control the path forward. Please take this matter seriously, and do not let our communities turn into an unsightly place to live. The truth of the matter is that the telecoms will continue to profit off all of us, but it is up to this city to protect our community character while providing a clear roadmap for cellular providers. Because the telecoms provide a valuable service, this ordinance needs to set clear guidelines so that our communities define the service we desire.

Sincerely,

Eric Clifton
760.580.4649

2050 Golden Eagle Trail
San Marcos, Ca 92078
eclifton@peaknrg.com

From: Backoff, Jerry
Sent: Monday, May 12, 2014 8:00
To: Brindley, Karen
Subject: FW: Draft Telecommunications Facilities Ordinance
Attachments: Planning Department Letter - 5-11-2014.pdf

Mr. Brandon's letter.

From: crf@att.net [<mailto:crf@att.net>]
Sent: Sunday, May 11, 2014 9:13 PM
To: Backoff, Jerry; Griffin, Jack; Desmond, Jim; Jones, Rebecca; Jenkins, Sharon; Jabara, Kristal; Orlando, Chris
Subject: Draft Telecommunications Facilities Ordinance

Dear Mr. Backoff,

Attached please find a letter we wrote for the Planning Department in advance of the Planning Commission Hearing regarding the draft wireless telecommunications facilities ordinance. We would appreciate an acknowledgement of receipt.

If you have any questions, or need further information, just let us know.

Thank you,
Jeff & Elaine Brandon

May 11, 2014

Jeff & Elaine Brandon
2080 Golden Eagle Trail
San Marcos, CA 92078

Jerry Backoff, Planning Director
City Council of San Marcos
1 Civic Center Drive
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JBackoff@San-Marcos.net

Dear Mr. Backoff,

The revisions to the Wireless Telecommunications Facilities draft ordinance represent a step in the right direction, but the draft still has a number of unnecessary and poorly based provisions that will discourage some of the best sites, burden carriers, and further hinder and delay the improvement of reliable wireless networks in our City. San Marcos has been waiting for decades for complete and efficient wireless networks. Networks that will help our community prosper and play an important role in protecting everyone's health and safety. The detrimental provisions in the draft ordinance are the result of flawed public input that does not provide a sound basis for inclusion. The goals of our immediate neighbors, the AT&T opponents who provided the input, are not compatible with the purpose of the ordinance and will prevent it from serving San Marcos in the best way possible.

The revised draft ordinance is still biased against Agricultural Zoning and equates it with Residential Zoning. This is a counter-productive step. We have provided testimony and materials to the City that clearly shows that this would not be an appropriate course to take and that it would hurt our community. City officials acknowledged the importance of this reality and the City Council recognized the distinctions and the benefits provided by Ag parcels for wireless development and questioned why the zones were being equated.

The reasoning offered as the basis for this unusual concept was that Ag parcels typically include a residence and can be near residential zonings. We have shown that Ag parcels are not defined by a residence, and being near residences is also true for a number of the current "preferred" locations in the ordinance. In addition, Ag parcels provide benefits that the preferred locations typically cannot. Due to their size, Ag parcels allow for larger separation from adjoining properties and more opportunities to construct facilities that blend-in with the surroundings. Ag parcels also provide some of the best elevations and technical locations in San Marcos. These locations will allow reliable networks to be completed using the fewest number of sites, resulting in the least impact on the City. Furthermore, rural areas are historically underserved and wireless development must be encouraged to correct this deficiency. Equating Residential and Ag zonings is not a standard or "best" practice. San Marcos needs to follow the lead of San Diego County and make Agricultural zoning a preferred location as well.

The preferred status given to locating sites in the Public Right-Of-Way (PROW) and for DAS technology would be counter-productive as well. DAS too would result in a larger number of sites in our City and more sites closer to homes. Like all objects in the PROW, DAS would cause a significant amount of visual clutter in the close and direct view of everyone traveling our roadways. This would amount to a large number of visual impacts for tens of thousands of people everyday. The following photos show an example of this type of visual clutter along a 1/2 mile stretch of road in Del Mar:

DAS Sites in the Del Mar PROW – Visual Clutter in close and direct view on a 1/2 mile stretch of Del Mar Heights Road.



Reducing clutter in the PROW has been a goal of most municipalities for many years. A single site in a more obscure area that can only be seen by a comparatively small number of people, and noticed by very few, is far better than the numerous sites in the PROW it would take to replace it.

Even more importantly, pushing DAS technology ahead of standard cell sites unnecessarily puts everyone's safety at risk. This is because DAS systems do not have long-term backup emergency power. During times of community emergency, we could be left without critical service. It makes no sense to risk public safety based upon a subjective opinion of what may or may not have the least visual impact. Particularly when the visual impact is already minimal using any reasonable standard and as shown by all of the people who have chosen to purchase residences in an area with a standard cell tower.

The AT&T opponents first learned about DAS in December and have been pushing the City ever since to include this provision. However, at the 4/2/14 Public Workshop after learning that it will not help them with their true goal as it relates to our property, they moved on to other topics. No valid reason exists to give preferential treatment to this technology. DAS should be reserved for special applications and to fill small gaps, just as it was designed to do. A well camouflaged standard site is a better choice for the community than the numerous DAS sites that would be needed to replace it. Not only does a standard site cause fewer impacts, it serves the community more effectively and efficiently, and still protects everyone during times of emergency.

As directed by the Mayor and the City Council, the ordinance needs to be developed from a citywide perspective for it to serve the community well. Unfortunately, it is clear that our neighbors and their self-driven purposes are still impacting a portion of the process. At the 4/2/14 Public Workshop for the revised ordinance, the public input was once again focused on our property. The question and answer session was dominated by comments about our site and our land. Our neighbors acknowledged that they want the ordinance to change what happens on our property and that the RF signal is their concern.

Considering restrictions based upon RF emissions is not only contrary to Federal Law, it is in conflict with science and common sense. Actual RF readings in the neighborhood and at the opponents' residences showed that the level was so low that it "could not be quantified." This was not surprising, our parcel allows the RF signal to originate a very long distance away from residences, and as a result, very little power is left in the signal by the time it reaches anyone. The scientific fact is that many of the electronic devices we all use result in hundreds or thousands of times more RF emission in our homes than that from cell sites. This has been clearly explained to our neighbors and they have elected to continue using these devices in their homes. One of the lead opponents who has been most vocal about RF concerns has even testified at a City hearing that he and his wife have chosen to have two RF emitting microcells in their home so that they can enjoy good cell service from two different carriers. Service they don't currently have without these devices due to the poor wireless coverage in our area. The sooner San Marcos gets complete wireless networks, the sooner they can eliminate the microcells and reduce the amount of RF emission they are exposed to in their home, without sacrificing the convenience they hold as a higher priority.

At the workshop, after being disappointed by the facts about DAS and learning that it would not be an appropriate alternative to standard sites in our neighborhood due to the terrain and size of the area, the opponents went back to their call for an extraordinarily large separation between cell sites and residences. A provision like this would prohibit many of the best locations in the City and also eliminate a number of the preferred locations in the ordinance from consideration. At the Planning Commission Hearing on

12/18/13 for the first draft ordinance, Mr. Kramer carefully and clearly explained to everyone that having a separation requirement from residences would be seen as regulating RF emissions and would not be allowed under Federal Law. The City's position on this was later confirmed by the City Attorney. Their wise judgment was validated and became incontrovertible when a lead opponent at the 4/2/14 Public Workshop testified that they wanted the separation based upon the RF signal.

When the opponents at the 12/11/13 Public Workshop first pushed for the enormous setback requirement from residences and Mr. Kramer explained that it would be in violation of Federal Law, they asked the Planning Department to include it anyway. They then went on to explain that the carriers would have the burden of fighting it in court and that they know from personal experience that lawsuits against the City are very expensive. Mr. Kramer dismissed the idea immediately and told them that the City would never use a tactic such as this and that it would be entirely inappropriate and unethical.

The new draft ordinance also has a number of other provisions not typically found in the ordinances of other municipalities. These items fail the cost/benefit ratio test and will discourage carriers from improving San Marcos first. Burdens such as annual RF reports, annual CUP compliance reports, and covering unspecified and unlimited costs for third-party reviews are not reasonable based upon history as it relates to these concerns and real-world application. Modern cell sites have never been shown to exceed Federal RF standards, the City has good resources in place to enforce compliance, and carriers would be at risk for covering a myriad of costs at the behest of small groups of people with only their own interests at heart. This was clear during the AT&T appeal when the opponents insisted on finding a "better" site, one even further from residences than our property. They then pushed for a specific location that would have put it closer to residences — just not their residences. The possibilities and resulting costs could be endless. Including provisions such as these are just discouraging nuisances that will delay service for our community and increase costs to all end-users, while providing no real value to anyone.

It is very important that the new ordinance encourages carriers to build-out dependable wireless networks in San Marcos first. This should be a stated goal of the ordinance, we have already waited too long for complete service in our City. It is an issue of not only convenience and commerce, it is an issue of health and safety. Provisions must be included in the ordinance to assure this goal. In addition, every provision in the ordinance must be carefully vetted to be sure that it does not hinder reaching this goal. Unless a restriction has an objective and clearly compelling purpose that serves the community in the best way possible, it is not worth risking anyone's safety over. It is unconscionable to do it for provisions that are subjective or arbitrary, provisions that will likely result in unintended consequences and get in the way of the Planning Department doing the job they do very well.

If you have any questions or need further details regarding these issues, just let us know, we can supply extensive background and documentation. Thank you for all of your efforts for our City and its residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff + Elaine Brandon". The signature is fluid and cursive, with a small cross-like mark between the names.

Jeff & Elaine Brandon

March 3, 2014

Jeff & Elaine Brandon
2080 Golden Eagle Trail
San Marcos, CA 92078

Jerry Backoff, Planning Director
City Council of San Marcos
1 Civic Center Drive
San Marcos, CA 92069
JBackoff@San-Marcos.net

Dear Mr. Backoff,

We are writing concerning the revision of the draft Wireless Telecommunications Facilities ordinance that your department is currently working on. We have presented information at the hearings and through correspondence that pertains to the development of the ordinance from a citywide perspective. Recently, it was suggested by City officials that we provide those details again directly to your department and include additional information we have learned that is important for the revision process.

As we have shown the City Council, the Planning Department has done a great job protecting our City's aesthetics and, as a result, negative visual impacts from cell sites are not a problem in San Marcos. Council members and other City officials agree that this is the case. The ordinance conversation as it relates to aesthetics is a "Straw Dog" that has been created by a small handful of our immediate neighbors who were told that aesthetics, due to federal law, is the only grounds on which they can base a complaint. Prior to hearing this, they had expressed no aesthetics concerns and when buying their residences they chose to purchase properties near our T-Mobile cell site. Now, they are using complaints about visual impacts as a means to use the City to try to control what we can do on our property.

Nobody understands as well as we do, the impacts that developments have on a neighbor. Over the past decade we have experienced everything going in next door from individual residences to all of the items required for a massive housing tract. In addition to enormous visual effects, we are now impacted by noise, air and light pollution and we have lost our privacy. In contrast, state-of-the-art cell sites have very little impact on surrounding properties, magnitudes less than typical developments. And, unlike most typical developments that only benefit the property owner who built it, a cell site benefits everyone in the City. It actually increases the property values of the community as a whole. This is borne out by the professionals, like San Elijo Hills and Richmond American, who own high-end properties overlooking our cell site, but don't oppose them or how they look. They recognize that poor wireless coverage is a big negative for everyone.

To put any doubt to rest about how a "Straw Dog" can and has affected this process. In addition to cell site aesthetics, there was another "Straw Dog" created by the opponents that misdirected the City and resulted in a mistaken response. The opponents claimed that T-Mobile had made significant modifications to their cell site without City approval that changed its look. Their emotional testimony, like their aesthetics claims, drew in a number of other people who were then upset that big

corporations take advantage of the residents and the City, as if it were commonplace, and that they should not be allowed to get away with it. City officials responded again as if it were factual and took actions against T-Mobile. An AT&T representative at a Council hearing was even assured that AT&T would not be convicted of the "sins of other companies."

Anyone listening as it all unfolded would likely have accepted their claims and the City's response as the appropriate course of action. However, it was just another "Straw Dog" based upon falsehoods, a fictional storyline that carried the day and sparked action by the City. In reality, T-Mobile did not "sin" and the antenna retrofit, for which they had City permits, did not change the tree. The truth is clearly illustrated in this before and after photo:



Picture taken shortly after original completion in November of 2008.



Picture taken in January of 2014 after antenna retrofit.

T-Mobile has been unfairly portrayed and actions have been taken against them in response to unreliable information presented by people with a personal agenda. Taking action based on these "Straw Dogs" is unjust. Decisions should never be made during times of high emotion, most often it results in the wrong outcome for everyone and hurts the entire City.

The experience of the first draft ordinance has shown that the revision process must adhere to some key principals to assure that it serves the community well and does not tie the planning department's hands, preventing it from assuring the best results for the City. The City Planners are the experts. Blanket rules and "one size fits all" regulations do not take into consideration the many unique and complex issues that pertain to each individual property and situation. In the end, they lead to many unintended consequences that cause more negative impacts on the community.

Any new restrictions should be kept to a minimum and must be proven "best practices" in other similar communities that have a track record for accomplishing their intended goals without hindering wireless network development or property owner's rights.

The first key point we presented is that Agricultural zoned parcels are very different from Residential zoned lots and the ordinance must recognize that fact for the benefit of the City.



Ag zoning is not defined by the presence of a residence, but by the low density, open space, and many other allowed uses. The large parcels of primarily undeveloped acreage allow large separation from higher density areas. In our case, the cell site is over ten times the setback limits from our neighbors. The additional space also provides more opportunities to construct a facility that blends-in with the surroundings. In addition, Ag parcels in San Marcos provide some of the best elevations and technical locations. This allows the carriers to properly build-out dependable wireless networks with the least impact on the community - lessening the number of sites needed, further minimizing visual issues. In addition, Ag zones themselves need better cell service and getting coverage to these long underserved areas has to be made a priority. Ag zoning properties have many advantages over a number of the current preferred locations and should be recognized, as they are in the County, as preferred locations as well.

The second key point we have presented is Clustering. Any revision to the ordinance that moves away from this time-honored developmental practice would run counter to the stated purpose of the ordinance and hurt the City as a whole. Clustering has now been recognized by the City Council as something that is needed to lessen visual and all other impacts citywide and to not tie the Planning Department's hands, which would lead to more negatives in more areas of the City.

This photograph illustrates the current San Marcos and nationwide standard practice of favoring the clustering of sites and how it minimizes the effects on a neighborhood. The bright green trees represent a clustered cell site arrangement:

**Serving the Community with Clustered Sites
The Preferred Standard Practice**



Minimizes all Impacts on the Community

Placing new facilities at existing locations is the preferred standard practice, it allows multiple sites to have little, if any, additional impact over a single site. The following photo illustrates the added impacts if an ordinance revision varies from this standard and encourages or forces a new site to move into a new area:

Serving the Community with Non-Clustered Sites



**More Residences Near a Site
More Environmental Impacts
More Visual Impacts**

It has been suggested by the opponents that allowing too many sites on a property would result in a visually unattractive "Tower Farm" and they supplied a mock-up photo to illustrate their definition:



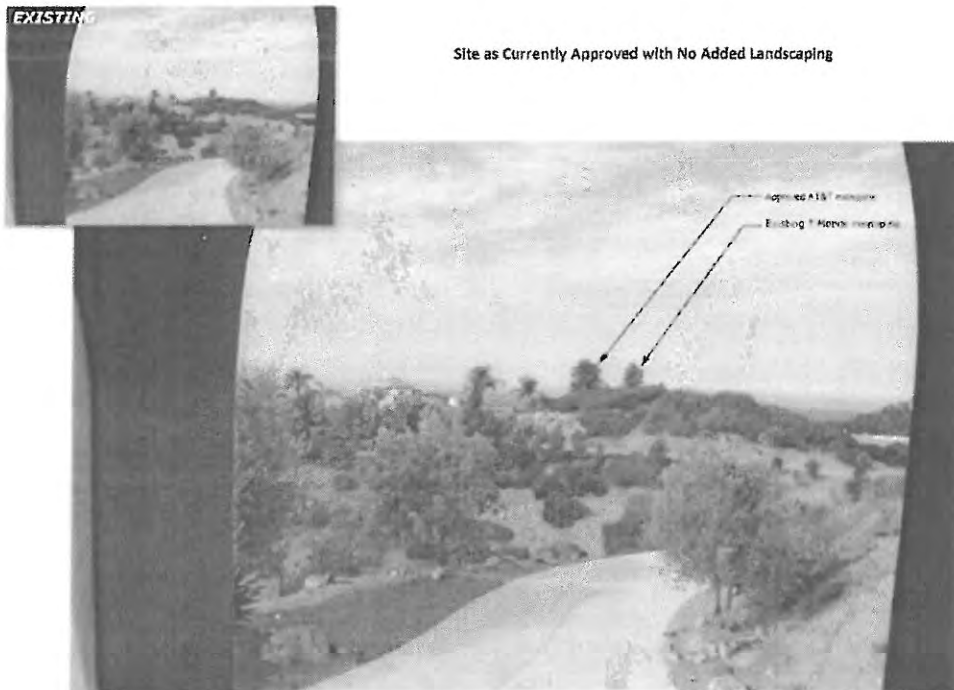
They also supplied other photos of the type of antenna installations that they feel are not appropriate for the City:



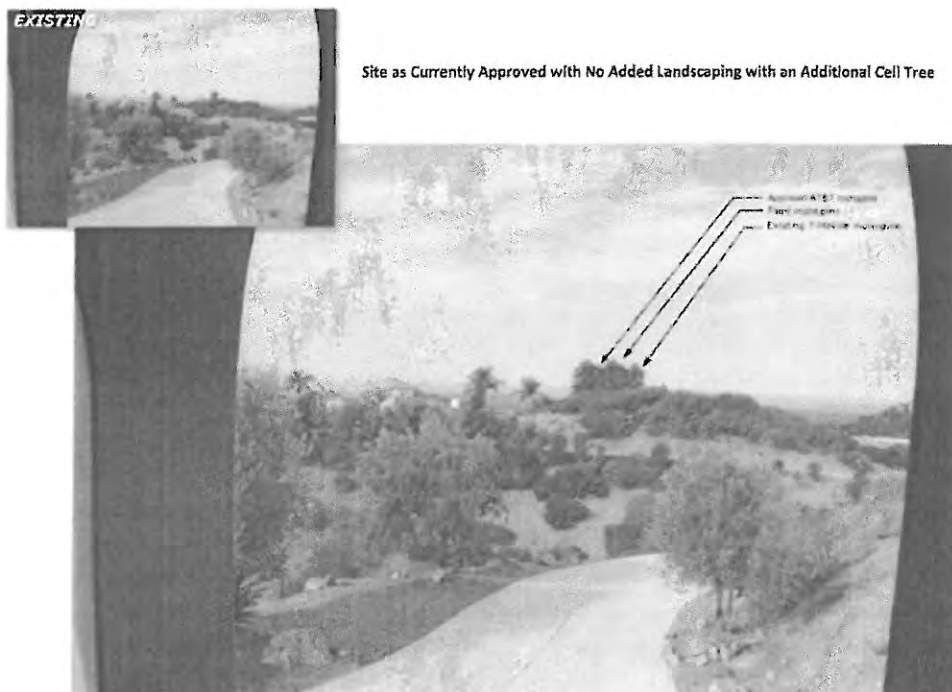
Everyone can agree that all of these are inappropriate, and the current ordinance has allowed the Planning Department to prevent modern cell sites in San Marcos from having visual impacts anything like these unknown antenna facilities.

To illustrate how the City benefits by placing a cell site at a location that already has a facility and takes advantage of a properly "clustered" arrangement, the following photos show what it would look like to add a third site on our property. The three sites are arranged in a triad, not a straight line, so they help screen each other while

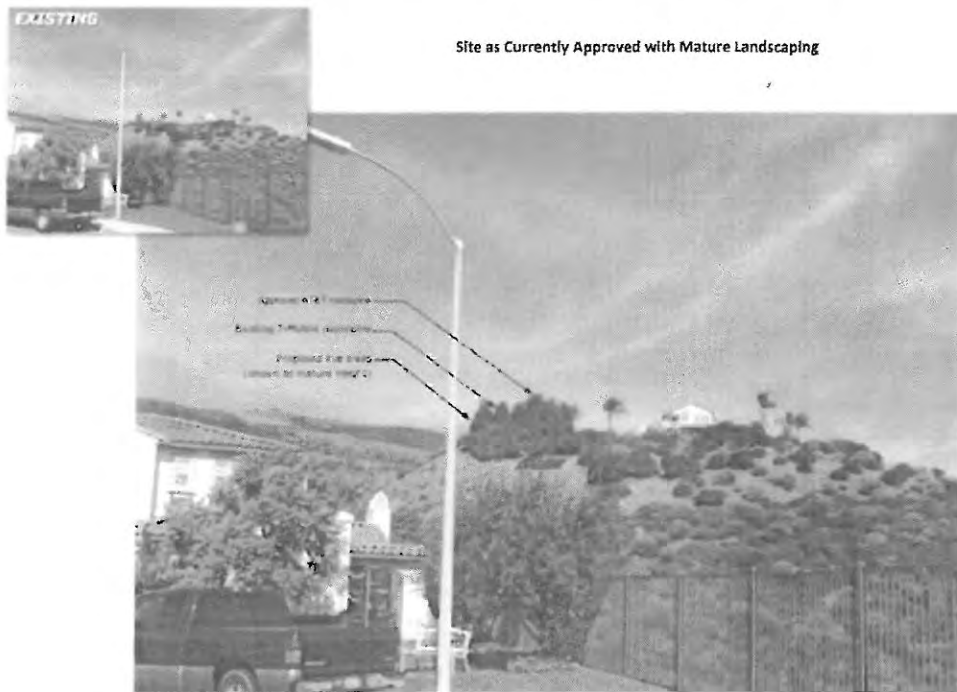
forming the cluster. This is the view with the two currently approved cell sites as seen from the lead opponent's residence, without the additional landscaping that will be incorporated:



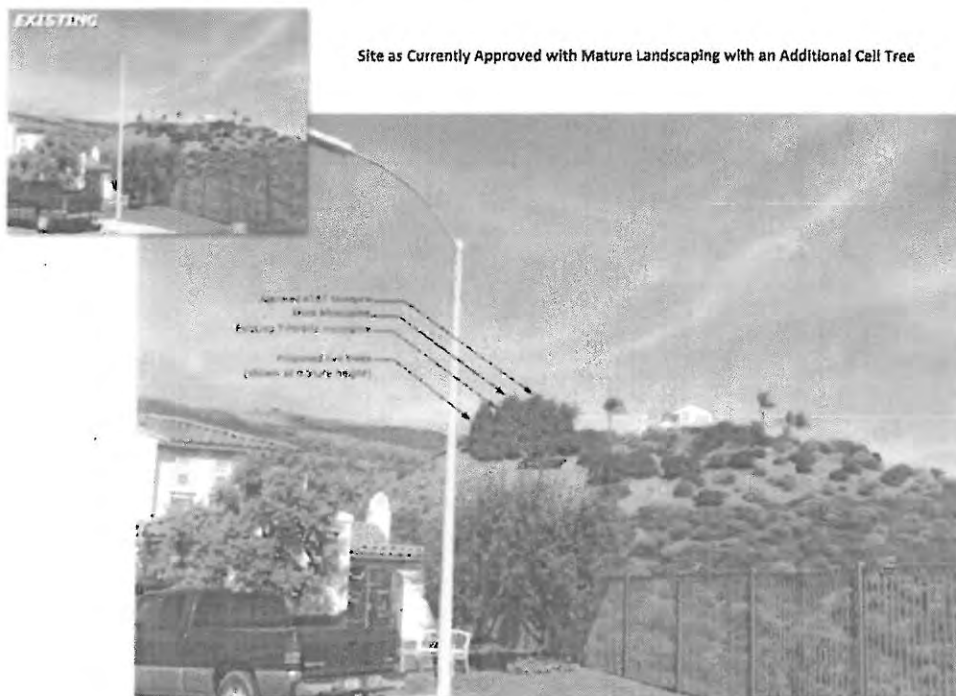
Below is the same view after adding a third cell tree of similar height in the clustered triad arrangement:



The next illustration shows the currently approved arrangement from the San Elijo Hills neighborhood with mature buffering landscaping:



Finally, the illustration below shows how adding a third site in the cluster with mature landscaping is almost indistinguishable:



The three site triad arrangement certainly has none of the negative visual impacts that concern the opponents as shown in their photos and "Tower Farm" mock-up. These illustrations clearly show that proper clustering provides the most aesthetically pleasing result while assuring that no impacts, visual, environmental, or otherwise, would be taken to a previously unaffected area in the City.

In addition, if anyone attempts to make a case contrary to the clear visual evidence provided above and still wants to set arbitrary limits on the number of sites per parcel, it should not be considered per the City Council direction. The Planning Department was guided to not include any novel restrictions and to follow the "best practices" of other area ordinances. After studying every ordinance mentioned by anyone at any of the City hearings and also the list of ordinances used to consider precedents on the first draft ordinance as provided by the City Attorney, we have learned that only two have any type of per parcel limit. Only San Diego County's ordinance limits the number of sites on a parcel in Agricultural zoning, limiting it to three sites, but also giving them preferred status and allowing more than three at the Director's discretion. As recognized by the City, San Diego County's A-70 zoning is functionally equivalent to our A-1 zoning.

Including a restriction on clustering that is more aggressive than San Diego County's would certainly not pass the nothing novel, "side-by-side" comparison test as requested by the Council. Trying to find an exceptionally restrictive outlier ordinance to justify it would not stand up to the "best practices" requirement and would simply be an effort to support a predetermined outcome for an agenda other than aesthetics, instead of learning from the experiences of other municipalities to benefit the City.

Further showing how limiting clustering would hurt aesthetics, if the federal guidelines for the new wireless facilities law follows the FCC guidance that was released last year, restrictions against or discouraging clustering would just lead to collocations without City input, resulting in taller structures such as this illustration:



This would be a less visually pleasing option. Just like the ordinances in practically every other city, clustering should not be restricted or discouraged if the goal is to have an ordinance that protects aesthetics in our City.

The third key point we have made is regarding safety. Ironically, safety has been given as a reason to try to stop cell sites due to misinformation about the RF signal. This is an unreasonable position as shown by science and even the actions of the people who have expressed the concern. The opponents requested and received RF surveys performed by a leading expert in the field and learned that their residences have cell site RF levels that are so low that they can't be quantified. This was not unexpected, cell tower RF signals are lower energy than visible light and are very low wattage, plus the energy level drops off rapidly with distance. All of the neighboring residences are very far from our site, hundreds of feet away, so having any effect from the antennas would have been the surprise.

Because a negative can't be proven, some people say that you can't know for sure about safety. However, after being informed that many electronic items they use emit hundreds and even thousands of times more RF signal in their homes than a cell site ever could, they have chosen to continue using those devices (cordless phones, cell phone handsets, Wi-Fi, laptops, etc.). In application, despite their words, they have shown that they too are satisfied with the safety of RF signals.

The legitimate cell site safety concern in San Marcos is not having reliable wireless networks for all of the carriers covering the whole City. This fact is incontrovertible, even though some have tried to convince the City Council otherwise. Contrary to their testimony, a T-Mobile site cannot receive 911 calls from handsets for all carriers. T-Mobile operates using GSM technology and there are other major carriers, Verizon and Sprint, that use CDMA technology. These technologies are incompatible and cannot "speak" to each other. Even if they could, there would still be capacity issues, especially during times of community emergency. In addition, there are emergency calls, and calls that can prevent emergencies before they happen, that have nothing to do with 911.

Safety must also be considered when studying new technologies that are being promoted as the "latest and greatest." While presented as panaceas, DAS and Small Cell require more installations, have many limitations, and are particularly unsuited for large, hilly areas. These systems have failed in many cases, resulting in spotty coverage and dead zones, multiplying the number of sites required to serve an area even further. Perhaps most importantly, systems that do not have back-up power capability will put the City at risk, especially grave risk during community disasters where long-term communications abilities are critical.

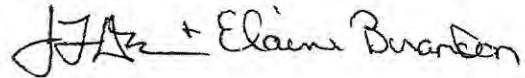
It is very clear, during times of community and personal emergencies it is critical to have reliable cell service for everyone, and San Marcos does not. Dead zones, dropped calls and capacity issues have been problems for decades in San Marcos. This needs to be corrected as soon as possible. Under the current ordinance's requirements and process, it takes too long to get a site up and running. The T-Mobile site on our property took 27 months from its inception, and the AT&T site is at 21 months and still counting, plus additional years if you include their previous efforts in our neighborhood.

First and foremost, any revision to the ordinance should encourage and expedite completing reliable wireless networks for the entire City. This must be the most important focus. San Marcos is a young and vibrant city that is growing. We need to have the competitive advantage and attract carriers to invest in our community first. The vast majority of residents want the improved convenience and safety benefits without delay. It is a quality of life issue that must be the primary consideration and not hindered by other interests.

Your thoughtful and careful efforts when addressing the wireless telecommunication facilities ordinance will make the difference as San Marcos moves forward in this rapidly advancing and competitive world. Please be sure to not get side-tracked by distractions and agendas that will not serve our community well.

Thank you for your consideration for our City and all of its residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff + Elaine Brandon". The signature is stylized and cursive.

Jeff & Elaine Brandon

From: Paul O'Boyle [pro@oboylelaw.com]
Sent: Friday, May 16, 2014 12:19
To: Brindley, Karen
Cc: sao@oboylelaw.com
Subject: Crown Castle Comment Letter on WTF
Attachments: Crown San Marcos Draft Wireless Ord Comment Ltr 051614 final.doc

Ms. Brindley,

Please disregard my earlier comment letter and use this version. Please call me if you should have any questions. Thank you.

Regards,

Paul

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May 16, 2014

Ms. Karen Brindley, Principal Planner
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

RE: San Marcos Municipal Code – Chapter 20.465
SMMC Title 20 / Case: P13-0065 (Text Amendment 13-001)
Comments on Draft Wireless Telecommunications Facilities Ordinance

Dear Ms. Brindley:

As outside counsel for Crown Castle NG West LLC ("Crown"), I have been a participant at several City public hearings and a public workshop regarding the above-stated Ordinance. Crown is appreciative of the opportunity to participate in the City's process, and is hopeful that its comments will assist the City in improving its Ordinance. Below are our comments:

Section 20.465.010 Purpose. A Paragraph should be added acknowledging the critical and beneficial role wireless telecommunications plays in our society. Whether for business, recreation or health and safety, wireless infrastructure is needed and wanted. The need for reliable cellular and mobile internet connectivity has never been higher. Not only are smartphone and tablet devices now ubiquitous, with social networking becoming commonplace, but even the FCC has recognized the usefulness of a reliable cellular signal for emergency purposes.

"The number of 911 calls placed by people using wireless phones has significantly increased in recent years. It is estimated that about 70 percent of 911 calls are placed from wireless phones, and that percentage is growing. For many Americans, the ability to call 911 for help in an emergency is one of the main reasons they own a wireless phone. Other wireless 911 calls come from "Good Samaritans" reporting traffic accidents, crimes or other emergencies. The prompt delivery of wireless 911 calls to public safety organizations benefits the public by promoting safety of life and property." www.fcc.gov/guides/wireless-911-services

Section 20.465.010 (A). The purpose of the Ordinance should not be to necessarily limit the number of WTFs. The purpose of the Ordinance should be to allow for the orderly deployment of wireless infrastructure, while balancing the community's desire to minimize potentially negative impacts of WTFs. Limiting the number of WTFs would not necessarily reduce those impacts to the community.

Section 20.465.020 (B). The last part of the last sentence, "when one or more new bands of services are activated", should be struck. The purview of the City is to regulate the time, place and manner of this land use, which includes aesthetics. The regulation of wireless frequencies is the purview of the federal government.

Section 20.465.020 (C)(1). If protecting the community character from aesthetic impacts is the objective, why then is the City exempting itself from complying with the Ordinance?

Section 20.465.030. First paragraph, the last part of the last sentence, references to new bands of services should be struck. The rationale given above for Section 20.465.020 (B) is applicable.

Section 20.465.030 (B)(2)(c) and (d) Factors such as proximity to "residential uses" and considering "uses" on nearby and surrounding properties should be modified to reference the underlying zoning. It is poor planning to allow existing non-conforming uses to interfere with the orderly and planned development of the City.

Section 20.465.040 (A) The end of the first sentence, "when Federal requirements can be met" should be struck.

Section 20.465.040 (A) The Second sentence should be modified to state that WTFs should be in scale with the surrounding "environment", not just buildings and trees.

Section 20.465.040 (B) The design goals for WTFs should be modified, WTFs at the "shortest minimum height technically feasible" may not result in the best aesthetic outcome. For example, Pole top extensions which some jurisdictions prefer would not be allowed. In addition, WTFs should not be placed in a "location least visible to the public" but should be placed instead in a location that creates the least visual impacts on the community.

Section 20.465.040 (C) (3)(ii) The minimum number of utilities on a pre-existing wood utility pole should be struck. A wood utility pole is a wood utility pole, is a wood utility pole.

Section 20.465.040 (F) Applicants for Right-of-Way ("ROW") sites should be clearly exempted from this requirement so long as they can prove that they have legal authority to occupy the public ROW. [i.e. Certificate of Public Convenience and Necessity ("CPCN") holders].

Section 20.465.050 (A)(2) would WTFs on public facilities be required to go through a discretionary process?

Section 20.465.050 (B)(2) Allowing existing non-conforming uses to interfere with the orderly and planned development of the City is poor planning.

Section 20.465.050 (C). The thought that a WTF can be located in both a preferred and discouraged location at the same time seems, counter-intuitive?

Section 20.465.070 (A)(2) The concern should not be the size of the antenna but instead the visibility of the WTF. It would be difficult, if not impossible, for the City to determine whether the wireless provider was using the "smallest antennas possible". Granted, antennas have gotten smaller as technology advances. People, however, are using their wireless devices to do more and more. The result is antennas are not necessarily getting smaller. Antennas must do more things and the wireless spectrum, to which carriers have paid billions to the government, need to be optimized. It is probably best that the City concentrate on aesthetics generally.

Section 20.465.070 (A)(2) Last sentence should be modified to read that WTFs shall be designed and located to hide the installation from "predominant public views". Unless protection of private views is codified elsewhere in the Municipal Code, "views from surrounding properties" should be struck. The regulation of private views can become a slippery slope.

Section 20.465.070 (E)(b)(ii) and (iii) Vaulting creates a number of challenges. Water in underground vaults can create electric reliability issues. In addition, vaults require vents, sometimes up to 3-4 pipes, that protrude out of the ground creating aesthetic concerns and tripping hazards, not to mention the potential reduction in life expectancies of roads and sidewalks.

Section 20.465.070 (E)(6) Same Vaulting comment as above.

Section 20.465.070 (E)(7) A proposed pole that would be less than 10% increase over the pre-existing pole should not be considered a replacement pole. This would bring the Ordinance in line with FCC guidelines and the Middle Class Tax Relief Act (Section 6409).

Section 20.465.070 (E)(9) Potentially limiting WTFs to one per pole or City structure is contrary to the commonly accepted belief that WTFs are better collocated. More flexibility should be written in, or at least 2 WTFs per pole to be consistent with Section 20.465.070 (E)(18)

Section 20.465.070 (E)(11)(d) states that multiple streetlight poles may be necessary to obtain a desired coverage. This call for multiple locations contradicts the stated purpose of the Ordinance in Section 20.465.010 (A).

Section 20.465.070 (F)(4) The challenges of protecting "views from adjacent properties" is applicable here.

Section 20.465.100 (B) The renewal of WTF should be evaluated on its benefits to the community vs. its impacts to the public. Adjacent properties are but one constituent group or stake holder.

Section 20.465.180 Definitions. The term Applicant should be modified to include utility companies regulated by the Public Utilities Commission ("PUC").

Section 20.465.180 Definitions. The term Panel Antenna limits its size to 24-inches in length and having a pole off-set of no more than 8-inches from pole to antenna face. Such restrictions limit the ability of wireless providers to meet end user demand for wireless services. Consequently, this will lead to more, not fewer, sites.

Crown looks forward to continue working with the City, residents and businesses in developing an Ordinance that meets the needs of all stakeholders. If you have any questions or need additional information regarding these comments, please do not hesitate to contact me. Thank you.

Sincerely,

Paul R. O'Boyle

From: "lesliejdaigle@aol.com" <lesliejdaigle@aol.com>

Date: May 19, 2014 at 10:05:18 AM PDT

To: "Jones, Rebecca" <RJones@san-marcos.net>

Subject: Follow-up Information on draft ordinance

Dear Vice Mayor Jones:

Thank you for speaking with me regarding the City's proposal to regulate wireless telecommunications facilities (WTF). I stated to you that I would follow-up our conversation with additional information.

1. The City will be well served by approaching WTFs as they do other land uses. Establishing locational and siting criteria is key to a land use paradigm. The core issue is how to deliver communication services to residents, visitors and businesses in an aesthetically acceptable condition.

Local land use criterion has been an effective structure over a long period of time. The draft introduces unnecessary engineering and federal legal standards that will result in the on going use of independent consultants to evaluate information that is in the purview of the federal government. Portions of the draft ordinance even try to re-write federal law.

2. The City should bifurcate the Public Rights of Way (PROW) from private property subject to Zoning. State law views the two as apples and oranges and City departments (Public Works or Planning) divide the administration of the two areas. Most cities have separate Ordinances for the PROW and zoned property. Some cities do not have an Ordinance for the PROW.

The attached written discussion points are a springboard to problem areas of the Ordinance:

1. The first discussion point focuses on the administrative WTF permit, which is poorly defined in the draft ordinance. Currently, administrative WTF permits in San Marcos are essentially a building permit. We would like to see this practice continue and the draft ordinance clarified to state as much. Otherwise, the administrative WTF permit is merely a CUP in disguise.

2. The second and third discussion points focus on right-of-way and DAS. Right-of-way should truly be the subject of a separate ordinance, as is the case in most

jurisdictions. Accordingly, DAS should not be an alternative for private property sites and vice versa.

3. The other discussion points are self-explanatory, but the administrative WTF permit issue comes up again in Item 5. A truly administrative process should not require submittal of coverage maps and other technical data related to the network.

Thank you for taking the time to speak with me. Verizon Wireless appreciates your thoughtful consideration of the issues related to the draft ordinance.

Link to draft ordinance:

<http://www.san-marcos.net/modules/showdocument.aspx?documentid=9041>

Sincerely,
Leslie Daigle
Verizon Wireless Representative
(949) 233-4869

Verizon Wireless – Discussion Points
City of San Marcos Draft Wireless Telecommunications Facilities Ordinance
Workshop April 2, 2014

1. The Draft Ordinance must clarify that the Administrative Wireless Telecommunications Facility Permit under Draft Ordinance § 20.465.030(A) is processed in the same manner as under current Zoning Ordinance § 20.465.040 – *Permit Procedures for Telecommunications Facilities*. Otherwise, procedures for an Administrative Wireless Telecommunications Facility Permit are unclear.
2. The Draft Ordinance must accommodate Verizon Wireless’s state-mandated right to place facilities in the public right-of-way under CPUC § 7901 subject only to limited “time, place and manner” restrictions under CPUC § 7901.1.
 - Location criteria under Draft Ordinance § 20.465.050 cannot lump facilities in right-of-way (which Verizon Wireless has a state-mandated right to occupy) with locations on public and private land that may be subject to local use restrictions. The City does not have the authority to require Verizon Wireless to select between these two alternatives.
3. The Draft Ordinance must not dictate technology by requiring distributed antenna systems (“DAS”) over non-right-of-way facilities.
 - New additions to Draft Ordinance §§ 20.465.040(D)(1) – *Siting Requirements and Guidelines* and 20.465.050(B) – *Discouraged Locations* state a clear preference for “facilities such as Distributed Antenna Systems” over any sites that exceed acreage limitations or discouraged locations, in clear violation of the holding of *New York SMSA v. Town of Clarkstown*, 612 F.3d 97 (2d Cir. 2010).
4. The Draft Ordinance should not rewrite federal law by redefining terms (such as “significant gap” and “least intrusive means” under Draft Ordinance § 20.465.180) created by federal courts. The Draft Ordinance should address areas within the City’s land use authority (e.g., location and design preferences) and otherwise remain subject to federal law without attempting to preempt or second-guess federal courts.
5. The Draft Ordinance should only require submittal information that is relevant to the City’s land use authority and that is necessary for an Administrative Wireless Telecommunications Facility Permit, or necessary to make required conditional use permit findings. Draft Ordinance submittal requirements not necessary for an administrative permit or that second-guess Verizon Wireless’s RF engineering are preempted by federal law and cannot be required, e.g.:
 - § 20.465.060(A)(1) “written documentation demonstrating ...Distributed Antenna Systems within the public right-of-way, were not technically or legally feasible”
 - § 20.465.060(A)(2) “description of the proposed wireless system and its consumer features...(i.e., cellular or PCS; voice, video, data transmissions, etc..)”
 - § 20.465.060(A)(8) “evidence...facility designed at a lower height combined with multiple sites can accomplish network coverage”
 - § 20.465.060(A)(15) “clear and convincing evidence....each such preferred location site was not technologically or legally feasible”
 - § 20.465.040(B) “same supporting documentation with the proposed Wireless Telecommunications Facility constructed to the underlying zone’s maximum height”

From: Eric Clifton <eclifton@peaknrg.com>

Date: May 26, 2014, 4:16:54 PM PDT

To: "Desmond, Jim" <JDesmond@san-marcos.net>, "Jones, Rebecca" <RJones@san-marcos.net>, "Orlando, Chris" <COlorando@san-marcos.net>, "Jabara, Kristal" <KJabara@san-marcos.net>, "Jenkins, Sharon" <SJenkins@ci.san-marcos.ca.us>

Cc: "del Solar, Sean" <SdelSolar@san-marcos.net>, "Backoff, Jerry" <JBackoff@san-marcos.net>, Planning Commission <planning.comm@san-marcos.net>

Subject: Re: Cell Ordinance comments from Eric Clifton

Mayor Desmond,

After receiving the latest version of the cell ordinance, I have drafted a letter trying to address why, if left uncorrected, this ordinance will do little to address this pending blight on our city.

I pray level heads will prevail, and I look forward to your response.

Sincerely,

Eric Clifton



2050 Golden Eagle Trail
San Marcos, CA 92078

Dear Mayor Desmond:

You have said that this cell ordinance is a *"citywide law and therefore should not address the 2080 Golden Eagle site issues directly"*. However, I would like to point out that not only are the few public notices that go out to the "greater city of San Marcos" limited to 500 feet of the 2080 Golden Eagle site, but also that the community around this site has put an enormous amount of effort and expense to have our concerns heard. This small group of San Marcos citizens has sacrificed our very little free family time outside of work at our own personal expense to try and make a positive difference for the entire city. Yet we are constantly met with a seemingly somewhat mocking disregard for our efforts. This new ordinance does little to reflect our efforts (cell farm in our backyard) or the core issue at hand: unsightly and irresponsible land use in our city.

Our request is quite simple...

Firstly, due to the increased focus on cell tower clustering, it seems that this "new version" of the ordinance was written to actually push towers into our backyard. If this is not the case, the remedy is simple, **increase the minimum acreage for clustering to 15 acres**. This would protect our small semi-rural area while serving the rural areas to the east that still have coverage gaps. If this version stands, the two currently approved towers at 2080 will grow to three; additional height will be requested and arguments made for the accommodation of four additional carriers, growing the facilities into three "mega trees" less than 200 feet from our homes!

Secondly, the "new version" also allows telecoms to submit for height restrictions to be waved. This will again allow "mega tree" towers that will never be able to be shielded by natural trees and carry multiple carriers very close to homes, truly making property values drop significantly more than towers shielded by trees of the same height. Again, **this can be addressed by allowing height limits only to be greater on sites that are no closer than 1000 feet from neighboring properties**.

Finally, the last portion I really do not understand is **why were unshielded antennas added in the "preferred" section to the public right of ways?** This small change further defeats the purpose of this whole initiative to try and conceal these facilities from public view.

Telecoms should act like good neighbors; they have the means to deliver service without turning our city into a barrio, and should do it because it is the right thing to do! Yet, here they are pushing/bullying the city and our community to protect their right to do whatever they please at the expense of our community. This is conducive of a thug, not good business, not a good neighbor, and certainly not acting with our community's best interest in mind. To this day, they have never once asked what the community wants or how they could accommodate. Their reaction is to use the threat of lawsuits to give them the right to dump on our city by whatever means they desire. This ordinance should reflect guidelines that support protecting our community from money grabbers, thugs, and looters that do not live here.

Please support your city members that actually make this their home and continue to try and voice reason, not profit, in an effort to preserve our community's character. We may be a small representation, but our voice represents a large portion of our city that is too busy with daily life to deal with this type of issue until it is directly impacting them. Quite frankly, they stand at the point in which the fight is already lost. Please hear our request and protect our city.

I am hopeful that you and the council will use good judgment in correcting this law to reflect these proposed changes.

Sincerely,

Eric Clifton

