



PV

Pat Venza

Fri 4/15/2022 12:39 PM

To: Oncall Planning



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Dear Planning Commissioners: This video is a must see before your meeting on the wireless ordinance. It is 44 minutes chuck full of great advice on what cities need to have in their ordinances to comply with both the FCC and the courts.

This highly respected New York telecom attorney has helped many California cities with essential elements to their wireless ordinances and this video offers excellent advice for city planners. Hope you find 44 minutes to watch as it will answer many questions and bring up other questions that you may want answers too. Thank you in advance for watching. Pat Venza

<https://www.youtube.com/watch?v=bKqB8wYY7cA>

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Attorney Andrew Campanelli 's Advice for Updating Local Wireless Ordinances, March 30, 2021

67 views

Feb 20, 2022

Active Link: [Attorney Andrew Campanelli 's Advice for Updating Local Wireless Ordinances, March 30, 2021 - YouTube](https://www.youtube.com/watch?v=bKqB8wYY7cA)

Oncall Planning

From: Pat Venza <[REDACTED]>
Sent: Friday, April 15, 2022 12:39 PM
To: Oncall Planning
Subject: Attorney Andrew Campanelli 's Advice for Updating Local Wireless Ordinances, March 30, 2021 - YouTube

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Attorney Andrew Campanelli 's Advice for Updating Local Wireless Ordinances, March 30, 2021

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Verizon Wireless Comments on Wireless Facilities Ordinance - Planning Commission Agenda Item 3, April 26 [Monterey]

Paul Albritton [REDACTED]

Thu 4/21/2022 5:08 PM

To: Oncall Planning <planning@monterey.org>

Cc: Kimberly Cole <cole@monterey.org>; CMO-City Clerk Office Employees <cityclerk@monterey.org>; Christine Davi <davi@monterey.org>

 1 attachments (225 KB)

Verizon Wireless Letter 04.21 22.pdf;

Some people who received this message don't often get email from pa@mallp.com. [Learn why this is important](#)

[NOTICE: This message originated outside of the City of Monterey mail system -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Dear Planning Commissioners, attached please find our letter prepared on behalf of Verizon Wireless providing comment on the draft wireless facilities ordinance to be considered at your meeting next Tuesday, April 26.

We urge the Commission to direct staff to incorporate our suggested revisions prior to recommending approval of the ordinance.

Thank you.

Paul Albritton
Mackenzie & Albritton, LLP
155 Sansome Street, Suite 800
San Francisco, California 94104
[REDACTED]

MACKENZIE & ALBRITTON LLP

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

April 21, 2022

VIA EMAIL

Chair Sandra Freeman
Vice Chair Hansen Reed
Commissioners Michael Brassfield,
Michael Dawson, Daniel Fletcher,
Terry Latasa and Stephen Millich
Planning Commission
City of Monterey
580 Pacific Street
Monterey, California 93940

Re: Draft Wireless Communications Facilities Ordinance
Planning Commission Agenda Item 3, April 26, 2022

Dear Chair Freeman, Vice Chair Reed and Commissioners:

We write on behalf of Verizon Wireless regarding the draft ordinance amending Monterey City Code Section 38-112.4, which regulates wireless facilities. We have previously commented on the City's wireless ordinances, and we emphasize that several provisions continue to contradict federal and state law. In particular, certain provisions contradict Federal Communications Commission ("FCC") regulations requiring reasonable design criteria for small cell facilities and streamlined approval of "eligible facilities requests" to modify existing facilities.

Since our last comments of October 2019, Verizon Wireless has licensed new frequencies from the FCC that have changed small cell designs and location requirements. Accordingly, the Draft Ordinance should be revised to accommodate multiple types of antennas for small cells on streetlight poles and utility poles in the right-of-way. Instead of lumping private property and right-of-way location preferences together, which contradicts state law, the City should adopt a distinct list of right-of-way location preferences qualified by a 500-foot search distance for any preferred options.

Absent substantial revisions, the Draft Ordinance will be subject to immediate challenge under state and federal law if applied to wireless facility applications in the City of Monterey. We urge the Planning Commission to direct staff to make the revisions we suggest prior to recommending the Draft Ordinance to the City Council.

The FCC's Infrastructure Order

In its 2018 Infrastructure Order, the FCC confirmed that a city's aesthetic criteria for small cells must be "reasonable," that is, technically feasible and meant to avoid "out-of-character" deployments, and also "published in advance." *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088, ¶¶ 86-88 (September 27, 2018). The FCC also found that that local requirements that "materially inhibit" service improvements and new technology constitute an effective prohibition of service under the Telecommunications Act. *Id.*, ¶¶ 35-37; *see also* 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II). In 2020, the Ninth Circuit Court of Appeals upheld these FCC requirements. *See City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, 141 S.Ct. 2855 (Mem) (U.S. June 26, 2021).

Our comments are as follows. We note that several Draft Ordinance provisions would allow deviations if an applicant proves that an overly-strict standard violates state or federal law (e.g., Sections F(10)(d) and J(2)(c)). That would require applicants to wait until the decision stage for the City's aesthetic determination on a proposed design, which would violate the FCC's direction that small cell aesthetic standards be "published in advance." By relying on such "exception" schemes, the City would concede that its standards are unreasonable and preempted. Instead, the City should ensure that the Draft Ordinance designs standards are reasonable prior to adoption. Verizon Wireless does not consider certain infeasible standards to be reasonable as drafted. While Verizon Wireless welcomes the concept of pre-approved designs, that cannot be a substitute for adopting technically feasible, reasonable design standards that are "published in advance" in the ordinance.

§ 38-112.4 – Wireless Communications Facilities

D(1). Use permit review. This provision requires a use permit for "eligible facilities requests" to modify existing facilities, but that is inappropriate. For eligible facilities requests, federal law requires approval if a proposed modification does not exceed the FCC's six "substantial change" thresholds. 47 U.S.C. § 1455(a); 47 C.F.R. § 1.6100(b)(7). The City may not consider other factors, such as subjective use permit findings or public objections. Therefore, a use permit is excessive because it involves preempted findings, public notice, a hearing, and a potential appeal, none of which are necessary to evaluate the "substantial change" thresholds. Further, the City must approve eligible facilities requests within 60 days. *We suggest that eligible facilities requests receive a simple administrative approval.*

We note that requiring a use permit for small cells, for which the FCC imposed a 60- or 90-day Shot Clock, would likely be unachievable where appeal rights are available. Many cities have developed special streamlined permits for wireless facilities in the right-of-way, such as San Francisco and San Mateo.

E(3)(s). Master plan. For small cells, the City cannot require a master plan of existing and planned facilities. Such information regarding evaluation of the need for a new small cell contradicts California Public Utilities Code Section 7901, which grants telephone corporations such as Verizon Wireless a statewide right to place their equipment along any right-of-way. Further, the FCC determined that small cells are needed to densify networks, enhance existing service, and introduce new services, which are Verizon Wireless's objectives in placing small cells in Monterey. Infrastructure Order, ¶ 37. A master plan addressing other network facilities is irrelevant to a pending application; each facility must be evaluated on its own merits. *This submittal requirement should be deleted.*

E(3)(u). Information supporting a claim that denial would violate federal law. While not required unless an applicant "contends that denial of the application would result in an effective prohibition under federal law," we note that this also contradicts the FCC's determinations regarding the need for small cells. Information such as "signal coverage maps," "geographic area that would be served," and review of alternatives is not pertinent to the FCC's finding that small cells are needed to densify networks and enhance service. Standards that result in unreasonable denials would "materially inhibit" service improvements, which the FCC found constitutes a prohibition of service. The FCC also disfavored dated service standards for small cells based on "coverage gaps" and the like, so the service area information sought by this provision is preempted. Infrastructure Order, ¶¶ 37-40.

City officials should not be making judicial determinations regarding the federal prohibition of service standard. Instead, the City should ensure that its small cell standards are reasonable at the outset, as required by the FCC. This would avoid legal disputes.

E(5). Application submittal appointment. This provision allows the Director to deny applications that they deem incomplete during a submittal meeting, but that directly contradicts the FCC's "Shot Clock" rules. Instead of instant denial, the Director must issue a written notice of incomplete application ("NOI") specifying any missing information. A timely NOI pauses the Shot Clock, which then resumes when an applicant responds. 47 C.F.R. § 1.6003(d). The Director would lack substantial evidence to automatically deny an application at intake, in violation of the federal Telecommunications Act. 47 U.S.C. § 332(c)(7)(B)(iii). *Instead of allowing a potential instant denial, this provision should be completely revised to incorporate the FCC's Shot Clock rules codified at 47 C.F.R. § 1.6003.*

F(3). General principle for all locations. Requiring facilities to be the "minimum size necessary to serve the defined service objectives" places the City in the position to dictate the technology used by wireless carriers. However, that would intrude on the exclusive federal authority over the technical and operational aspects of wireless technology. *See New York SMSA Ltd. Partnership v. Town of Clarkstown*, 612 F.3d 97, 105-106 (2nd Cir. 2010). The "minimum size" standard disregards the equipment volume allowances in the

FCC's definition of small cell, which are up to three cubic feet for each antenna, and up to 28 cubic feet for associated equipment. 47 C.F.R. § 1.6002(l). *This provision should be deleted.*

F(4)(b), F(5)(a)(ii). Height (private property sites). These would limit wireless facilities on private property to zone height limits, but the City should allow a modest increase consistent with Code Section 38-106, which provides height exceptions for various structures. These include church spires and electric towers. *We suggest allowing a 10-foot increase over zone height limits for rooftop facilities or freestanding stealth facilities.*

F(7)(b). Structure preferences (right-of-way). If strictly applied, the top preference for City-owned poles would contradict California Government Code Section 65964(c), which bars local governments from limiting wireless facilities to sites owned by particular parties. Verizon Wireless has the right to place its telephone equipment on joint utility poles as a member of the Northern California Joint Pole Authority. Small cell equipment is not "out-of-character" on utility poles, given existing utility lines and other infrastructure, and structure preferences used to deny this option would be unreasonable. *We suggest that the right-of-way structure preferences simply favor existing/replacement poles over new poles.*

To provide clear direction to applicants, the City should specify a reasonable search distance for any existing/replacement structure. *Applicants should be allowed to place a new pole if there is no feasible existing/replacement pole option within 500 feet along the right-of-way.*

F(7)(e), (f). Equipment underground or in ground-mounted cabinet. These provisions would require undergrounding of small cell associated (non-antenna) equipment unless a facility meets the strict requirements of referenced Code Section 32-08.04, that a facility be "stealth" or "integrated," or that undergrounding is infeasible. Otherwise, equipment must be placed in a ground cabinet, with only limited exceptions that are not based on reasonable dimension thresholds.

Both provisions contradict the FCC's requirement for "reasonable" small cell standards because small pole-mounted equipment components are not "out-of-character" among other right-of-way infrastructure. Utility poles commonly support electric transformers and other utility equipment. Further, undergrounding small cell computer equipment is generally infeasible due to utility lines already routed underground and the space required for active cooling/dewatering equipment. *We suggest that the City allow up to five cubic feet of associated equipment on a streetlight pole, or 16 cubic feet on a utility pole (consistent with Section F(7)(k)), before undergrounding is considered.*

F(7)(i). All antennas in pole-top radome. To be reasonable per the FCC's Infrastructure Order, the City's antenna standards must be technically feasible for new and emerging technologies, accommodating the antenna and radio models available from

manufacturers. In addition to the low-band frequencies currently in use, Verizon Wireless recently licensed mid-band and high-band frequencies from the FCC. These require different antennas. Accordingly, some small cells may involve several types of antennas, and up to three of each, facing different directions where they provide service.

This provision must be revised to accommodate multiple types of antennas on a streetlight pole or utility pole. For streetlight poles, Verizon Wireless may place a cylindrical “cantenna” that is already manufactured in its own sleek radome, along with small panel antennas underneath that cannot be covered in a radome because that impedes propagation of their higher-frequency signal.

For utility poles, Verizon Wireless may place antennas above and/or on the side of a pole. For side-mounted antennas, state safety regulations require at least two feet of horizontal separation from the pole centerline. Public Utilities Commission 95, Rule 94.4(E). Accordingly, Verizon Wireless may place one to three antennas on a cross-arm, facing different directions where they provide service. As noted above, some mid- and high-band antennas cannot be shrouded as that impedes signal propagation.

Given the above design requirements, this provision requiring all antennas within a single pole-top radome is technically infeasible and unreasonable. Some installations would be prohibited by the strict total volume limit of three cubic feet. (The FCC defined “small wireless facility” to include antennas up to three cubic feet *each*, 47 C.F.R. § 1.6002(l)). *This provision should be deleted. Instead, the City should provide for multiple antennas above or on the side of a pole, as described. Verizon Wireless would be pleased to provide examples of its small cell designs to serve as the basis for reasonable antenna standards.*

F(7)(k). Pole-mounted equipment cabinets. For utility poles, we suggest a modest expansion of the dimensions for pole-mounted equipment housing. On utility poles, equipment must be placed on a four-inch stand-off bracket that allows utility workers to safely climb the pole. The housing also must accommodate required radio units and cables while providing for air circulation. These factors require more width and protrusion than allowed by the Draft Ordinance, which imposes technically infeasible size constraints on pole-mounted equipment housing. *The allowed width, depth and total protrusion of equipment housing should be increased from 15 to 22 inches.*

F(7)(n). New support structures. Section (ii) implies that equipment must be placed inside a pole, which would need to be of wide diameter to enclose required radio units, leading to an awkward appearance. Instead, the City should allow the new pole design that Verizon Wireless has installed in various California cities, with radios and other non-antenna gear concealed in a base shroud. Because Public Utilities Code Section 7901 grants telephone corporations a statewide right to place and own their own poles along any right-of-way, the City cannot require a light fixture or City signage because they bear no relation to wireless service. However, Verizon Wireless may be willing to allow these

by mutual agreement. *The City should allow a new pole with a base shroud up to 20 inches square and four feet tall to conceal radios and associated network components.*

F(9)(a). Preference for City-owned or -controlled parcels. As noted above, Government Code Section 65964(c) bars cities from limiting wireless facilities to sites owned by particular parties. *This provision directly contradicts this state law, and it should be deleted.*

F(9)(b), (c), (e). Preference for private property over right-of-way. These provisions prefer private property sites (e.g., towers and buildings) over the right-of-way. However, because Section 7901 grants telephone corporations a statewide right to use any right-of-way, the City cannot redirect a proposed right-of-way facility to private property. To that end, the City should develop a distinct list of location preferences for the right-of-way. As noted above, the City should provide clear guidance by adopting a reasonable search distance of 500 feet for any preferred options, a practice adopted by many California cities. *The City should adopt new location preferences for the right-of-way, preferring industrial and commercial areas over residential and historic areas, while allowing a less-preferred location if there is no feasible preferred option within 500 feet.*

F(10). Special considerations (required effective prohibition showing for certain areas). The City cannot require Verizon Wireless to prove an effective prohibition of service to place small cells in certain areas, such as residential zones. As noted, the FCC found that small cells are needed to densify networks and enhance existing service. The extra hurdle of demonstrating an effective prohibition would “materially inhibit” these goals. *For small cells, the City should adopt the location preferences and 500-foot search distance suggested above, without requiring an “effective prohibition” showing.*

G(1). Applications for eligible facilities requests. For eligible facilities requests, the FCC allows cities to request only that information pertinent to determining if a proposed modification would fall under the FCC’s “substantial change thresholds.” 47 C.F.R. § 1.6100(c)(1). Some of the application submittals of referenced Draft Ordinance Section 38-112.4(E)(3)(a)-(r) are irrelevant: (c) public notice materials, (j) screening/landscaping information, and (r) undergrounding information. The City cannot require new landscaping or undergrounding of equipment as a condition of approving a qualifying eligible facilities request. *The list should be revised to exclude items (c), (j), and (r).*

J(2)(c). Finding that denial would result in actual or effective prohibition. As noted, City officials should not be making such judicial determinations, which could “materially inhibit” service improvements if applied to small cells. *This finding should be deleted.*

L(2)(i). Curtailed permit term for eligible facilities requests. The City cannot require that the permit term of an approved eligible facilities request expire on the same date as the prior permit for a facility. That would contradict Government Code Section 65964(b) that allows a 10-year term for wireless facility permits absent a substantial land use

Monterey Planning Commission

April 21, 2022

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reason. Modifications that result in no “substantial change” do not create a substantial land use impact. *This provision should be deleted.*

Verizon Wireless appreciates the opportunity to provide comment on the Draft Ordinance. We encourage the Commission to direct staff to make the revisions we suggest prior to recommending approval.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Albritton", with a stylized flourish at the end.

Paul B. Albritton

cc: Christine Davi, Esq.
Kimberly Cole

From: Pat Venza [REDACTED]
Sent: Thursday, April 21, 2022 10:32 AM
To: Clementine Bonner Klein <bonner@monterey.org>
Subject: Comments for Item #3 on April 26 Planning Commission Agenda

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Dear Planning Commissioners: Having been the VP and then President of the Monterey Vista Neighborhood Association at the time of the Extenet application, some 5 or so years ago, I remember a couple of things that I feel have to be emphasized in the new wireless ordinance.

The first is in Applications and Submittals (E.3.u.). Not only from our experience during the Extenet application, but also after watching the You Tube video of telecom attorney Andrew Campanelli, it is so important that "proof of gap" in service or "prohibition" be very specific. In the subsection iii or in v. the ordinance needs to specifically say that drive by test is required for this proof. "Providing maps" that are computer generated is not proof. It wasn't until the City of Monterey hired an outside company to do "drive by testing" was there proof of "no gap in service" within our neighborhood. Request that "drive by testing" be added to subsection iii or v.

Another way, that Mr. Campanelli suggested, is for the City to have on file a yearly "drive-by" test done by the City or City hired contractor. Why wait for each applicant to come in pleading that there is a gap when a drive-by test can be pulled out at the very

beginning of the application process to show that there is no gap or where there is gaps. The City should be pro-active in the process.

The second concern I have is about "mock-ups". In the "Planning Commission Agenda Report", Key takeaways include, it says, "One of the key changes between the subcommittee draft and proposed

ordinance is the elimination of the mock-up installations. It has been determined to be infeasible to meet this requirement with extensive engineering, permitting and installation requirements.” But then in section titled, Consideration, (O.2.) it does say: “....and provide such mock-ups as may be necessary to evaluate the impact of the design.” I remember that the MVNA mock-up, of all the devices that were going to be on the pole, was very powerful to the Commission, the audience and the newspapers. A visual is what most people understand. I hope that the commission will question the difference between what is said in the Planning Commission Agenda Report and what is in “O.2.” for clarification. We need mock-ups to talk to most of us who rely heavily on visuals. This is especially important since aesthetics is still in the control of the cities. I agree that a “mock-up” at each location would be too much to ask, but “A Mock-up” of the exact size, look, etc. is a reasonable request.

I want to thank the members of the Wireless Ordinance Subcommittee for all the work they did to improve this ordinance. None of the work they did should be deleted, or watered-down. It is important to all the people who fought so hard against Extenet that the City follow through with the direction from the Wireless Ordinance Subcommittee.

Thank you, Pat Venza
Monterey Vista Neighborhood Association member

From: [Paula O'Connor](#)
To: [Oncall Planning](#)
Subject: Old Town neighbor
Date: Saturday, April 23, 2022 3:42:55 PM

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We are property owners and long time residents and we do not support the cell towers near any school or residential neighborhood. Thank you, Mike and Paula O'Connor

Sent from Paola's I Pad

TO: Planning Commission-City of Monterey
FROM: City of Monterey resident, Jeana M. Jett
CC: City Council
RE: Wireless Communication Ordinance Update-2022
DATE: April 22, 2022

Why is it so difficult for appointed commissioners—and, in fact, elected council members—to understand and act upon the fact that the City of Monterey Residents do not want cell towers in their neighborhoods for many reasons?

The City of Monterey's proposed Wireless Communications Ordinance—as developed by the well-intentioned, well-represented, and tireless Draft Committee—falls short of protecting residents from the effects of cell towers installed in residential areas. It also falls short of protecting the City of Monterey from protracted lawsuits.

Sophisticated local governments rely on Smart Planning Objectives grounded in factual determinations as to whether wireless applicants have provided iron-clad, stringently researched, evidence-based data.

Sophisticated local governments incorporate procedural, factual guidelines into their written Wireless Communications Ordinances, thusly, protecting residents and minimizing lawsuits.

Note the following:

1. The Federal Telecommunications Act of 1996 states that local government has the right to regulate.

The City of Monterey should not fear lawsuits if its Ordinance designates and incorporates strong evidentiary standards (excluding “propagation maps” now judged in the 9th Circuit Court to be unreliable in field tests, and confusing due to reliance on proprietary software) and the specific factual evidence on which decisions are based. The FCC makes it clear that it does not wish to play a zoning arbitrator role when municipalities fail to designate specific criteria and evidentiary guidelines in their ordinances.

2. The City of Monterey Staff and the City “Director” as designated in the Wireless Communications Ordinance must themselves handle the applications rather than outsource this responsibility to consultants who may/may not have vested and/or monetary interests in the outcomes.

Staff and the “Director” must take responsibility for the content of reports and the required research.

3. If the City of Monterey considers hiring wireless communication consultants, Residents must be notified. Administrative decision-making must be eliminated from the Ordinance.

Please do not give away the City's powers of local control.
Strengthen the Wireless Communication Ordinance.

Thank you for your attention.

Jeana M. Jett, Resident of Monterey

From: [Katalin Markus](#)
To: [Oncall Planning](#)
Subject: Cell Towers
Date: Monday, April 25, 2022 11:07:23 AM

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[NOTICE: This message originated outside of the City of Monterey mail system -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Dear Planning Commissioners,

Please do not give permits to build dangerous cell towers near residential areas and schools in Monterey!
I'm a grandma and I want to save the furniture generation.
As you know cell towers pulsating microwave radiation.
A healthy life is more important than a profit for cell companies.

Thanks for understanding
Katalin Markus

Sent from my iPhone



Monterey Vista Neighborhood Association

Monterey, CA 93940

Web: montereyvistaneighborhood.org Email: mvneighborhood@gmail.com

4/22/2022

Dear Planning Commissioners,

Beginning on April 26, you will be making decisions about a revised wireless ordinance for the City of Monterey. MVNA hopes to impress upon each of you, the importance to residents of language adopted in order to:

- a. Maximize and preserve local authority and control over the placement and construction of wireless facilities guaranteed by the Federal Communications Act
- b. Protect and preserve the health, safety, quality of life, property rights and values of residents character, aesthetics, and property values of residents and neighborhoods.
- c. Retain the City's unique historic character and preserve and protect historic structures and resources.

The proposed draft, a hybrid ordinance, wherein the Staff has combined part but far from all of the Wireless Ordinance Subcommittee's adopted product. The Staff has and additions added by the staff after the subcommittee adopted its version. While there are sections with good, strong language designed to protect residential districts, there are parts of the original Subcommittee's version we would urge you to restore. These restorations will provide more rigorous requirements for applicants seeking preemption from local code requirements, claiming effective prohibition and non-existence of less invasive alternatives. This letter will focus exclusively on parts deleted by staff from the Subcommittee's version. This letter will be followed by a second letter urging you to add some new, stronger language not present in either draft. We wish to keep these categories separate to avoid confusion and overlong letters.

Let's start with sections of the Subcommittee's work that were unilaterally deleted by staff that should remain.

1. Under: Non Emergency Temporary Cell Towers...While not allowed in residential districts except in emergencies, it is foreseeable that locations immediately adjacent to residences or residential districts are possible. The committee felt it was very important for applicants be required to send a notice to locations adjacent to the proposed locations to provide written notice. Here is the requirement agreed upon by committee members:
 - d. Except in the case of permits issues pursuant to subsection d, within ten (10) days of filing of an application for a temporary wireless facility, notice that an application for a temporary wireless facility has been filed, the location and duration proposed for the facility and how the application may be viewed shall be mailed to owners of property that would be entitled to notice under provided consistent with Monterey City Code Section 38-159 based upon the location of their properties., but the permits are not subject to hearing or appeal.

This entire requirement adopted by the Subcommittee has been removed in the staff edited version. The Committee felt it was important that adjacent properties be provided notice of applications including purpose, duration, location and periods of operation. Temporary towers can be quite large, noise producing and emit RF radiation. Since the notice requirement would be at applicant's expense, we see no reason this requirement was removed and we request its reinstatement for non-emergency placement of temporary cell towers, generally used for event related commercial uses. We would also like to see a setback requirement of 1000 ft or more from residential structures.

2. Under "Applications" the Committee included a sentence that required that the legal notices identify the facility as a "wireless communications facility" because prior notices given to residents described the project without identifying it as such and seemed to deliberately withhold its true purpose and functionality. For some reason the staff unilaterally removed the portion underlined: "...notice shall state that the applicant is filing an application for a wireless communications facility." Previous brief descriptions failed to mention it being a wireless cellular facility with antennas. Residents were unclear what is being proposed nearby. We would like this requirement restored.
3. Under Hazard Compliance Certification the Subcommittee voted to require the following sentence that staff has removed. This was very important to representatives from neighborhoods living with High Hazard Zones: The documentation shall be supported by sworn statements attesting that the facility as installed will comply with applicable law. We would like it put back.
4. The Staff also deleted a requirement that was extremely important to high hazard neighborhoods and a deceased subcommittee representative scientist that was approved by the subcommittee, namely: The safety certification shall include a wind load analysis. This underlined sentence has been removed from the Staff's version. This is a common requirement in wireless ordinances. Here is a typical clause from the Calabasas ordinance:

"All installations shall be engineered to withstand high wind loads. An evaluation of high wind load capacity shall include the impact of an additional antenna installation on a pole with existing antenna."

5. The subcommittee worked long and hard on the possible requirement of a mock up of the proposed facility. This was important for several reasons. The City had already been blindsided by the size and intrusiveness of a proposed facility on Foam St. the scale of which was not evident in simulated photos and plans. Often these photo renderings are designed to be misleading and downplay visual impacts from all directions. To get a sense of the aesthetic impacts and scale during MVNA's response to thirteen sites, residents had to construct their own scale model and had to assemble it at the hearing inside chambers to demonstrate a realistic impact. Other use permit applicants may be required to erect story poles and boundaries of proposed structures and other cities have ordinances requiring mock ups, especially for rights of way sitings. The holding in *Portland v. US* specifically vacated the section of the FCC that attempted to require wireless facilities to be treated by the same as similar non-wireless equipment in the rights away and allowed cities to apply different aesthetic standards for wireless equipment, so this requirement should not run afoul of ninth circuit holdings. We would like the requirement when it is necessary to

provide the community a fair opportunity to assess the impact of a proposed facility. We would like the option of a required mock up as agreed upon by the City Council appointed Subcommittee to remain.

6. One thing the committee was adamant about was timely public access to applications materials on the City's planning website. This is the language the Subcommittee agree upon:

6. Applications Available Online. ~~The City shall cause to~~ Except where good cause has been shown, as determined by the Director, applications will be posted on the City website all complete applications within ~~three~~ five working days of ~~upon~~ filing or as soon thereafter as practical, along with communications between the City and the applicant regarding those filings (including additions and modifications to the filing). The City shall post notice promptly when the application is deemed "complete." The City's failure to post the applications by the time required shall not affect the validity of any application submitted under this section.

The stricken words were in the subcommittee's version. The underlined words were not. This is another example of a staff rewrite of sections of the Subcommittee's work with no legally required justification. The subcommittee wanted this iron clad requirement of timely posting of every wireless facility application, without exception. This was extremely important to members for transparency and public accessibility to applications as they come in. The language substituted by staff gives a director the right to determine on a subjective basis what applications get posted and which do not. What would possibly be construed as "good cause"? The three day requirement agreed upon is changed to five and at the discretion of the Director, not posted at all. It is important to note that many of the staffs and Directors application responsibilities for wireless facilities have been farmed out to an outside contractor. The public is entitled to be notified quickly of all wireless applications in an easily accessed location. Otherwise, the only notices available will those mailed only to those living within a few hundred feet.

It was the intent of the representatives on the subcommittee that staff post all wireless applications. This was not raised as problematic by the Director who was at every Subcommittee meeting. Phrases such as "or as soon thereafter as practical" are vague and imprecise and can be abused to avoid compliance. The underlined sections should be removed and this requirement left as adopted by the Subcommittee. These applications come with shotclocks which distinguish them from other types of permit requests and the public have a right to reliable and timely notification of newly pending applications.

7. There are also a few places where the word shall in the Subcommittee's draft has been substituted with the word "should" which is permissive and which the Committee sought to avoid wherever possible:

Staff draft page 13 letter d.: Facilities should; page 16 letter c. All equipment should; page 19 i Antennas should be placed...: & k. should be enclosed: page 21 8 c. The design of the facility should page 20: k cont. Equipment housing should be no greater than 15" deep...Equipment housing should be of a uniform depth. The Subcommittee request all "shoulds" be changed to "shall" but apparently several have not been and we may not have caught them all. We hope staff will be asked to do a word search or "should" and make these changes.

8. What follows addresses application requirements if applicants contend that denial of their application will constitute an effective prohibition and thereby preempt local codes and ordinances which should be avoided if possible. This is extremely important since this claim is inevitable raised and abused by applicants seeking to construct their facilities in disallowed locations or construct them in a manner that would otherwise violate local requirements as explained above. A requirement in the subcommittee adopted version included the following language:

“If applicant contends that denial of the application would result in an effective prohibition under federal law, or otherwise violate federal law such that a permit must issue, it must provide all facts that it relies upon for that claim. Applicant is not entitled to later supplement its effective prohibition showing except as the Director may permit, and the failure to submit information because applicant believes it may not be required to do so does not excuse the inadequacy of a showing. Where the applicant is not a wireless service provider, the information must be provided for the affected wireless service providers. Any affected wireless service provider must also have submitted a letter as required by subsection 38-112.4.E. 4.

The underlined portions have been removed by staff which is odd since this language was developed with the assistance of Mr. Van Eaton with staff present. We believe that the staff and public should be entitled to know all grounds being raised to support a claim of effective prohibition up front, not as a moving target, so as to be able to be informed and raise objections to their arguments if necessary. The second underlined sentence was meant to assure that in the frequent case of independent contractors such as Crowne Castle and Extenet, that are allowed to build facilities without providing wireless services to customers, that the server leasing the facility such as Verizon, AT&T and T-Mobile be required to validate the need for service they will be providing and be part of the application process and hearing especially when a prohibition of service argument is not made. A complaint of the Planning Commissioners during the Monterey Vista and Old Town applications was that Verizon was not required to attend, provide documents or validate claims of coverage gaps directly or answer questions from the Planning Commissioners. We believe this paragraph should remain as adopted by the Subcommittee.

As aforementioned, MVNA is sending a separate letter that includes recommendations for stronger language and added requirements that are found in other California ordinances we would urge you to adopt.

Thank you for taking the time to read and consider MVNA's recommendations.

Jean Rasch, President,
Monterey Vista Neighborhood Association



Monterey Vista Neighborhood Association

Monterey, CA 93940

Web: montereyvistaneighborhood.org Email: mvneighborhood@gmail.com

4/22/2022

Dear Planning Commissioners,

Protecting the City, the residents and the businesses of Monterey from the unreasonable proliferation of wireless facilities throughout our small town will require the strongest and most protective language permissible under the law. Not incorporating similar provisions has been the undoing of many once beautiful coastal communities too numerous to mention. Avoiding the Visual blight and the out of character placement of industrial looking wireless facilities is essential to the quality of life of everyone.

When exercising the City's constitutionally guaranteed right to regulate placement of such facilities, great care must be taken to preserve aesthetic beauty, historic character, and the aesthetic beauty that draws people here and supports our local economy and enhances property values. In doing so, it is important to keep in mind the non-discrimination clause in the Federal Telecommunications Act which means every approval sets an access precedent for all companies licensed to build similar facilities, not just AT&T, Verizon and T-Mobile. Once built, other federal laws demand no more than administrative approval for collocation of additional antennas and radio equipment added to the bulk, height and unsightliness of the original facility design.

MVNA learned a great deal about telecommunications laws and cases during the assault on our beautiful, historic neighborhood when threatened by a proposed densified network of thirteen cell towers; most embedded closely adjacent to homes, in high hazard zones, with no setback limitations, which, if allowed, would have threatened the aesthetics, safety and desirability of our neighborhood and set a precedent for all residential neighborhoods.

With the help of attorneys, scientists and engineers living in our neighborhood some of us read every applicable state and federal law and binding interpretations of those laws in cases brought before state and federal appellate judges which then become binding precedent unless overturned by state and federal Supreme Courts. We came before the Commission and testified that the claimed effective prohibition was bogus supported by the testimony of hundreds of satisfied Verizon customers within the area proposed to be served. This was further confirmed by the CTC drive by test that technically proved 100% coverage. Seaside and Carmel also denied applications over false claims of coverage gaps based on presented propagation maps. It is standard procedure for applicants to try to avoid local codes and ordinances if they can, by false and self serving claims of effective prohibition. These maps which the Ninth Circuit has referred to as "confusing and unclear" are not probative, especially when contradicted by customer testimony, field testing and the carriers own published coverage maps.

Additional proof that these maps do not accurately prove prohibition is born out by the fact that years later, with no new residential towers, no Monterey, Seaside or Carmel residents within the proposed area to be served have witnessed a reduction in the quality or coverage of their service years after unanimous denials from their Planning Commissions and City Councils. It is also telling that after denial, there was no follow up on less invasive alternative commercial locations a few blocks away.

Interestingly in Carmel, Verizon claimed a less invasive alternative location studied in a non-residential area could not fill its service gap, then came back two years later applying for a facility in the exact location to serve the same claimed need, saying they “made a mistake” the first time they denied its viability.

There must be strong language in ordinances that assures that applicants can prove by clear and convincing evidence that less invasive options are unavailable and that denial would actually result in a prohibition of telecom services by applicant, especially when the applicants are not service providers themselves, but are simply building as many facilities as possible as cheaply as possible to make as much money as possible leasing them to actual service providers.

The requirement for “Current signal coverage by providing maps showing existing coverage in the area to be serviced by the proposed facilities” is not the best way or even a reliable test of coverage. These maps are generated by the carrier’s proprietary software with whatever data the programmer enters and is not independently verifiable without access to this data and software. There is a simple and inexpensive test for specifically and reliably testing wireless coverage, namely a drive by test such as that conducted by CTC hired by the City previously. This test conducted independently can and should be required by any applicant claiming coverage issues or gaps in coverage. In our neighborhood over a thousand points throughout the neighborhood were tested that showed 100% connectivity at every point with no dropped calls. The staff’s draft ordinance stated, “In order to be treated as probative, maps shall be dated and based on data collected within the prior six months.” That is a good requirement for any maps submitted as evidence, but these propagation maps should never be referred to as “probative” for reasons stated above. This language was not in the Subcommittee approved draft. Please note that if the claimed prohibition of services could be proved by such maps, denial years ago in Monte Vista, Seaside and Carmel where all such maps claimed significant gaps, should have resulted in problematic or less than adequate service in the areas claimed to have such gaps. Years after denial, the same reliable levels of service have remained consistent.

From the Calabasas Ordinance:

“ ‘Significant gap’ as applied to an applicant's personal communication service or the coverage of its personal telecommunication facilities is intended to be defined in this chapter consistently with the use of that term in the Telecommunications Act of 1996 and case law construing that statute. Provided that neither the Act nor case law construing it requires otherwise, the following guidelines shall be used to identify such a significant gap:
A significant gap may be demonstrated by in-kind call testing. [Drive By Testing]

The commission shall accept evidence of call testing by the applicant and any other interested person and shall not give greater weight to such evidence based on the identity of the person who provides it but shall consider (i) the number of calls conducted in the call test, (ii) whether the calls were taken on multiple days, at various times, and under differing weather and vehicular traffic conditions, and (iii) whether calls could be successfully initiated, received and maintained in the area within which a significant gap is claimed.

A significant gap may be measured by:

The number of people affected by the asserted gap in service;

Whether a wireless communication facility is needed to merely improve weak signals or to fill a complete void in coverage;"

We would recommend a requirement for applicants to submit all approved, existing or planned locations for applicant carrier's or other carriers' facilities that could impact signal as well as help determine whether collocation on any existing or planned facility of any carrier might be a possible collocation site by applicant carrier.

MVNA agrees with a preference for undergrounding all equipment that can be.

The strongest possible ordinances such as those adopted in Calabasas, Petaluma and Costa Mesa must have reasonable setback requirements from peoples's homes and schools and between facilities. There are none mentioned in the proposed draft. Here are some examples taken as examples from other California City ordinances we would like to see setback requirements in place here as well. We would like to suggest two setback requirements we found in the Calabasas Ordinance. The first is to keep facilities out of the fall zone of any structure designed for human occupancy:

"A freestanding telecommunications tower or monopole shall be setback a distance of at least one hundred fifty percent of the height of the nearest structure designed for occupancy."

The second setback requirement applies to homes and more. Here are the setback requirements in the Calabasas Ordinance for example:

"All new wireless telecommunications facilities subject to a Tier 2 wireless telecommunication facility permit, shall be set back at least one thousand feet from schools, dwelling units, and parks, as measured from the closest point of the wireless telecommunication facility (including accessory

equipment) to the applicable property line, unless an applicant establishes that a lesser setback is necessary to close a significant gap in the applicant's personal communication service, and the proposed wireless telecommunications is the least intrusive means of doing so..."

In the Calabasas ordinance "Prohibited Locations" includes Ridgelines, Residential Zones, including parks and playgrounds, and Open Space. Applicants are required to present, "technically sufficient and conclusive proof that the proposed location is necessary for provision of wireless services to substantial areas of the city, that it is necessary to close a significant gap in the operator's coverage and that there are no less intrusive alternative means to close that significant gap."

Using appropriate post Portland V. US terminology if significant gap is not the current standard, we want to see setback requirements to homes and schools included in our local ordinance of at least 300 up to 1000 feet, with the added effective prohibition language preemption to allow for less of a setback only if required if applicant proves (not shows) this would result in an effective prohibition.

We would like our city to adopt stricter requirements than the language used in the submitted draft which requires “a showing”. The phrase “technically sufficient and conclusive proof” is much more in line with ninth circuit decisions which requires the evidentiary standard of “clear and convincing evidence” which goes well beyond a mere “showing” or the substantial evidence test which only requires a “scintilla” of evidence. While the City must only present substantial evidence to justify their denial, an applicant must prove by clear and convincing evidence that its application was illegally denied.

MVNA would like the applicant’s for wireless facilities especially in the rights of way, to be required to provide a site survey which we fail to find in the draft ordinance but existing in many if not most ordinances as an application requirement.. Here is suggested language which we believe will not only benefit the City in evaluating the project but help the public study the impacts of the proposed facility on surrounding structures, vegetation, streets, sidewalks, etc. The language below would provide a wealth of information and is a reasonable requirement. As mentioned before, the Ninth Circuit in the Portland case vacated the FCC requirement that wireless facilities should not be held to a different standard than other industrial type equipment in the rights of way as over-broad. Cities can and should regulate telecommunications facilities differently under this decision in part, the decision declared, because other utilities such as cable and electric operate under City paid franchise while telecommunications facilities operate under a State franchise with no local fees. Site Survey. Here is the recommended Site Survey requirement as worded in the Calabasas ordinance:

“For any new wireless telecommunication facilities proposed to be located within the public right-of-way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer or surveyor. The survey shall identify and depict all existing boundaries, encroachments and other structures within two hundred fifty (250) feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks, and other street furniture; and (viii) existing trees, oak trees, planters and other landscaping features;”

Another requirement we would like to see that we have found in multiple California ordinances is a maximum height limit increase of two feet (24”) above the current pole height to

accommodate top mounted antennas on existing or replacement poles, rather than the proposed 4 foot limit. This draft section also allows the height to be raised even higher if necessary or maintaining clearance from wires. We would like to see height increases more tightly regulated to avoid making equipment more visible, less stable and more likely to be seen in view sheds as well as putting them more out of alignment with neighboring poles.

As a final aside, but an important one, it is important that decision makers understand the City is protected from lawsuits for damages, or plaintiff attorney fees by the *Rancho Palos Verdes v. Abrams* US Supreme Court ruling that the only remedy available to denied telecom applications is that stated in the Federal Telecommunications Act, namely an expedited hearing before a court of competent jurisdiction and declaratory relief being an injunction for the City to issue the permit. It's also important to note that courts are generally very deferential to upholding such denials as long as they were based on upholding the City's reasonable adopted code requirements. It has become a standard scare tactic to make vague references to threatened law suits when the City's ordinance results in a denial or makes more expensive alternatives necessary but available such as building mounted in preferred areas that require more expense and annual leases to property owners. These threats are without merits.

Yours truly,
Jean Rasch, President
Monterey Vista Neighborhood Association

Dear Planning Commissioners,

As you may recall, I was one of the representatives chosen by the City Council to serve on their Wireless Ordinance Subcommittee. We spent over a year in meetings looking at various Ordinances, getting Joseph Van Eaton's input and that of City Staff every step of the way. He was there telephonically or in person for many if not most of the meetings. The process took so long that we lost two members living in the Monterey Vista Neighborhood, one due to a stroke at one of our meetings, and one who sold her house and moved to Oregon. The Director, Kim Cole was at each meeting and often Christine Davi.

In reviewing the proposed ordinance, I found it best to read the marked up version. Every cross out, and there are many, represents a staff decision to eliminate much of the original Subcommittee ordinance. Every colored text, and there is much of it, is new language added by the staff. The magnitude of changes, including many parts that have been unaffected by any intervening court decisions or changes in the law, have been changed or deleted from the Subcommittee's draft. At the City Council meeting when representatives were appointed, the directions were clear. The Subcommittee was to do the work, and make the decisions as to what would go into the ordinance that would then go to you, the Planning Commission for final tweaking and recommendation. The Staff were to be made available to make sure we complied with the Brown Act and answer the Committee's questions, but not make independent decisions regarding content. We understood that before a final draft was completed, our work would be subject to legal review which was done by Mr. Van Eaton before we disbanded. Paramount in the City Council's directive was the statement that we create the strongest possible ordinance, that maintains local regulative control permitted under the law.

Our MVNA President, Jean Rasch, has already sent you a fairly detailed list of those items removed from the Committee's draft we would like to have reinstated as well as a few new items omitted from both the staff's and subcommittee's drafts that we would urge the Commissioners to consider adding to application and other requirements that other California City's have added to their ordinances in the several years since the Subcommittee completed their draft. I will refer you to MVNA's letter rather than presenting a list of my own.

We, of course, noted entire paragraphs that were removed as well as small but important details within paragraphs. The Subcommittee worked long and hard on the mock up requirements for example. This whole section is simply deleted. I am sure the staff have their reasons, but staff was present at all our meetings and voiced no objections to the final version. I would like to see this requirement in place, at least as it pertains to rights of way applications which could be easily accomplished by erecting a faux utility pole on City land, publicly accessible to view as a mock up upon which to place scale models of proposed equipment.. Surely it is more reasonable to ask applicant to provide scale model boxes and cylinders than force residents to do so and drag them into chambers and reassemble them as we had to do at the hearing for the proposed wireless facilities in our neighborhood. Most of this equipment are, after all, simple rectangular boxes and cylinders not difficult or expensive for applicants to cobble together in order to give public and decision makers an accurate approximation of visual impacts in the same vein as story poles and/ or balloons are useful.

There is much if not most that can be retained in the staff's draft, and no one is expecting a start from scratch approach. But please consider the noted changes in the MVNA President's letter that we hope you to restore or changes/additions made we urge you to delete. Before this goes to Council for final review, please take your time do what you can to insure statutorily, to preserve the strongest possible local regulatory control over siting, design, construction and operational regulation of wireless facilities so that unbridled proliferation doesn't have its way with our fair and historic City and its neighborhoods. An option after you have made any changes, is that Andrew Campanelli's telecom specialty law firm, for a mere \$8500. will review a proposed ordinance and give recommendations, if needed, for additional language to assure it is the strongest possible under current laws. This is also who the residents' group in Carmel is using to help them advise the City. His recommendations are just that, the City can choose to adopt them or not. But he has done this for California

Cities and is completely versed in State and Federal Laws and important Ninth and other Circuit Appellate case holdings as well state appellate and Supreme Court holdings as well as FCC rulings. This is his specialty. This would be well worth the small expense to confidently assure the City decision makers, the staff and Monterey residents that we have included everything possible to protect and preserve our unique City.

Thank you,

Susan Nine, Former MVNA Board Member and Homeowner

Dear Planning Commissioners,

As you may recall, I was one of the representatives chosen by the City Council to serve on their Wireless Ordinance Subcommittee. I did so because the Council assured the Committee they would do the drafting a decision making that would then be sent to the PC as written. We spent over a year in meetings looking at various Ordinances, getting Joseph Van Eaton's input and that of City Staff every step of the way. He was there telephonically or in person for many if not most of the meetings. He conducted legal review of the final version before we disbanded. The process took so long that we lost two members living in the Monterey Vista Neighborhood, one due to a stroke at one of our meetings, and one who sold her house and moved to Oregon. The Director, Kim Cole was at each meeting and often Christine Davi.

In reviewing the proposed ordinance, I found it best to read the marked up version. Every cross out, and there are many, represents a staff decision to eliminate much of the original Subcommittee ordinance. Every colored text, and there is much of it, is new language added by the staff. The magnitude of changes, including many parts that have been unaffected by any intervening court decisions or changes in the law, have been changed or deleted from the Subcommittee's draft. At the City Council meeting when representatives were appointed, the directions were clear. The Subcommittee was to do the work, and make the decisions as to what would go into the ordinance that would then go to you, the Planning Commission for final tweaking and recommendation. The Staff were to be made available to make sure we complied with the Brown Act and answer the Committee's questions, but not make independent decisions regarding content. We understood that before a final draft was completed, our work would be subject to legal review which was done by Mr. Van Eaton before we disbanded. Paramount in the City Council's directive was that we create the strongest possible ordinance.

Our MVNA President, Jean Rasch, has already sent you a fairly detailed list of those items removed from the Committee's draft we would like to have reinstated as well as a few new items omitted from both the staff's and Subcommittee's drafts that we would urge the Commissioners to consider adding to application and other requirements that other California City's have added to their ordinances in the several years since the Subcommittee completed their draft. I will refer you to MVNA's letter rather than presenting a list of my own.

We noted entire paragraphs that were removed as well as small but important details within paragraphs. The Subcommittee worked long and hard on the mock up requirements, for example. This whole section is simply deleted. I am sure the staff have their reasons, but staff was present at all our meetings and voiced no objections to the final version. I would like to see this requirement in place, at least as it pertains to rights of way applications which could be easily accomplished by erecting a faux utility pole on City land, publicly accessible to view as a mock up upon which to place scale models of proposed equipment. It is more reasonable to ask applicant to provide scale model boxes and cylinders than force residents to do so and drag them into chambers and reassemble them as we had to do at the hearing for the proposed wireless facilities in our neighborhood. Most of this equipment are, after all, simple rectangular boxes and cylinders not difficult or expensive for applicants to cobble together in order to give public and decision makers an accurate approximation of visual impacts in the same vein as story poles and/or balloons are useful.

There is much if not most that can be retained in the staff's draft, and no one is expecting a start from scratch approach. But please consider the noted changes in the MVNA President's letter that we hope you to restore or changes/additions made we urge you to delete. Before this goes to Council for final review, please take your time do what you can to insure statutorily, the strongest possible local regulatory control over siting, design, construction and operational regulation of wireless facilities so that unbridled proliferation doesn't have its way with our fair and historic City and its neighborhoods. An option after you have made any changes, is that Andrew Campanelli's telecom specialty law firm, for a modest \$8500. will review a proposed ordinance and give his expert recommendations for additional language to assure it is the strongest possible under current statutory and case law. This is also who the residents' group in Carmel is using to help them advise the City. His

recommendations are just that, the City can choose to adopt them or not. But he has done this for California Cities with strong language. This would be well worth the small expense to confidently assure the City decision makers, the staff and Monterey residents that we have included everything possible to protect and preserve our unique City.

Thank you,

Susan Nine, MVNA Board Member and Homeowner

From: [susan.nine](#)
To: [Oncall Planning](#)
Subject: Corrected letter to PC re: wireless ordinance
Date: Tuesday, April 26, 2022 12:15:31 PM
Attachments: [susan's comment letter.pdf](#)

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Dear Jennifer, my hastily written letter sent yesterday contained typos and incorrectly identified me as a “former” MVNA Board Member. I meant to say, “Former MVNA President and current Board Member. Can you replace this corrected draft for the one sent yesterday in haste?

Thanks, Susan Nine

Sent from my iPad

4/26/22

Dear Commissioners,

I have already sent you written comment and agree with everything on the MVNA list of important changes to consider. But I would like to add a couple of additional considerations as you work on refining the ordinance. The current draft does not prohibit wireless facilities in Historic Overlay districts nor on historic building. It does require they not be visible at ground level but that allows visibility from higher elevations or taller buildings. Our precious adobes and other structures are listed as national historic resources, and wireless facilities affecting them should require CEQA review under CEQA laws. The ordinance should reflect the need for CEQA review prior to any facilities being placed near or upon historic resources.

Also, due to the permissibility of collocation (6409) requirements, there are no guarantees that an originally stealth facility will remain so after more equipment and bulk is added and the City lacks the authority to say no to these collocation so long as they stay within the definition. This is true on historic resources and districts, but is also true of facilities in the rights of way where they are not only visible to residents but to pedestrian, bicycle and auto traffic. It isn't enough to just consider the aesthetic impacts of the initial project, decision makers must also take into account the possibility if not likelihood that attempts to render these facilities camouflaged or stealth can be easily defeated by future collocation with no ability or power to deny, so long as the added equipment stay within the maximum volume to render it as a collocation, which can not only raise the height, but length breadth and overall visual impact and appearance of the permitted original facility to which equipment such as more antennas and radios may be added as 6409 collocated changes. This can defeat the purpose of concealment..

Recently, in over 800 pieces of public comment were received against a highly visible rights of way facility immediately adjacent to homes and the historic LaPlaya hotel in Carmel with no CEQA review.. What was remarkable about this was not only the inappropriate placement, but also the fact that none of the residents contacted received a mailed or hand delivered notice which Verizon was required to do and attest to before the first Planning Commission hearing. Well known telecom lawyer Andrew Campanelli who has written and reviewed many wireless ordinances in California and elsewhere and who has been retained by the Carmel residents group for help with Carmel's ordinance, strongly recommends that the notice required by applicant be by certified Mail. This should be required in our ordinance as well.

I urge you to keep mock up's and site surveys required for rights of way applications. Most important of all are stated requirement that applicants seeking preemption from code provisions because of a claimed effective prohibition be required to not only provide "technically sufficient and conclusive proof" with "clear and convincing evidence" rather than the language in the draft which refers to their burden for preemption to be a mere "showing". Language regarding determination of whether applicants have met their burden should include studies of less invasive alternatives and make clear that decision makers will also to give weight to contradictory evidence provided by the public or independent field testing, that the applicant has not met its burden of proof.

Sincerely,

Susan Nine, City Council Wireless Subcommittee Member

Input on ordinance related to wireless communication facilities

Putnam and Conboy

April 26, 2022

1. Consider abandoned or decommissioned *equipment* within a facility still in use.

Section H (ordinance p. 24) considers abandoned or decommissioned *facilities*. **The ordinance should also cover abandoned or discontinued equipment *within* a facility that remains in use.**

The operator of the cell tower in our neighborhood, for example, has told us that the bottom row of panels on the tower is no longer in use, but they don't bother to remove unused panels. It seems unnecessary and irresponsible to clutter our view with unused panels. A requirement to remove outdated and unused technology could be included in the ordinance.

2. Consider strengthening mechanisms for permit condition enforcement.

E3e (ordinance p. 7), the Project Description Letter of the Application Content, notes that "if the application is for a modification to an existing wireless communications facility, or a support structure, the application shall identify whether the existing wireless facility or support structure was installed pursuant to a permit and if so provide the original permit and any permit modifications; describe any camouflage and concealment elements, and describe how the modifications to the facility or proposed support structure will maintain the concealment elements, and how it will preserve other requirements intended to camouflage or otherwise limit the visual impacts of a wireless communications facility, or support structure."

We would recommend requiring applicants to *fully document compliance with all previously established permit conditions* before granting any permits for further modifications.

L5, Maintenance of Elements Designed to Reduce Visual Impacts (ordinance p. 27), notes that "all concealment elements shall be maintained in a manner so that the concealment elements are not defeated."

L3, Ongoing Compliance (ordinance p. 26), notes that the "City may inspect and test wireless facilities to ensure ongoing compliance with permit conditions, and charge the cost of the inspection to persons holding wireless permits for the facilities inspected."

We would suggest making regular compliance inspections *mandatory* to ensure that applicants are meeting all conditions of a permit, including the installation and maintenance of elements designed to reduce visual impacts.

In our neighborhood, the initial tower and subsequent modification permits were granted subject to many conditions. In multiple cases, the permit holder ignored the conditions for years, and it was left to the local residents to monitor the site and report noncompliance. This approach puts an undue burden on residents, who have no desire to police these sites and no power to enforce an ordinance. If the city does not have adequate staff to enforce codes, we need to find other ways to make sure permit conditions are met. The expense of monitoring and enforcing permit conditions should be passed along to the permit holder.

3. Clarify the status of permits issued before the new ordinance.

L2 (ordinance p. 26) Permit Term, notes that “any validly issued conditional use permit for a wireless communications facility will automatically expire at 12:01 a.m. local time exactly 10 years and one day from the issuance date, except when California Government Code section 65964(b), as may be amended, authorizes the City to issue a permit with a shorter term.”

Could the ordinance clarify whether the permit term applies to facilities and equipment permitted before an ordinance is revised? Are previously permitted sites exempt from later revisions to the ordinance, or does this revision mean that sites more than 10 years old can now be reviewed for compliance with the latest guidelines?

In our neighborhood, the 21-year-old cell tower would be unlikely to receive approval if the original permit were requested today: the tower is sited in a residential neighborhood, and the permit holder has been out of compliance on many permit conditions over the years. If the permit holder applies for further modifications, we would like to have the original permit reviewed.

From: [Ron Beck](#)
To: [Oncall Planning](#)
Subject: Wireless Ordinance 4/26 hearing
Date: Monday, April 25, 2022 10:45:20 PM

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1. We want required setbacks (distance) from homes and schools as well as between facilities (at least 300 feet or more). Calabasas, CA requires 1000 feet.
2. We want protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.
3. We want all applicants to be required to complete and submit a Site Survey for rights-of-way facilities.
4. We want mailed notices to residents and businesses of any non-emergency temporary cell towers within 500 ft or more describing their purpose and duration and nonuse of generators.
5. Applicants often make false claims of effective prohibition and coverage gaps to get around code requirements and into neighborhoods. The ordinance needs to require "technically sufficient and conclusive proof with verifiable clear and convincing evidence" to support their claims of an effective prohibition. The ordinance should give weight to customer evidence and testimony of reliable service, carrier's online and in-store coverage maps, dropped call data, study of alternative less invasive locations, drive test data, etc. instead of just taking the word of the applicant based on their confusing, unclear and easily-manipulated self-generated propagation maps using their "proprietary software."
6. We want only designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. We want all equipment that can be put underground to be there.
7. We want independent review of RF reports submitted by applicants.

Additionally, residents in the City of Carmel are asking their city to hire telecom expert Andrew Campanelli's law firm to review their own proposed ordinance to make sure it is as strong as possible. Campanelli's fee is very reasonable for this sort of review and Carmel residents are so eager to hire him that they want to pay for it if their city doesn't. We think Monterey should do the same to make sure our ordinance retains as much local control as is legally possible.

Thank you for all your efforts!

Stop Dangerous Residential Cell Towers

From: [chip dorey](#)
To: [Oncall Planning](#)
Subject: "Wireless Ordinance 4/26 hearing."
Date: Tuesday, April 26, 2022 9:35:31 AM

You don't often get email from [REDACTED]. [Learn why this is important](#)

[NOTICE: This message originated outside of the City of Monterey mail system -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Dear Planning Commission,

I am writing you in concern as a life long Monterey Resident that has already battled the situation of the 13 proposed cell towers. I am concerned the language in the city wireless ordinance is not strong enough to give enough local control to the residence that live and pay lots of hard earned money to live in this area. It is in your best interest to support these residence that live, work, and make this community what it is.

Below you will see a list of things that a paramount to be included in the city ordinance.

1. We want required setbacks (distance) from homes and schools as well as between facilities (at least 300 feet or more). Calabasas, CA requires 1000 feet.
2. We want protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.
3. We want all applicants to be required to complete and submit a Site Survey for rights-of-way facilities.
4. We want mailed notices to residents and businesses of any non-emergency temporary cell towers within 500 ft or more describing their purpose and duration and nonuse of generators.
5. Applicants often make false claims of effective prohibition and coverage gaps to get around code requirements and into neighborhoods. The ordinance needs to require "technically sufficient and conclusive proof with verifiable clear and convincing evidence" to support their claims of an effective prohibition. The ordinance should give weight to customer evidence and testimony of reliable service, carrier's online and in-store coverage maps, dropped call data, study of alternative less invasive locations, drive test data, etc. instead of just taking the word of the applicant based on their confusing, unclear and easily-manipulated self-generated propagation maps using their "proprietary software."
6. We want only designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. We want all equipment that can be put underground to be there.
7. We want independent review of RF reports submitted by applicants.

Thank you and I know you will do the right thing for the people you represent.

Sincerely,

Chip Dorey
[REDACTED]

From: [Kristin Dotterer](#)
To: [Oncall Planning](#)
Subject: Apr. 26 PC Hearing: Item 3 Wireless Ordinance Update
Date: Tuesday, April 26, 2022 1:33:43 PM
Attachments: [PC letter 4.26.pdf](#)

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Dear City of Monterey Planning Commissioners:
Please see attached letter as my public comment on this agenda item for today's hearing.
Thank you very much.
Best regards, Kristin Dotterer, Monterey Vista Resident

Kristin Dotterrer
Monterey Vista Neighborhood Homeowner/Resident

April 26, 2022

Re: Wireless Ordinance City Code Update

Dear Monterey Planning Commissioners Sandra Freeman, Hansen Reed, Michael Brassfield, Michael Dawson, Daniel Fletcher, Terry Latasa, and Stephen Millich:

In the years-long aftermath of Verizon's attempt to saturate our residential neighborhoods with ugly cell towers, the residents of Monterey Vista, Old Town, and Skyline are weary of the long process of updating the wireless ordinance. But in this moment please recognize that the impetus was a citizen-led effort to strengthen city code in order to retain as much local control of wireless facility placement as is legally permissible.

Please consider hiring the legal expert on reviewing wireless ordinances, Andrew Campanelli, who only charges a fraction of what it cost the city to consult with Van Eaton.

It is absolutely essential that the ordinance require minimum distance setbacks from homes and schools, and between facilities. The City of Calabasas requires a 1000 foot setback, for example. High-powered, high-frequency (small cell) wireless facilities do not belong in Monterey's residential areas.

This ordinance must also include the following:

- Protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.
- All applicants to be required to complete and submit a Site Survey for rights-of-way facilities.
- Mailed notices to residents and businesses of any non-emergency temporary cell towers within 500 ft or more describing their purpose and duration and nonuse of generators.
- Require "technically sufficient and conclusive proof with verifiable clear and convincing evidence" to support the applicant's claims of an effective prohibition. The ordinance should give weight to customer evidence and testimony of reliable service, carrier's online and in-store coverage maps, dropped call data, study of alternative less invasive locations, drive test data, etc. instead of just taking the word of the applicant based on their confusing, unclear and easily-manipulated self-generated propagation maps using their "proprietary software."
- Designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. We want all equipment that can be put underground to be there.
- Independent review of RF reports submitted by applicants.

Thank you for your consideration of this weighty issue. Sincerely, Kristin Dotterrer

From: [Kimberly Cole](#)
To: [Jennifer Cleary](#)
Subject: Fw: Draft Ordinance on Wireless Communication Facilities
Date: Tuesday, April 26, 2022 11:45:08 AM

From: Robert Evans [REDACTED]
Sent: Tuesday, April 26, 2022 11:37 AM
To: Kimberly Cole <cole@monterey.org>
Cc: Nat Rojanasathira <Rojanasathira@monterey.org>
Subject: Draft Ordinance on Wireless Communication Facilities

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Hi Kimberly,

I missed the Planning Commission Meeting yesterday but I thought the comments in following thread might be of interest in the long term. David participated in many of the meetings about wireless communications so I sought his input. I agree with David that Ordinances without enforcement are not very useful. I hope as the City recovers, so will enforcement.

Thanks for listening,

Bob

Begin forwarded message:

From: David Breedlove [REDACTED]
Subject: Re: April 26, 2022 Amended Planning Commission Meeting Agenda
Date: April 25, 2022 at 12:58:10 PM PDT
To: Robert Evans [REDACTED]

Have read through the draft ordinance. Without looking back to compare with the old one, I'd say this looks reasonable. No impact I can see on NM from the Airport/FAA stuff.

Main things I don't like:

1. This regulates **ONLY** wireless. Power, cable TV, and internet/fiber not included. Even though the bulk of **aesthetic impacts** are **cable**, and the bulk of **fire hazards** are **power**.
2. Where is the financial/structural guarantee that the City will **aggressively enforce** the ongoing maintenance. Look at the **cable junk** hanging on poles today, in clear violation of wording I nagged them into putting in the current ordinance. Need to get this whole topic out of Planning Commission arena; create

an enforcement arm of City government that doesn't lose interest once the permits are finished.

David Breedlove

[REDACTED]

From Moto G Power 2021

On Mon, Apr 25, 2022, 10:28 AM Robert Evans [REDACTED] wrote:
No problem! I can sympathize! I am curious about all the airport stuff and if any of that will impact New Monterey, like us sitting under the ILS approach.

Bob

> On Apr 24, 2022, at 9:07 PM, David Breedlove [REDACTED] wrote:
>
> Bob -- I'll try to wade through it tomorrow. You can no doubt understand why -- after two years and 109 hours of meetings -- I am less than enthusiastic about dealing with the City or the other participants in this ongoing nightmare/comedy.
>
> David.

From: [Bruce Hollenbeck](#)
To: [Oncall Planning](#)
Subject: Wireless Ordinance 2/26 hearing
Date: Tuesday, April 26, 2022 12:44:17 AM

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Please enter into the record

April 25, 2022

Planning Commissioners,

I really hope you will stand up for the City of Monterey and not update our codes to facilitate wireless carriers. I think the citizens of Monterey have made it very clear that we want to *strengthen* our codes to *protect* our residential neighborhoods and schools.

We desperately need to hire the most experienced cell tower attorney in the nation, Andrew Campinelli, to review our ordinance before we adopt it!

1. We want required setbacks (distance) from homes and schools as well as between facilities. Calabasas requires 1000 ft.
2. We want protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.
3. We want all applicants to be required to do and submit a Site Survey for rights of way facilities.
4. We want certified mail notices to residents and businesses of any non emergency temporary cell towers within 500 ft or more describing its purpose and duration and forbid use of gas generators.
5. Applicants often make false claims of effective prohibition and coverage gaps to get around code requirements and into neighborhoods. The ordinance needs to require "technically sufficient and conclusive proof with verifiable clear and convincing evidence" to support their claims of an effective prohibition and the ordinance should give weight to customer evidence and testimony of reliable service, carrier's published online and in store coverage maps, dropped call data, study of alternative less invasive locations, drive test data, etc. and not just take the word of the applicant based on confusing and unclear and easily manipulated self-generated propagation maps using proprietary software. Proof is what the Federal Communications Act and Ninth Circuit Case Law requires of a high order by clear and convincing evidence in order for applicant providers to get around local codes and ordinance requirements. The language in the ordinance needs to spell this out.
6. We want only designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. We want all equipment that can be put underground to be there. We want independent confirmation of rf reports submitted by applicants.

Thank you,
Christy Hollenbeck

Sent from my iPad

From: [REDACTED]
To: [Oncall Planning](#)
Subject: Wireless Facilities Ordinance Proposed Changes
Date: Monday, April 25, 2022 8:32:24 PM

You don't often get email from rmeyers527@aol.com. [Learn why this is important](#)

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Raymond D. Meyers
[REDACTED]

April 25, 202

Planning Commissioners:
Sandra Freeman, Chair
Hansen Reed, Vice Chair
Mike Brassfield, Mike Dawson, Daniel Fletcher
Terry Latasa and Steve Millich
580 Pacific Street
Monterey, CA 93940

Re: Planning Commission to Consider Recommending an Ordinance to the City Council Amending City Code Chapter 38 Article 17 Section 112.4 Related to Wireless Communication Facilities
Dear Commissioners:

All cellular wireless communication facilities emit EMF (electromagnetic radiation) that is always in some degree biologically dangerous – the degree that it is considered dangerous (requiring warning signs) is now determined by a combination of (ERP) effective radiated power (total energy expressed in radio watts times the gain of the antenna) and the distance you are from the antenna, due to the inverse square law of nature. The FCC safety limits must be in compliance with these standards and the applicants for wireless facilities must be able to provide substantial proof that their proposed facilities will be in compliance. Problem is that these facilities are yet to exist and models must be created to predict these potential future impacts.

Based upon my experiences in reviewing numerous applications submitted to the City of Monterey in the past for wireless communications facilities, I have found these applications to include numerous factual errors, misleading information and be woefully lacking detailed data and other information to substantiate the conclusions and statements of compliance to the FCC limits. Therefore, it is my belief that the proposed changes to City Code relating to the Wireless Communication Facilities Ordinance must include a provision to require the applicant to provide verification of methods – the actual measurements of distances from structures, antenna and building elevations, including topography maps, and both *azimuth* (horizontal) field radiation patterns, and *elevation* radiation (vertical) field radiation patterns (including consideration for antenna down tilt) in order to verify that the proposed facility is in compliance with the FCC maximum limits for safety.

I also would recommend the ordinance have a requirement for the city to have an independent radio engineer review and verify all the work that the applicant has submitted, just as any other building project permit requires now. Consider that, as the ordinance is now, it is much like a building permit plan check with no engineer's review. The city must hold public meetings and the residents are forced to appeal to the planning commissioners, who have no expertise in these matters. The city staff may have limited experience in radio engineering as well. The ordinance must specify that the applications be reviewed by a city appointed qualified radio engineer for both accuracy and verification of data.

In 2018, Extenet on behalf of Verizon Wireless, submitted to the City of Monterey, 13 applications for a densified network of cellular facilities in a very small section of the city. The city had a Public Outreach Meeting where I was able to ask questions about the sites and safety reports by the applicants. I was told by their radio engineer, that I could look up directly myself all the data that they used from the antenna and radio manufactures. He also told me that the software he used to model his data was unavailable to me, as it was proprietary.

I did as he advised and researched all the applications and data myself from each application and found that I was unable to verify his calculations, due to a critical mistake on the safety report. The antenna models specified were not as claimed (directional antenna, with direction at 260 degrees). The model specified in the safety report was actually an omnidirectional antenna which broadcasts at 360 degrees. This critical error was repeated on all 13 applications and without the correct model number, I could not verify the safety reports. Further, this pattern of errors was repeated over and over again on the Planning Commission Agenda Report and the CTC Technology and Energy Report.

Details matter in science and we rely on our public officials to know how to verify what they are allowing to be built and operated in our neighborhoods and place of business. Please consider the suggested changes I have outlined be included in the changes to the Wireless Facilities Ordinance.

Sincerely,

Raymond D. Meyers

A solid black rectangular box used to redact the signature of Raymond D. Meyers.

Oncall Planning

From: Laurie Putnam [REDACTED]
Sent: Tuesday, April 26, 2022 3:16 PM
To: Oncall Planning
Cc: Kerry
Subject: Input on ordinance related to wireless communication facilities
Attachments: PutnamConboy_WirelessComments_26April2022.pdf

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Dear Planning Commission,

We would like to offer several comments on the revised ordinance based on our personal experience living across from a cell tower that was permitted, installed, and modified multiple times over the last 21 years. This is a freestanding cellular base station in a residential area that the city would now consider a nonpreferred location.

Our apologies for not submitting this input earlier. We only became aware of this meeting through last week's email newsletter from the city.

Our suggestions, in summary:

1. Consider abandoned or decommissioned *equipment* within a facility still in use.
2. Consider strengthening mechanisms for permit condition enforcement.
3. Clarify the status of permits issued before the revised ordinance.

We've elaborated on these suggestions in the attached PDF file.

Sincerely,

Laurie Putnam
Kerry Conboy
[REDACTED] Monterey

Input on ordinance related to wireless communication facilities

Putnam and Conboy

April 26, 2022

1. Consider abandoned or decommissioned *equipment* within a facility still in use.

Section H (ordinance p. 24) considers abandoned or decommissioned *facilities*. **The ordinance should also cover abandoned or discontinued equipment *within* a facility that remains in use.**

The operator of the cell tower in our neighborhood, for example, has told us that the bottom row of panels on the tower is no longer in use, but they don't bother to remove unused panels. It seems unnecessary and irresponsible to clutter our view with unused panels. A requirement to remove outdated and unused technology could be included in the ordinance.

2. Consider strengthening mechanisms for permit condition enforcement.

E3e (ordinance p. 7), the Project Description Letter of the Application Content, notes that "if the application is for a modification to an existing wireless communications facility, or a support structure, the application shall identify whether the existing wireless facility or support structure was installed pursuant to a permit and if so provide the original permit and any permit modifications; describe any camouflage and concealment elements, and describe how the modifications to the facility or proposed support structure will maintain the concealment elements, and how it will preserve other requirements intended to camouflage or otherwise limit the visual impacts of a wireless communications facility, or support structure."

We would recommend requiring applicants to *fully document compliance with all previously established permit conditions* before granting any permits for further modifications.

L5, Maintenance of Elements Designed to Reduce Visual Impacts (ordinance p. 27), notes that "all concealment elements shall be maintained in a manner so that the concealment elements are not defeated."

L3, Ongoing Compliance (ordinance p. 26), notes that the "City may inspect and test wireless facilities to ensure ongoing compliance with permit conditions, and charge the cost of the inspection to persons holding wireless permits for the facilities inspected."

We would suggest making regular compliance inspections *mandatory* to ensure that applicants are meeting all conditions of a permit, including the installation and maintenance of elements designed to reduce visual impacts.

In our neighborhood, the initial tower and subsequent modification permits were granted subject to many conditions. In multiple cases, the permit holder ignored the conditions for years, and it was left to the local residents to monitor the site and report noncompliance. This approach puts an undue burden on residents, who have no desire to police these sites and no power to enforce an ordinance. If the city does not have adequate staff to enforce codes, we need to find other ways to make sure permit conditions are met. The expense of monitoring and enforcing permit conditions should be passed along to the permit holder.

3. Clarify the status of permits issued before the new ordinance.

L2 (ordinance p. 26) Permit Term, notes that “any validly issued conditional use permit for a wireless communications facility will automatically expire at 12:01 a.m. local time exactly 10 years and one day from the issuance date, except when California Government Code section 65964(b), as may be amended, authorizes the City to issue a permit with a shorter term.”

Could the ordinance clarify whether the permit term applies to facilities and equipment permitted before an ordinance is revised? Are previously permitted sites exempt from later revisions to the ordinance, or does this revision mean that sites more than 10 years old can now be reviewed for compliance with the latest guidelines?

In our neighborhood, the 21-year-old cell tower would be unlikely to receive approval if the original permit were requested today: the tower is sited in a residential neighborhood, and the permit holder has been out of compliance on many permit conditions over the years. If the permit holder applies for further modifications, we would like to have the original permit reviewed.

From: [Leslie Rosenfeld](#)
To: [Oncall Planning](#)
Subject: Wireless Ordinance 4/26 hearing
Date: Tuesday, April 26, 2022 11:33:43 AM

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I am concerned about the proliferation of cell towers in our city. City residents should not be at the mercy of cell phone providers being able to put their facilities wherever they want without considering the needs and desires of the neighborhood. I would like to see required setbacks from homes and schools and all applicants should be required to submit a site survey. Applicants should also have to submit evidence of the actual need for additional antennae.

Leslie Rosenfeld

To Planning Commissioners:

The Monterey Wireless Ordinance must be strengthened to protect homes and schools. The current ordinance does not offer maximum protection to the residential zones or schools.

Here are examples on how the Monterey Planning Commission can strengthen its wireless ordinance:

1. We want required setbacks (distance) from homes and schools as well as between facilities (at least 300 feet or more) Calabasas requires 1000.
2. We want protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.
3. We want all applicants to be required to do and submit a Site Survey for rights of way facilities.
4. We want mailed notices to residents and businesses of any non-emergency temporary cell towers within 500 ft or more describing its purpose and duration and forbid use of gas generators.
5. Applicants often make false claims of effective prohibition and coverage gaps to get around code requirements and into neighborhoods. The ordinance needs to require “technically sufficient and conclusive proof with verifiable clear and convincing evidence” to support their claims of an effective prohibition and the ordinance should give weight to customer evidence and testimony of reliable service, carrier’s published online and in store coverage maps, dropped call data, study of alternative less invasive locations, drive test data, etc. and not just take the word of the applicant based on confusing and unclear and easily manipulated self-generated propagation maps using proprietary software. Proof is what the Federal Communications Act and Ninth Circuit Case Law requires of a high order by clear and convincing evidence in order for applicant providers to get around local codes and ordinance requirements. The language in the ordinance needs to spell this out.
6. We want only designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. We want all equipment that can be put underground to be there. We want independent confirmation of rf reports submitted by applicants.

Please do not leave Monterey neighborhoods and schools vulnerable,
Dr. Dylan J. Witt and Natasha Witt

From: [Tony Flores](#)
To: [Oncall Planning](#)
Subject: Stop Cell Towers Next to Monterey Homes
Date: Wednesday, April 27, 2022 7:58:38 PM

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Planning commission,

I spent 30 years in the telecom sector. I was fortunate that not only did I see major evolution in the communications world, but was actually instrumental in creating the progression that we have today. My companies were involved in the design and sales of complete communications systems, which we sold under private label to service providers worldwide. The design and development of my experience extends to the point of actually having created labs that self-certified for UL, CSA FCC etc. We stress tested and designed the products and had equipment such as anechoic chambers to measure RF emissions, amongst many types of tests. Needless to say, I have firsthand experience with emissions and radiation. In short "Transmission" is radiation, it's synonymous. Service providers will have their attorneys argue about safe levels, obviously for self-protection of their business model, but it's no different than arguing how much cigarette smoking is safe to smoke. It's harmful irrespective.

OK so the real issue at hand is our desire for services and willingness to live with harmful radiation as well as encroachment of the cell equipment of visual beauty that is around us.

To a first order "Property law gives a land owner the right to the **full use, and enjoyment of his property, without any substantial interference from others, under reasonable circumstances.**.. If a defendant hosts an unreasonably loud party during the work week, which disturbs the defendants sleep, the defendant has acted negligently and created a nuisance." The same is true and much worse with radiation and visual hindrances of cell site equipment. As property owners we should the right of full use and enjoyment of our properties and yes, we also would like the convenience of our technologies. Therefore we ask that there is a proper symbiosis with our local City, the Service Provider and the Homeowners.

Many of our neighbors have drafted the bullet items below, which in my experience are reasonable and doable. I think that cooperation from all can lead to a Win-Win-Win solution, assuming that each party is willing. Therefore I agree with the below have would like to express my request for the same.

1. We want required setbacks (distance) from homes and schools as well as between facilities (at least 300 feet or more). Calabasas, CA requires 1000 feet.
2. We want protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.
3. We want all applicants to be required to complete and submit a Site Survey for rights-of-way facilities.
4. We want mailed notices to residents and businesses of any non-emergency temporary cell towers within 500 ft or more describing their purpose and duration and nonuse of generators.
5. Applicants often make false claims of effective prohibition and coverage gaps to get around code requirements

and into neighborhoods. The ordinance needs to require “technically sufficient and conclusive proof with verifiable clear and convincing evidence” to support their claims of an effective prohibition. The ordinance should give weight to customer evidence and testimony of reliable service, carrier’s online and in-store coverage maps, dropped call data, study of alternative less invasive locations, drive test data, etc. instead of just taking the word of the applicant based on their confusing, unclear and easily-manipulated self-generated propagation maps using their "proprietary software."

6. We want only designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. We want all equipment that can be put underground to be there.

7. We want independent review of RF reports submitted by applicants.

Also would like Andrew Campanelli's law firm to review the proposed ordinance to make sure it is as strong as possible.

Thank you.

Tony Flores

[REDACTED]
[REDACTED]

Please deliver to All Planning Commissioners : Important Concern

Wed 5/4/2022 2:50 PM

1 attachments (29 KB)

Planning Commissioners. Important Concern.docx;

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May 4, 2022

To: All Planning Commissioners, City of Monterey

Sandra Freeman, Hansen Reed, Michael Brassfield, Michael Dawson, Daniel Fletcher, Terry Latasa, and Stephen Millich.

Dear Planning Commissioners of Monterey,

A few years has passed since we were present in that overly crowded City Council Chambers on March 15, 2018 with unhappy residents opposing the Verizon Cell Tower plan to threaten their neighborhood, homes, and schools. Now, with the distraction of the pandemic we are learning that the Wireless Ordinance originally drafted by the appointed Sub-Committee of selected neighbors has been re-written, changed, and weakened again with different language and will allow countless and powerful 5G cell antennas to be still installed close to our homes. With the Wireless Ordinance draft written as it is there is not even a setback of footage required on these radiation emitting antennas. .

Honorable Planning Commissioners, you must understand that the residents that fought so long for their right to choose in their own neighborhood would be completely outraged at the Wireless Ordinance being re-written, only to allow these 5G radiation antennas to be installed close to their homes, businesses, and schools.

You are aware of the vital issues, especially in our natural and sensitive environment being filled with electromagnetic waves of 5G high frequency RF radiation going 24/7. It is clear there is a threat as Hazard signs are posted on the never tested 5G radiation equipment, so it's clear why residents don't want them close to an occupied building. Also, remember what we covered before, that this radiation definitely generates extreme heat and the equipment, especially the antennas gets intently hot. Why would anyone living in an environmentally sensitive neighborhood want 5G antennas close to their homes or schools with the intense heat they generate? With global warming and intent fires on the rise why would we want these intently heated cell antennas peppered through our natural and vulnerable environment, close to our homes where we hope to sleep in safety? Remember, August 2020 was not so long ago with the lightning fire storm and Monterey was extremely fortunate to only experience a heavy blanket of other people's ashes.

This is what we the residents of Monterey are demanding for our protection and peace of mind as necessary in the Wireless Ordinance:

The Neighbors Request: We want the Wireless Ordinance to require a setback distance of these antennas from our homes and schools, and we would like to match what Calabasas, CA has demanded and achieved as a setback of 1,000 feet.

The Neighbors Request: Especially in our environmentally sensitive city of Monterey, we want all equipment that can be put underground to be placed there for aesthetics and fire prevention safety. We want only designs that are unnoticeable and concealed and do not ruin or decrease the beauty of our natural sanctuary.

The Neighbors Request: We want a protective fall zone from the height of any antenna mounted on a monopole to be at least 1.5 times the space height between the poles to an occupied building.

The Neighbors Request: For any temporary and non-emergency cell towers within 500 feet, the residents want mailed notices stating their time of use and their purpose.

The Neighbors Request: The Wireless Ordinance should give credibility to customer evidence of the residents and their testimony of reliable service, instead of just taking the word of the applicant based on their vague and confusing, statements of a coverage gap. For instance, here in Monterey one of the signers of this letter had Verizon coverage for many years and there has been absolutely no dropped calls or static or interference whatsoever and the phone reception is perfect.

The Neighbors Request: For rights-of-way facilities, we want applicants to submit for review a Site Survey for safety and consideration of the residents.

The Neighbors Request: We want an independent review of RF radiation reports submitted by the applicants.

We want to thank you Planning Commissioners for taking the extra care and time in considering the needs of the residents that live in Monterey, and for the extreme importance of the Wireless Ordinance to be written as strongly and clearly as possible to protect our health, our lives, our homes, and our unique and irreplaceable beautiful sanctuary. We remained strongly united.

Best to you for continued health and safety,

Dr. John Adamo
Catherine Adamo
Charisse Carlile

Monterey residents

May 8, 2022

To: All Planning Commissioners, City of Monterey

Sandra Freeman, Hansen Reed, Michael Brassfield, Michael Dawson, Daniel Fletcher, Terry Latasa, and Stephen Millich.

Dear Planning Commissioners of Monterey,

A few years has passed since we were present in that overly crowded City Council Chambers on March 15, 2018 with unhappy residents opposing the Verizon Cell Tower plan to threaten their neighborhood, homes, and schools. Now, with the distraction of the pandemic we are learning that the Wireless Ordinance originally drafted by the appointed Sub-Committee of selected neighbors, has been re-written, changed, and weakened again with different language and will allow countless and powerful 5G cell antennas to be still installed close to our homes. With the Wireless Ordinance draft written as it is there is not even a setback of footage required on these radiation emitting antennas.

Honorable Planning Commissioners, you must understand that the residents that fought so long for their right to choose in their own neighborhood would be completely outraged at the Wireless Ordinance being re-written, only to allow these 5G radiation antennas to be installed close to their homes, businesses, and schools.

You are aware of the vital issues, especially in our natural and sensitive environment being filled with electromagnetic waves of 5G high frequency RF radiation going 24/7. It is clear there is a threat as Hazard signs are posted on the never tested 5G radiation equipment, so it's clear why residents don't want them close to an occupied building. Also, remember what we covered before, that this radiation definitely generates extreme heat and the equipment, especially the antennas gets intently hot. Why would anyone living in an environmentally sensitive neighborhood want 5G antennas close to their homes or schools with the intense heat they generate? With global warming and intent fires on the rise why would we want these intently heated cell antennas peppered through our natural and vulnerable environment, close to our homes where we hope to sleep in safety? Remember, August 2020 was not so long ago with the lightning fire storm and Monterey was extremely fortunate to only experience a heavy blanket of other people's ashes.

This is what we the residents of Monterey are demanding for our protection and peace of mind as necessary in the Wireless Ordinance:

The Neighbors Request: We want the Wireless Ordinance to require a setback distance of these antennas from our homes and schools, and we would like to match what Calabasas, CA has demanded and achieved as a setback of 1,000 feet.

The Neighbors Request: Especially in our environmentally sensitive city of Monterey, we want all equipment that can be put underground to be placed there for aesthetics and fire prevention safety. We want only designs that are unnoticeable and concealed and do not ruin or decrease the beauty of our natural sanctuary.

The Neighbors Request: We want a protective fall zone from the height of any antenna mounted on a monopole to be at least 1.5 times the space height between the poles to an occupied building.

The Neighbors Request: For any temporary and non-emergency cell towers within 500 feet, the residents want mailed notices stating their time of use and their purpose.

The Neighbors Request: The Wireless Ordinance should give credibility to customer evidence of the residents and their testimony of reliable service, instead of just taking the word of the applicant based on their vague and confusing, statements of a coverage gap. For instance, here in Monterey one of the signers of this letter had Verizon coverage for many years and there has been absolutely no dropped calls or static or interference whatsoever and the phone reception is perfect.

The Neighbors Request: For rights-of-way facilities, we want applicants to submit for review a Site Survey for safety and consideration of the residents.

The Neighbors Request: We want an independent review of RF radiation reports submitted by the applicants.

We want to thank you Planning Commissioners for taking the extra care and time in considering the needs of the residents that live in Monterey, and for the extreme importance of the Wireless Ordinance to be written as strongly and clearly as possible to protect our health, our lives, our homes, and our unique and irreplaceable beautiful sanctuary. We remained strongly united.

Best to you for continued health and safety,

Dr. John Adamo
Catherine Adamo
Charisse Carlile

Monterey residents

MVNA suggested changes 1

May 17th, 2022

Section	Comment add/del
38-112.4 A	add to end of section

38-112.4 D2	Comment
-------------	---------

38-112.4 E3 after e	add
------------------------	-----

38-112.4 E3 after current h	add
--------------------------------	-----

38-112.4 E3I	remove
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"

replace with

38-112.4 E3n
(Hazard Cert)

add after n
(safety cert)

38-112.4 E3q

modify

38-112.4 E3u

add

38-112.4 E3v	add
--------------	-----

"	remove
---	--------

"	remove
---	--------

"... v	remove
--------	--------

38-112.4 E6 (Applications Available Online)	remove
---	--------

"	remove
"	Comment

38-112.4 F4c add

 remove
38-112.4 F7d add before i.
38-112.4 F7f question
38-112.4 J1 add after "...38-159"

38-112.4 M2 add after section 1

38-112.4 M2 add after section
above

Additional
comments

Annual
Recertification

Public Rights-of-Way
Facilities

Setbacks
Max size

should/shall

to Wireless Ordinance

Language change

The City seeks to minimize, to the greatest extent possible, any unnecessary adverse impacts caused by the siting, placement, physical size, and/or unnecessary proliferation of, personal wireless service facilities, including, but not limited to, adverse aesthetic impacts, adverse impacts upon property values, adverse impacts upon the character of any surrounding properties and communities, adverse impacts upon historical and/or scenic properties and districts, and the exposure of persons and property to potential dangers such as structural failures, debris fall, and fire.

The City also seeks to ensure that, in applying this section, the Planning Commission ("Commission") is vested with sufficient authority to require applicants to provide sufficient, accurate, and truthful probative evidence, to enable the Commission to render factual determinations consistent with both the provisions set forth herein below and the requirements of the TCA when rendering decisions upon such applications.

This is creating a liability situation for the City, there are no height limits, no notification requirement (was removed by staff) nor is there any reference to requiring a liability policy, no time limit, and ten days is too long of a removal period. These towers can have significant visual and other impacts. Notification of surrounding properties should be required to be done by applicant, not City staff (restore subcommittee language regarding notification). No mention of required RF reports. Temporary A Drawn-To-Scale Depiction

The applicant shall submit drawn-to-scale depictions of its proposed wireless support structure and all associated equipment to be mounted thereon, or to be installed as part of such facility, which shall clearly and concisely depict all equipment and the measurements of same, to enable the Director to ascertain whether the proposed facility would qualify as a small wireless facility as defined under this Chapter.

If the applicant claims that its proposed installation qualifies as a small wireless facility within this Site Survey.

For any new wireless telecommunication facilities proposed to be located within the public right-of-way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer or surveyor. The survey shall identify and depict all existing boundaries, encroachments and other structures within two hundred fifty (250) feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; Photographs and Photo Simulations. Accurate color photographs and photo simulations that show the proposed facility in context of the site from reasonable line-of-sight locations from public streets or

Visual Impact Analysis

A completed visual impact analysis, which, at a minimum, shall include the following:

(a) Small Wireless Facilities

For applications seeking approval for the installation of a small wireless facility, the applicant shall provide a visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.

(b) Telecommunications Towers and Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility

For applications seeking approval for the installation of a telecommunications tower or a personal wireless service facility that does not meet the definition of a small wireless facility, the applicant shall provide:

- (i) A "Zone of Visibility Map" to determine locations from where the new facility will be seen.
- (ii) A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.

(Restore deleted windload study language adopted by the study committee)

Safety certification shall include a wind load analysis.

Combine following **City** and **Campanelli** to create strongest language.

Applicant shall submit a RF exposure compliance report prepared by a RF licensed engineer. The report shall include a certification by the engineer that the facility complies with FCC RF standards, be prepared in accordance with FCC guidelines, and include the calculations and information on which the engineer relied. The report shall clearly identify any areas where exposure would exceed occupational or general FCC exposure limits, vertically and horizontally, and shall include drawings that show those areas in relation to the proposed structure, adjoining buildings, and property lines. The report shall clearly identify any measures that must be taken to ensure compliance with FCC rules. The report's analysis will be based on a "worst case" scenario, and assuming all antennas are operating at maximum output.

An FCC compliance report, prepared by a licensed engineer, and certified under penalties of perjury, that the content thereof is true and accurate, wherein the licensed engineer shall certify that the proposed facility will be FCC compliant as of the time of its installation, meaning that the facility will not expose members of the general public to radiation levels that exceed the permissible radiation limits which the FCC has set.

If it is anticipated that more than one carrier and/or user is to install transmitters into the facility that the FCC compliance report shall take into account anticipated exposure from all users on the facility and shall indicate whether or not the combined exposure levels will, or will not exceed the permissible General Population Exposure Limits, or alternatively, the occupational Exposure Limits, where applicable.

Such FCC Compliance Report shall provide the calculation or calculations with which the engineer determined the levels of RF radiation and/or emissions to which the facility will

A completed alternative site analysis of all potential less intrusive alternative sites which the applicant has considered, setting forth their respective locations, elevations, and suitability or unsuitability for remedying whatever specific wireless coverage needs the respective applicant or a specific Wireless Carrier is seeking to remedy by the installation of the new facility which is the subject of the respective application for a PWSF use permit.

If, and to the extent that an applicant claims that a particular alternative site is unavailable, in that the owner of an alternative site is unwilling or unable to accommodate a wireless facility upon such potential alternative site, the applicant shall provide probative evidence of such unavailability, whether in the form of communications or such other form of evidence that reasonably establishes same.

The alternative site analysis shall contain:

- (a) an inventory of all existing tall structures and existing or approved communications towers within a two-mile radius of the proposed site.
- (b) a map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, the height of the structure and/or

Effective Prohibition Claims

The City is aware that applicants seeking approvals for the installation of new wireless Facilities often assert that federal law, and more specifically the TCA, prohibits the local government from denying their respective applications.

In doing so, they assert that their desired facility is "necessary" to remedy one or more significant gaps in a carrier's personal wireless service, and they proffer computer-generated propagation maps to establish the existence of such purported gaps.

The City is additionally aware that, in August 2020, driven by a concern that propagation maps created and submitted to the FCC by wireless carriers were inaccurate, the FCC caused its staff to perform actual drive tests, wherein the FCC staff performed 24,649 -tests, driving nearly ten thousand (10,000) miles through nine (9) states, with an additional 5,916 stationary tests conducted at 42 locations situated in nine (9) states.

At the conclusion of such testing, the FCC Staff determined that the accuracy of the propagation maps submitted to the FCC by the wireless carriers had ranged from as little as 16.2% accuracy to a maximum of 64.3% accuracy.

As a result, the FCC Staff recommended that the FCC no longer accept propagation maps from wireless carriers without supporting drive test data to establish their accuracy. A copy of the FCC Staff's 66-page report is made a part of this Chapter as per <https://docs.fcc.gov/public/attachments/DOC-361165A1.pdf>. The City considers it of critical import that applicants provide truthful, accurate, complete, and sufficiently reliable data to enable the Planning Commission to render determinations upon applications for new wireless Facilities consistent with both the requirements of this Chapter and the statutory requirements of the TCA.

Consistent with same, if, at the time of filing an application under this Chapter, an applicant intends to assert before the Planning Commission or the City that: (a) an identified wireless carrier suffers from a significant gap in its personal wireless services within the City, (b) that the applicant's proposed installation is the least intrusive means of remedying such gap in services, and/or (c) that under the Federal Communications Act, 47 U.S.C. § 333, the denial of the application would result in an effective prohibition under federal law, or otherwise violate federal law such that a permit must issue, it must provide all facts that it relies upon for that claim.

Applicants who claim that denial would be a "prohibition" or "effective prohibition" are encouraged to address at least the following:

i. If it is contended that compliance with an aesthetic standard is not reasonable, explain why in detail, and describe alternatives considered in determining whether service objectives for the wireless service provider could be reasonably satisfied by other means.

Current signal coverage, by providing maps showing existing coverage in the area to be serviced by the proposed facilities. In order to be treated as probative, maps shall be dated, and based on data Except where good cause has been shown, as determined by the Director,

or as soon thereafter as practical

Mandatory and timely posting of all applications was important to all Sub Committee representatives to allow public scrutiny and study of all PWSF applications, especially in response to shortened shot

Small Wireless Facilities

(a) Within Business and Industrial Districts the minimum setback shall be fifty (50) feet, unless the facility is being installed upon a pre-existing utility pole or other utility structure. (b) Within all residentially-zoned and other districts, all small wireless facilities shall be set back a minimum of 300 feet from any residential dwelling or structure, unless the facility is being installed upon a pre-existing utility pole or is being co-located upon a pre-existing personal wireless service facility.

Cell Towers and all Personal Wireless Service Facilities that do not meet the definition of a Small Wireless Facility

(a) Each proposed wireless personal service facility and personal wireless service facility structure, compound, and complex shall be located on a single lot and comply with applicable setback requirements. Adequate measures shall be taken to contain on-site all debris from tower failure and

w

A 1500 ft separation shall be maintained between wireless facilities within the PROW.

What are I, ii and iii

upon each PWSF use permit, consistent with the procedures in §38-159), except the Planning Commission shall have authority to schedule such additional or more frequent public hearings as may be necessary to comply with the applicable shot clocks imposed upon the City and the Planning Commission under the requirements of the TCA.

Required Public Notices

The Planning Commission shall ensure that both the public and property owners whose properties might be adversely impacted by the installation of a wireless facility receive Notice of any public hearing pertaining to same and shall ensure that they are afforded an opportunity to be heard concerning same.

Before the date scheduled for the public hearing, the Planning Commission shall cause to be published a

"NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY"

Each "Notice of Public Hearing for New Wireless Facility" shall state the name or names of the respective applicant or co-applicants, provide a brief description of the personal wireless facility for which the applicant seeks a special permit, and the date, time, and location of the hearing.

Each "Notice of Public Hearing for New Wireless Facility" shall be published both: (a) once per week for two successive weeks in the official newspaper of the Cityscape and (b) by mailing copies of such notice to property owners, as provided for herein below.

The face of each envelope containing the notices of the public hearing shall state, in all bold typeface, in all capital letters, in a font size no smaller than 12 point, the words:

"NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY"

Notices of public hearing shall be mailed to all property owners whose real properties are situated within 300 feet of any property line of the real property upon which the applicant seeks to install its new wireless facility. If the site for the proposed facility is situated on, or adjacent to, a residential street containing twelve (12) houses or less, the Planning Board shall additionally mail a copy of such notices to all homeowners on that street, even if their home is situated more than 300 feet from any

As disclosed upon the FCC's public internet website, personal wireless services facilities erected at any height under 200 feet are not required to be registered with the FCC.

Of even greater potential concern to the City is the fact that the FCC does not enforce the RF radiation limits codified within the CFR by either: (a) testing the actual radiation emissions of wireless Facilities either at the time of their installation or at any time thereafter, or (b) requiring their owners to test them. See relevant excerpts from the FCC's public internet website. This means that when wireless Facilities are constructed and operated within the City, the FCC will have no idea where they are located and no means of determining, much less ensuring, that they are not exposing residents within the Town and/or the general public to Illegally Excessive levels of RF Radiation.

The City deems it to be of critical importance to the health, safety, and welfare of the City, its residents, and the public at large that personal wireless service facilities do not expose members of the general public to levels of RF radiation that exceed the limits which have been deemed safe by the FCC, and/or are imposed under CFR.

In accord with the same, the City enacts the following RF Radiation testing requirements and provisions set forth herein below.

No wireless telecommunications facility shall at any time be permitted to emit illegally excessive RF Radiation as defined in §, or to produce power densities that exceed the legally permissible limits for electric and magnetic field strength and power density for transmitters, as codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

To ensure continuing compliance with such limits by all owners and/or operators of personal wireless service facilities within the City, all owners, and operators of personal wireless service facilities shall submit reports as required by this section.

As set forth hereinbelow, the Town may additionally require, at the owner and/or operator's expense, independent verification of the results of any analysis set forth within any reports submitted to the Town by an owner and/or operator.

If an operator of a personal wireless service facility fails to supply the required reports or fails to

Random RF Radiofrequency Testing

At the operator's expense, the Town may retain an engineer to conduct random unannounced RF Radiation testing of such Facilities to ensure the facility's compliance with the limits codified within 47 CFR §1.1310(e)(1) et seq.

The Town may cause such random testing to be conducted as often as the Town may deem appropriate. However, the Town may not require the owner and/or operator to pay for more than one test per facility per calendar year unless such testing reveals that one or more of the owner and/or operator's facilities are exceeding the limits codified within 47 CFR §1.1310(e)(1) et seq., in which case the Town shall be permitted to demand that the facility be brought into compliance with such limits, and to conduct additional tests to determine if, and when, the owner and/or operator thereafter brings the respective facility and/or facilities into compliance.

If the Town at any time finds that there is good cause to believe that a personal wireless service facility and/or one or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Planning Board at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the Town for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

Such hearing shall be duly noticed to both the public and the owner and/or operator of the respective facility or facilities at issue. The owner and/or operator shall be afforded not less than two (2) weeks written notice by first-class mail to its Notice Address.

At such hearing, the burden shall be on the City to show that, by a preponderance of the evidence, the Facilities emissions exceeded the permissible limits under 47 CFR §1.1310(e)(1) et seq.

In the event that the City establishes same, the owner and/or operator shall then be required to

(1) each active small cell installation is covered by liability insurance in the amount of \$2,000,000 per installation, naming the City as additional insured; and (2) each active installation has been inspected for safety and found to be in sound working condition and in compliance with all federal safety regulations concerning RF exposure limits. (see Americans for Responsible Technology Model Right of way rules including a 1500 ft separation between wireless facilities
A 1500' separation shall be required between wireless facilities.

All wireless facilities should be 50 ft from any residence and should be 500 ft from any school.

Maximum equipment volume including transformers, antennae and other boxed electronics on any single pole is limited to 10 cubic feet (eg. 1 large transformer). Any equipment larger than this needs to
All instances of "should" shall be replaced with "shall".



Monterey Vista Neighborhood Association

Monterey, CA 93940

Web: montereyvistaneighborhood.org Email: mvneighborhood@gmail.com

TO: City of Monterey Planning Commissioners
FROM: The Monterey Vista Neighborhood Association
CC: The Monterey City Council
RE: The Planning Commission Meeting Agenda-August 9, 2022
DATE: August 4, 2022

The Monterey Vista Neighborhood Association is pleased that the Wireless Ordinance is on the agenda for your review at the August 9, 2022 meeting.

Upon reviewing the August 9th agenda packet, however, the Monterey Vista Neighborhood Association is dismayed that the extensive recommendations we submitted are not included. The Wireless Ordinance Subcommittee draft ordinance also is not included, nor are the changes the Planning Commission itself recommended.

As background the City Council directed its appointed Wireless Ordinance Subcommittee “to develop the strongest wireless ordinance possible”. When making its appointments the City Council assured the Subcommittee representatives that Staff would play a supportive role and not function as decision makers.

The wireless communications draft submitted by Staff for your August 9th meeting clearly does not adhere to the City Council’s mandate.

For your information, the Monterey Vista Neighborhood Association’s recommendations were well-researched and “borrowed” from other California cities deemed to have the most up-to-date and strong wireless ordinances as of first-quarter 2022.

As requested by the Planning Commission the MVNA submitted an extensive list of change/add recommendations. The Community Development Director requested that we submit our recommendations to her in a specific format to which we complied.

While the total body of recommendations submitted by the Monterey Vista Neighborhood Association are imperative to creating “the strongest wireless ordinance possible”, certain omissions/additions are particularly concerning as follows:

1. Staff removed the Wind Load Safety Test as required by the Wireless Ordinance Subcommittee.
2. Staff included the option that allows noise-creating equipment to be added post application approval for a project that was initially approved without noise-creating equipment.
3. The RF Compliance Report requirements merit more detailed and stringent language.

The Monterey Vista Neighborhood Association is one of the fifteen City of Monterey neighborhood associations that represents its residents. Our goal is to preserve the quality and character of our neighborhood areas. Our services include review and comment on selected city programs, proposed ordinances, and building designs. We post on our website and nextdoor.com, hold events for our members and the general public, and provide assistance to residents in resolving neighborhood concerns.



Monterey Vista Neighborhood Association

Monterey, CA 93940

Web: montereyvistaneighborhood.org Email: mvneighborhood@gmail.com

4. Staff did not add the requirement that the applicant must provide Drive Test data to substantiate a claim of Prohibition/Effective Prohibition/significant coverage gap. Note that the FCC determined that Propagation Maps are inaccurate and unreliable.
5. The representatives of the Wireless Ordinance Subcommittee required Staff to post all wireless application filings on the City website according to a specified time frame. Staff changed this language to give themselves discretionary authority regarding the posting notifications of application filings.
6. Staff omitted minimum setback requirement of facilities from residences and schools.
7. Staff lessened the design element requirements for public right-of-way locations from what is in the current ordinance.
8. Staff omitted all mock-up requirements. The representatives of the Wireless Ordinance Subcommittee required mock-ups in their final document.
9. The Wireless Ordinance employs many legal and technical terms and acronyms not readily understood by the lay public. Staff did not contribute to nor improve upon the Definitions section as requested.
10. Staff removed the requirement that applicants must demonstrate the non-existence of less invasive alternative locations.

The Monterey Vista Neighborhood Association urges the Planning Commission to NOT recommend approval of the wireless ordinance that “is not as strong as possible” and that does not reflect Community values.

Yours truly,
Jean Rasch, President
Monterey Vista Neighborhood Association

The Monterey Vista Neighborhood Association is one of the fifteen City of Monterey neighborhood associations that represents its residents. Our goal is to preserve the quality and character of our neighborhood areas. Our services include review and comment on selected city programs, proposed ordinances, and building designs. We post on our website and nextdoor.com, hold events for our members and the general public, and provide assistance to residents in resolving neighborhood concerns.

Dear Planning Commissioners,

Having read through the agenda packet for your August 9 hearing, I see no substantive changes in the draft being presented to you, which does not appear to differ substantially from that presented at the April hearing. I do not see any of your recommended requests for substantive changes or any submitted by the general public or notably from the extensive list provided by MVNA.

What I am deeply concerned about in this email, however, is what I consider a serious misstatement and misunderstanding of the existing state of telecommunications law made by the BB&K lawyers present at the April meeting and recited in the minutes of that meeting. They have resulted in vital requirements for applicants being omitted from the draft ordinance. They are quoted as stating that “significant coverage gap” and “least invasive alternatives showings” are no longer required to establish an effective prohibition in order to get an exemption from ordinance requirements. Rather than attempt to explain the reasons this is false and not reflective of current Ninth Circuit precedent, I urge you to view this video by Andrew Campanelli, which directly refutes this claim, in a very clear and forthright manner. This video was made after the Portland decision so that case is part of his discussion.

This is such a vitally important component of telecommunications law and essential to City regulation of cell tower regulation I strongly urge you to please take a few minutes to watch and understand this video, because the statements in the minutes are grossly inaccurate. I have been studying and following all aspects of telecom law very closely for several years and my law degree has trained me to grasp legal concepts and language and thoroughly read and understand applicable and controlling telecommunications case law. I have thoroughly read and researched the Portland Case and concur with all of Mr. Campanelli’s conclusions with regards to applicability of that decision.

<https://youtube.com/watch?v=bKqB8wYY7cA&feature=share>

Yours truly,

Susan Nine, JD

City Council appointed member of the City’s Wireless Ordinance Subcommittee

From: [Tony Flores](#)
To: [Oncall Planning](#)
Cc: [Clyde Roberson](#); [Alan Haffa](#); williamson@monterey.org; [Ed Smith](#); [Dan Albert](#); [Christine Davi](#)
Subject: PC Wireless Ordinance Hearing 8/9/22
Date: Saturday, August 6, 2022 1:37:24 PM

Some people who received this message don't often get email from [REDACTED]

[Learn why this is important](#)

Planning commission,

I spent 30 years in the telecom sector. I was fortunate that not only did I see major evolution in the communications world, but was actually instrumental in creating the progression that we have today. My companies were involved in the design and sales of complete communications systems, which we sold under private label to service providers worldwide. The design and development of my experience extends to the point of actually having created labs that self-certified for UL, CSA FCC etc. We stress tested and designed the products and had equipment such as anechoic chambers to measure RF emissions, amongst many types of tests. Needless to say, I have firsthand experience with emissions and radiation. In short "Transmission" is radiation, it's synonymous. Service providers will have their attorneys argue about safe levels, obviously for self-protection of their business model, but it's no different than arguing how much cigarette smoking is safe to smoke. It's harmful irrespective. Having worked in the factory I personally have seen radiation burns.

To point out, is that one pole location that was previously identified is literally 30 ft away from our bed, including the same height, since the bedroom is on the second story. I would challenge anyone wanting to sleep next to the RF antennas 365 days a year.

OK so the real issue at hand is our desire for services and willingness to live with harmful radiation as well as encroachment of the cell equipment of visual beauty that is around us.

To a first order "Property law gives a land owner the right to the **full use, and enjoyment of his property, without any substantial interference from others, under reasonable circumstances.**.. If a defendant hosts an unreasonably loud party during the work week, which disturbs the defendants sleep, the defendant has acted negligently and created a nuisance." The same is true and much worse with radiation and visual hindrances of cell site equipment. As property owners we should the right of full use and enjoyment of our properties and yes, we also would like the convenience of our technologies. We ask that there is a proper symbiosis with our local City, the Service Provider and the Homeowners.

Many of our neighbors have drafted the bullet items below, which in my experience are reasonable and doable. I think that cooperation from all can lead to a Win-Win-Win solution, assuming that each party is willing. Therefore, I agree with the below have would like to express my request for the same.

1. We want required setbacks (distance) from homes and schools as well as between facilities (at least 300 feet or more). Calabasas, CA requires 1000 feet.
2. We want protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.
3. We want all applicants to be required to complete and submit a Site Survey for rights-of-way facilities.
4. We want mailed notices to residents and businesses of any non-emergency temporary cell towers within 500 ft or more describing their purpose and duration and nonuse of generators.

5. Applicants often make false claims of effective prohibition and coverage gaps to get around code requirements and into neighborhoods. The ordinance needs to require "technically sufficient and conclusive proof with verifiable clear and convincing evidence" to support their claims of an effective prohibition. The ordinance should give weight to customer evidence and testimony of reliable service, carrier's online and in-store coverage maps, dropped call data, study of alternative less invasive locations, drive test data, etc. instead of just taking the word of the applicant based on their confusing, unclear and easily-manipulated self-generated propagation maps using their "proprietary software."

6. We want only designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. We want all equipment that can be put underground to be there.

7. We want independent review of RF reports submitted by applicants.

Also would like Andrew Campanelli's law firm to review the proposed ordinance to make sure it is as strong as possible.

Thank you.

Tony Flores



[**NOTICE:** This message originated outside of the City of Monterey mail system -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

From: [Marta Kraftzeck](#)
To: [Oncall Planning](#)
Cc: [Clyde Roberson](#); [Dan Albert](#); [Alan Haffa](#); smith@monterey.org.com; [Tyler Williamson](#)
Subject: August 9, 2022 Planning Commission Meeting Agenda Item 2
Date: Sunday, August 7, 2022 1:35:20 PM

Chair Fletcher and Commissioners;

I am writing to encourage the Planning Commission to consider only the strongest legally possible Wireless Ordinance for the City of Monterey. I urge you NOT to recommend the ordinance that has been presented to the Planning Commission. As the ordinance stands currently it is not strong enough for the City to legally uphold the right to regulate placement of cell towers.

Our neighborhoods fought this battle but the telecom companies have returned using various loopholes in city codes to once again try to add cell towers and increase corporate profits. City staff recommending approval of this current cell ordinance should not be enabled to rewrite the City's wireless ordinance. This staff is the same staff that recommended approval of cell towers throughout our Monterey Vista and Old Town neighborhoods several years ago.

I urge the Planning Commission to recommend to the Monterey City Council that the Council hire a respected and trusted telecom attorney such as, Andrew Campanelli or Jeffrey Melching, to write a strong ordinance to protect our city and residents from this exploitation.

Please adopt the following requirements in the ordinance:

- Maintain the requirement for significant gap in coverage to be identified for approval of both small cells and cell towers.
- Maintain requirement for the least intrusive methods to fill the gap for both small cells and cell towers.
- Require a justification study which includes the rationale for selecting the proposed use; if applicable, a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide wireless service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option.
- Require a 1500 Foot Setback from other small cell installations: Every effort shall be made to locate small cell installations no less than 1500 feet away from the Permittee's or any Lessee's nearest other small cell installation. To not require this will seriously degrade all areas of Monterey and residential areas particularly and add to the cumulative impacts of blight and rf radiation.

I am a lifelong resident of Monterey and am a concerned homeowner and feel that the City has an obligation to protect the health and welfare of all citizens and to prohibit cell tower proliferation in residential areas and near schools.

Thank you for your consideration.
Marta Kraftzeck

[NOTICE: This message originated outside of the City of Monterey mail system -- **DO NOT**

From: [Pat Venza](#)
To: [Oncall Planning](#)
Cc: [Clyde Roberson](#); [Tyler Williamson](#); [Alan Haffa](#); [Dan Albert](#); [Ed Smith](#)
Subject: Wireless ordinance before the Planning Commission on August 9, 2022
Date: Sunday, August 7, 2022 4:11:29 PM

Dear Planning Commissioners:

I am so confused as I hope most of you are also. The direction by the City Council some 5 years ago was 2 fold:

1. That a subcommittee be formed to design a new wireless ordinance and that City staff would be there to assist, but not to write it.
2. That the new wireless ordinance was to be as strong as legally possible.

What you have before you on August 9 does not reflect either of those directives. What came out of the wireless subcommittee is not what you are seeing. Much of it has been reduced to less restrictive than the ordinance prior to the City Council meeting 5 years ago.

At the last Planning Commission meeting that reviewed the draft many of you stated concerns as did many people from the neighborhoods. You submitted comments/revisions as did the Monterey Vista Neighborhood Association (MVNA) and yet none of the substantial changes (virtually none of the changes) were incorporated.

My hope is that at the August 9 meeting we hear why the staff is so reluctant to follow the City Council direction of developing a strong wireless ordinance.

Since the completion of the wireless ordinance subcommittee draft and disbanding of the subcommittee there have been court cases and FCC changes that can be included to help even more.

The one that I find to be most significant is that the FCC has determined that the only truly accurate test to prove a "significant gap in service" is "drive-by testing". Other tests to prove prohibition/effective prohibition (proof of a significant coverage gap) were between 16 to 64% accurate. Not very good proof. Why shouldn't Monterey's ordinance have it in the ordinance that "drive-by testing" is the required proof needed to start the application process?

I feel for the subcommittee members who spent hundreds of hours to develop a strong ordinance only to see it rewritten by staff and legal counsel.

Thank you for your concerns and tough questions throughout this process. Pat Venza

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PC Wireless Ordinance Hearing 8/9/22

Mon 8/8/2022 9:05 PM

To: Oncall Planning <planning@monterey.org>

Cc: Tyller Williamson <twilliamson@monterey.org>; Dan Albert <albert@monterey.org>; Clyde Roberson <roberson@monterey.org>; Alan Haffa <haffa@monterey.org>; Ed Smith <smith@monterey.org>

You don't often get email from [REDACTED] [Learn why this is important](#)

Dear Planning Commission Members:

I am a homeowner, resident and vote in the City of Monterey. I worked as senior legislative policy staff in the California State Assembly and wrote many major pieces of state legislation. The draft ordinance and information provided by City Staff is deficient in a number of respects, and I urge you to reject their recommended draft ordinance.

First, it ignores many of the recommendations of the Wireless Ordinance Subcommittee appointed by the City Council, and it does not follow the direction of the City Council to develop the strongest ordinance legally possible.

Second, City Staff apparently has not even provided to you the Subcommittee recommendations and its draft ordinance. The Subcommittee put a lot of time into examining the issues and considering input from, among others, the public and local neighborhood associations representing residents of the City. Yet, the staff's recommendation ignores all of this and does not even give you this information for you to consider as part of your decision making process. As a former senior policy staff member, I see this as a very serious omission that prevents you from making the best decision possible that represents the interest of the public.

Third, the Subcommittee decided that all application filings must be posted on the City's website within a specified time. Staff has changed it so that they will have discretionary authority regarding posting notifications of applications. Transparency is a hallmark of good government. I urge the Commission not to approve any ordinance with this or any similar provision that in any way inhibits reasonable notice to the public.

Fourth, several very important requirements are not included in the ordinance staff has presented you. Among these are:

There is no requirement for drive by testing to determine if there is even gaps in service that show a need for the proposed cell towers. At a minimum, such a need must be established by the proponents of adding cell towers.

There are no wind load safety tests mandated from the proponents that show the poles which the towers will be added to will be sufficiently strong.

There are other such examples.

In sum, I urge the Planning Commission to reject the proposed staff ordinance and direct the staff to prepare an ordinance that provides the strongest ordinance legally possible and that is in the best interests of residents of the City of Monterey which starts by following the recommendations of the Wireless Ordinance Subcommittee and to the extent allowable to improve upon them.

Thank you,
Barbara Moore

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Verizon Wireless Comments on Draft Wireless Facilities Ordinance - Planning Commission Agenda Item 2, August 9 [Monterey]

Paul Albritton <pa@mallp.com>

Mon 8/8/2022 3:31 PM

To: Oncall Planning <planning@monterey.org>

Cc: CMO-City Clerk Office Employees <cityclerk@monterey.org>; Christine Davi <davi@monterey.org>; Kimberly Cole <cole@monterey.org>

 1 attachments (243 KB)

Verizon Wireless Letter 08.08.22.pdf:

Some people who received this message don't often get email from pa@mallp.com. [Learn why this is important](#)

Dear Planning Commissioners, attached please find our follow-up letter prepared on behalf of Verizon Wireless providing comment on the revised draft wireless facilities ordinance to be considered at your meeting tomorrow.

We urge the Commission to adopt our suggested revisions prior to recommending approval of the ordinance.

Thank you.

Paul Albritton
Mackenzie & Albritton, LLP
155 Sansome Street, Suite 800
San Francisco, California 94104
(415) 288-4000
pa@mallp.com

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MACKENZIE & ALBRITTON LLP

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

August 8, 2022

VIA EMAIL

Chair Sandra Freeman
Vice Chair Hansen Reed
Commissioners Michael Brassfield,
Michael Dawson, Daniel Fletcher,
Terry Latasa and Stephen Millich
Planning Commission
City of Monterey
580 Pacific Street
Monterey, California 93940

Re: Draft Wireless Communications Facilities Ordinance
Planning Commission Agenda Item 2, August 9, 2022

Dear Chair Freeman, Vice Chair Reed and Commissioners:

We write again on behalf of Verizon Wireless regarding the draft wireless facilities ordinance (the “Draft Ordinance”). Recent revisions by staff do not include changes we recommended in our April 21, 2022 letter, and several new provisions introduce additional conflicts with federal and state law. These include contradictions with the FCC’s 2018 Infrastructure Order which requires that a city’s small cell aesthetic standards be “reasonable,” that is, “technically feasible” and meant to avoid “out-of-character deployments.”¹ For example, antenna standards must be revised to accommodate typical small cell designs required for service, and location preferences should be qualified by a reasonable 500-foot search distance for any preferred option. We urge the Planning Commission to adopt the revisions we suggest below prior to recommending the Draft Ordinance to the City Council.

§ 38-112.4 – Wireless Communications Facilities

D(1). Use permit review. This provision requires a use permit for “eligible facilities requests” to modify existing facilities, but that is inappropriate because a modification

¹ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088, ¶¶ 86-88 (September 27, 2018). The Ninth Circuit Court of Appeals upheld these FCC requirements. See *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, 141 S.Ct. 2855 (Mem) (U.S. June 26, 2021).

must be approved if it not exceed the FCC's six "substantial change" thresholds. 47 U.S.C. § 1455(a); 47 C.F.R. § 1.6100(b)(7). A use permit involves preempted findings that exceed these FCC criteria, as well as public notice, a hearing, and potential appeal, none of which are necessary to evaluate the "substantial change" thresholds. Further, the City must approve eligible facilities requests within 60 days. *We suggest that eligible facilities requests receive a simple administrative approval.*

E(3)(m). Photographs and photosimulations. This provision has been modified to require photos and simulations from viewpoints not on public streets and with the "most significant adverse aesthetic impacts." This implies that private property views would be adversely affected, but that is not always the case, particularly with small cells in the right-of-way which pose minimal impact. Further, an applicant can only enter private property to take photos with the owner's permission. *This provision should require that for right-of-way facilities, an applicant must submit only photos and photosimulations from two street vantage points on opposite sides of a proposed small cell.*

E(3)(r). Radio frequency compliance report. As revised, this submittal requirement now requires "certification under penalty of perjury" that an RF compliance report is "true and correct," but that is excessive. The provision already requires that each report be prepared by a licensed engineer, who would affix their professional engineer stamp, which serves as a declaration that a proposed design complies with applicable regulations. *The last sentence regarding penalty of perjury should be deleted.*

E(3)(t). Master plan. For small cells, the City cannot require a master plan of existing and planned facilities, which implies evaluation of the need for a new facility. Other existing or potential facilities are irrelevant to an individual proposed small cell, which must be evaluated on its own merits. California Public Utilities Code Section 7901 grants telephone corporations such as Verizon Wireless a statewide right to place their equipment along any right-of-way with no demonstration of the need. The FCC determined that small cells are needed to densify networks, enhance existing service, and introduce new services, which are Verizon Wireless's objectives in placing a small cell in Monterey. Infrastructure Order, ¶ 37. *This submittal requirement should be deleted.*

E(3)(v). Information supporting a claim that denial would violate federal law. This submittal is required for certain locations by Section 38-112.4(F)(10), but information such as "signal coverage maps," "geographic area that would be served," and review of alternatives is not pertinent to the FCC's finding that small cells are needed to densify networks and enhance service. Standards that result in unreasonable denials would "materially inhibit" service improvements, which the FCC found constitutes a prohibition of service. The FCC also disfavored dated service standards for small cells based on "coverage gaps" and the like, so service area information is preempted. Infrastructure Order, ¶¶ 37-40. City officials should not be making judicial determinations regarding the federal prohibition of service standard. *This provision should be deleted, or at a minimum, not required for small cells.*

F(3). General principle for all locations. Requiring facilities of the “minimum size necessary to serve the defined service objectives” would let the City dictate the technology used by wireless carriers, but that would intrude on the exclusive federal authority over the technical and operational aspects of wireless technology. *See New York SMSA Ltd. Partnership v. Town of Clarkstown*, 612 F.3d 97, 105-106 (2nd Cir. 2010). The “minimum size” standard disregards the equipment volume allowances in the FCC’s definition of small cell, which are up to three cubic feet for each antenna, and up to 28 cubic feet for associated equipment. 47 C.F.R. § 1.6002(l). *This provision should be deleted.*

F(4)(b), F(5)(a)(ii). Zone height limit (private property sites). These would limit wireless facilities on private property to zone height limits, but the City should allow a modest increase consistent with Code Section 38-106, which provides height exceptions for various structures such as church spires. A modest height increase allows a facility to provide broader coverage. *We suggest allowing a 10-foot increase over zone height limits for rooftop facilities or freestanding stealth facilities.*

F(7)(b). Structure preferences (right-of-way). If strictly applied, the top preference for City-owned poles would contradict California Government Code Section 65964(c), which bars local governments from limiting wireless facilities to sites owned by particular parties. Verizon Wireless has the right to place its telephone equipment on joint utility poles as a member of the Northern California Joint Pole Authority. Small cell equipment is not “out-of-character” on utility poles, given existing utility lines and other infrastructure, so structure preferences used to deny this option would be unreasonable. *The City should simply favor existing/replacement poles over new poles, while allowing a new pole if there is no feasible existing pole within 500 feet along the right-of-way.*

F(7)(d), (e). Equipment underground or in ground-mounted cabinet. These provisions would require undergrounding of small cell associated (non-antenna) equipment unless a facility meets the strict requirements of referenced Code Section 32-08.04, that a facility be “stealth” or “integrated,” or that undergrounding is infeasible. Otherwise, equipment must be placed in a ground cabinet, with only limited exceptions that are not based on reasonable dimension thresholds.

Both provisions contradict the FCC’s requirement for “reasonable” small cell standards. This is because small pole-mounted equipment components are not “out-of-character” among other right-of-way infrastructure. Utility poles commonly support electric transformers and other utility equipment. Further, undergrounding is generally infeasible due to limited sidewalk space, utility lines already routed underground, and the space required to safely bury network and cooling/dewatering equipment in a vault. *We suggest that the City allow up to five cubic feet of associated equipment on a streetlight pole, or 16 cubic feet on a utility pole (consistent with Section F(7)(k)), before undergrounding is considered.*

F(7)(h). All antennas in pole-top radome. Verizon Wireless appreciates the new revision allowing cut-outs in a radome if required for signal propagation. However, the requirement to conceal all antennas in one pole-top radome remains unreasonable because it would not accommodate small cell designs with several types of antennas

required for different frequencies. Verizon Wireless may place a “cantenna” manufactured in its own cylindrical radome above a pole and/or several small panel antennas underneath on the side that face different directions where they provide service. For utility poles, side-mounted antennas must be separated at two feet horizontally from the pole centerline. C.P.U.C. General Order 95, Rule 94.4(E). A single shroud cannot feasibly enclose all of these antennas, and would lead to a bulky appearance. *Shrouds should be required only if feasible, and not for antennas on the side of a utility pole.*

F(7)(j). Pole-mounted equipment cabinets. For utility poles, we suggest a modest expansion of the dimensions for pole-mounted equipment housing. As acknowledged in this provision, equipment on the side of a utility pole must be placed on a four-inch stand-off bracket which allows utility workers to safely climb the pole. The housing also must accommodate required radio units and cables while providing for air circulation. These factors require more width and protrusion than allowed by the Draft Ordinance, which imposes technically infeasible dimension constraints. *The allowed width, depth and total protrusion of equipment housing should be increased from 15 to 22 inches.*

F(7)(n). New support structures. Section (ii) implies that equipment must be placed inside a new pole, which would require a very wide diameter to enclose the radio units, leading to an awkward appearance. Instead, the City should allow the new pole design that Verizon Wireless has installed in various California cities, with radios and other non-antenna gear concealed in a base shroud. Because Public Utilities Code Section 7901 grants telephone corporations the right to place and own poles along any right-of-way, the City cannot require a light fixture or signage because they bear no relation to wireless service. However, Verizon Wireless may be willing to allow these by mutual agreement. *The City should allow a new pole with a base shroud up to 20 inches square and four feet tall to conceal radios and associated network components.*

F(9)(a). Preference for City-owned or -controlled parcels. As noted above, Government Code Section 65964(c) bars cities from limiting wireless facilities to sites owned by particular parties. *This provision directly contradicts state law, and it should be deleted.*

F(9)(b), (c), (e). Preference for private property over right-of-way. These provisions prefer private property sites (e.g., towers and buildings) over the right-of-way. However, because Section 7901 grants telephone corporations a right to use any right-of-way, the City cannot redirect a proposed right-of-way facility to private property. Instead, the City should develop a distinct list of location preferences for the right-of-way. As suggested above for new poles, the City should provide clear guidance by adopting a reasonable search distance of 500 feet for any preferred location options, a practice adopted by many California cities. *The City should adopt new location preferences for the right-of-way, preferring industrial and commercial areas over residential and historic areas, while allowing a less-preferred location if there is no feasible preferred option within 500 feet.*

F(10). Special considerations (required effective prohibition showing for certain areas). The City cannot require Verizon Wireless to prove an effective prohibition of service to place small cells in certain areas. As noted, the FCC found that small cells are

needed to densify networks and enhance existing service. The extra hurdle of demonstrating an effective prohibition would “materially inhibit” these goals. *For small cells, the City should adopt the location preferences and 500-foot search distance suggested above, without requiring an “effective prohibition” showing.*

G(1). Applications for eligible facilities requests. For eligible facilities requests, the FCC allows cities to request only that information pertinent to determining if a proposed modification would fall under the FCC’s “substantial change thresholds.” 47 C.F.R. § 1.6100(c)(1). Some of the application submittals of referenced Section 38-112.4(E)(3)(a)-(r) are irrelevant: (c) public notice materials, (k) screening/landscaping information, and (s) undergrounding information. The City cannot require new landscaping or undergrounding of equipment as a condition of approving a qualifying eligible facilities request. *The list should be revised to exclude items (c), (k), and (s).*

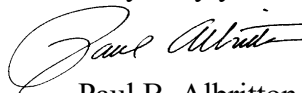
J(2)(c). Finding that denial would result in actual or effective prohibition. As noted, City officials should not be making such judicial determinations, which could “materially inhibit” service improvements if applied to small cells that do not satisfy unreasonable design standards. *This finding should be deleted.*

L(2)(i). Curtailed permit term for eligible facilities requests. The City cannot require that the permit term of an approved eligible facilities request expire on the same date as the prior permit for a facility. That would contradict Government Code Section 65964(b) that allows a 10-year term for wireless facility permits absent a substantial land use reason. Modifications that result in no “substantial change” do not create a substantial land use impact. *This provision should be deleted.*

As noted in our April letter, the City cannot rely on the “deviation” process to excuse Draft Ordinance standards that violate federal or state law. Such late determinations at the decision stage would leave applicants guessing at the outcome of their application, violating the FCC’s direction that small cell aesthetic standards be “published in advance.” Infrastructure Order, ¶ 86. Instead, the City should ensure that its standards are reasonable at the outset, as required by the FCC.

Verizon Wireless appreciates the City’s continued invitations to provide comment on the Draft Ordinance. We encourage the Commission to incorporate our suggested revisions prior to recommending approval.

Very truly yours,



Paul B. Albritton

cc: Christine Davi, Esq.
Kimberly Cole

PC Wireless Ordinance Hearing 8/11/22

Mon 8/8/2022 9:45 PM

To: Oncall Planning <planning@monterey.org>

Cc: Clyde Roberson <roberson@monterey.org>; Dan Albert <albert@monterey.org>; Alan Haffa <haffa@monterey.org>; Ed Smith <smith@monterey.org>; Tyler Williamson <twilliamson@monterey.org>

You don't often get email from [REDACTED] [Learn why this is important](#)**Raymond Meyers**

Monterey, CA 93906

August 8, 2022

Planning Department Commissioners
Planning Commissioners
570 Pacific Street
Monterey, CA 93940

RE: Planning Commission Wireless Ordinance Hearing 8/9/22

Dear Planning Department Commissioners:

In 1996 the FCC adopted the new and updated Office of Engineering and Technology Bulletin 65 for evaluating compliance with FCC guidelines for human exposure to radio frequency electromagnetic fields, replacing the original bulletin from 1985. These standards were based upon technology that has long moved on – in 1996 we used 2G flip phones and pagers, pre-Blackberry, and 11 years away from the first iPhone.

Despite the revolution in cellular technology, the 1996 Bulletin 65 is still the standard that we use today, although in a 2021 lawsuit, the U.S. Court of Appeals for the D.C. Circuit concluded the FCC "failed to provide a reasoned explanation for its determination that its guidelines adequately protect against the harmful effects of exposure to radio frequency radiation". The court has determined that the FCC will have to go back to the drawing board and address the evidence presented in the case that called into question these 25-year-old dated technology safety standards.

In the meantime, our own Wireless Ordinance must be as protective and strong as allowable, and we must mandate every requirement for EMF safety compliance be included in the ordinance to protect the general public.

Please consider that any application for wireless facility provide verification of methods – the radio and antenna models with specifications required to validate the safety. The ordinance should also require models that graphically predict the 2D or 3D field radiation patterns and the topography and elevations of the structures within these patterns so the public can visually see what levels of effective radiated power will occur at various heights and distances from the proposed antennas.

I also recommend the ordinance have a requirement for an independent radio engineer review verify all the work that the applicant has submitted, just as any other building project plan check requires now.

The true measure of any wireless facility will always come from the actual measurement of EMF once it becomes operational. The ordinance must require some routine unannounced inspection by an independent radio engineer to further ensure compliance.

These wireless facilities will only continue to change as the demand for bandwidth and faster speeds are required for the new 21st century world. 5G is now here which requires many smaller multiple transmitting and receiving antennas and future beam-forming capabilities.

Please reject the current wireless ordinance as proposed and modify it to make it as strong as possible.

Regards,

Raymond Meyers

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Legal Update - Wireless

Recent Developments Affecting Local Authority

Gail A. Karish
August 9, 2022



Best Best & Krieger



Company/BestBestKrieger



@BBKlaw



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Agenda

- Update on state law developments
- Update on federal law developments



Update on state law developments



State Law

Concerning ROW placements:

- **Cal. Pub. Util. Code § 7901** –Telephone corporations including wireless companies have a statutory state franchise to construct facilities along and upon any public road or highway. . . in such manner and at such points as not to “incommode the public use of the road or highway”
 - *T-Mobile W., LLC v. City & Cnty. of San Francisco (2019)* – Discretionary review considering aesthetics ok’d under state law by California Supreme Court
- **Cal. Pub. Util. Code § 7901.1** – Power to reasonably regulate “time, place, and manner” in which roads are accessed. Must be applied to all entities in an “equivalent” manner.
- **Cal Pub. Util. Code § 2902** – regulate use and repair of public streets, location of poles, wires, mains, or conduits of any public utility, on, under, or above any public streets (to the extent not preempted by CPUC regulation)



State Law

- **Gov. Code 65964** prohibits:
 - Escrow deposit for removal of a facility (bonds ok)
 - Permit of less than 10 years (unless “public safety” or “land use” reasons)
 - Requiring all facilities to be located on sites owned by particular parties
- **Gov. Code 65964.1** (AB 57):
 - Deemed approved remedy for FCC’s 90 and 150 day shot clocks
 - Note: this remedy is *not* available for proposed placements on fire dept facilities
- **Gov. Code 65850.75** (AB 2421):
 - Temporarily imposes 60 day shot clock and mandatory approval of qualifying emergency generators at macro cell sites; does not apply to small cells, distributed antenna systems, or rooftop facilities
 - Sunsets on Jan. 1, 2024
- **Gov. Code 65850.6** intended to allow:
 - Discretionary permit to approve base facilities that may later add collocation facilities
 - No discretionary review of facilities collocated on base facility



Recent State Laws

- **AB 537 (2021)** took effect on Jan. 1, 2022
 - expands Gov. Code 65964.1 deemed granted remedy to include the 60 and 90 day FCC shot clocks for small cells
- **SB 378 (2021)** took effect on Jan. 1, 2022
 - Requires cities, counties, special districts and publicly owned utilities w/ excavation jurisdiction to allow microtrenching
 - Local agency may refuse only via a written finding that microtrenching for a fiber installation would have a specific, adverse impact on the public health or safety
- **SB 556 (2021)** vetoed by Gov. Newsom
 - would have mandated access to streetlights and traffic lights at regulated rates and shorter timelines than FCC's Small Cell Order



Update on federal law developments



National Policy On Wireless

- **National deployment policy** – no local decision or regulation can prohibit or have the effect of prohibiting personal wireless service
- **National RF emissions guidelines** – localities can only ensure applicant has shown it will comply with FCC guidelines
- **Timely action required** – deadlines and remedies for failure to act on applications
- **Denials** – Must be in writing and based on substantial evidence
- **Non-discrimination** – No unreasonable discrimination among providers of functionally equivalent services
- **Expedited appeals**
- **Some mandatory approvals** – modifications to existing wireless facilities that qualify as Eligible Facilities Requests must be approved



FCC Moratoria Order Upheld; Small Cell Order Partially Overturned

City of Portland v. United States, 969 F.3d 1020 (9th Cir. 2020).
SCOTUS cert petition denied, June 2021.

- FCC's ban on express and de facto moratoria on processing telecommunications facilities applications upheld.
- Aesthetic regulations for small wireless facilities must not prohibit or effectively prohibit the provision of personal wireless services
- Aesthetic requirements for small wireless facilities must be:
 - *Reasonable* ("technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments"); and
 - ~~• No more burdensome than those applied to other types of infrastructure deployments;~~
 - ~~• Objective and published in advance~~
- Spacing, separation, and setback requirements for small cells are subject to same federal standards
- Strike outs reflect Ninth Circuit decision.



FCC Effective Prohibition Standard Upheld

- FCC Small Cell Order on Effective Prohibition:
- “...an effective prohibition occurs where a state or local legal requirement *materially inhibits* a provider’s ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities...an effective prohibition includes materially inhibiting additional services or improving existing services.” (Para. 37)
- “...we reject alternative readings of the effective prohibition language that have been adopted by some courts and used to defend local requirements that have the effect of prohibiting densification of networks. Decisions that have applied solely a “coverage gap”- based approach under Section 332(c)(7)(B)(i)(II) reflect both an unduly narrow reading of the statute and an outdated view of the marketplace. Those cases, including some that formed the foundation for “coverage gap”-based analytical approaches, appear to view wireless service as if it were a single, monolithic offering provided only via traditional wireless towers. By contrast, the current wireless marketplace is characterized by a wide variety of offerings with differing service characteristics and deployment strategies. As Crown Castle explains, coverage gap-based approaches are “simply incompatible with a world where the vast majority of new wireless builds are going to be designed to add network capacity and take advantage of new technologies, rather than plug gaps in network coverage.” Moreover, a critical feature of these new wireless builds is to accommodate increased in-building use of wireless services, necessitating deployment of small cells in order to ensure quality service to wireless callers within such buildings.” (Para.40)
- “...we reject both the version of the “coverage gap” test followed by the First, Fourth, and Seventh Circuits (requiring applicants to show “not just that this application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try”) and the version endorsed by the Second, Third, and Ninth Circuits (requiring applicants to show that the proposed facilities are the “least intrusive means” for filling a coverage gap) (FN 94)



FCC Effective Prohibition Standard Upheld

- Ninth Circuit rejected both arguments made by local government petitioners against the FCC's effective prohibition standard in the Small Cell and Moratoria Orders :
- Local governments argued the FCC's application of the material inhibits standard was inconsistent with *Sprint Telephony PCS, L.P. v. County of San Diego*, 543 F.3d 571 (9th Cir. 2008) (en banc) which required showing an actual prohibition.
 - **Court held:** *Sprint* endorsed the material inhibition standard as a method of determining whether there has been an effective prohibition. The FCC here made factual findings, on the basis of the record before it, that certain municipal practices are materially inhibiting the deployment of 5G services. Nothing more is required of the FCC under *Sprint*.
- Local governments contended that the FCC, without reasoned explanation, departed from its prior approach in *California Payphone*, and has made it much easier to show an effective prohibition.
 - **Court held:** *California Payphone*'s material inhibition standard remains controlling. The differences in the FCC's new approach are reasonably explained by the differences in 5G technology. The FCC has explained that it applies a little differently in the context of 5G, because state and local regulation, particularly with respect to fees and aesthetics, is more likely to have a prohibitory effect on 5G technology than it does on older technology. The reason is that when compared with previous generations of wireless technology, 5G is different in that it requires rapid, widespread deployment of more facilities.



FCC RF Guidelines Unchanged

- FCC (2019) terminated an inquiry into possible updates to RF emissions exposure guidelines
- *Environmental Health Trust et al. v. FCC et al.*, (case no. 20-1025), D.C. Circuit Court of Appeals (2021) majority held the FCC's decision to end the inquiry was arbitrary and capricious
 - *The Court did not overturn the existing FCC guidelines or comment on their merits*
 - *The Court did not order the FCC to change the guidelines but said the FCC must provide a "reasoned explanation" for deciding no changes were warranted*
 - *The existing FCC guidelines remain in effect*



RF Guidelines Unchanged

- U.S. Court of Appeals (2021) majority stated:
“To be clear, we take no position in the scientific debate regarding the health and environmental effects of RF radiation – we merely conclude that the Commission’s cursory analysis of material record evidence was insufficient as a matter of law. As the dissenting opinion indicates, there may be good reasons why the various studies in the record, only some of which we have cited here, do not warrant changes to the Commission’s guidelines.”



EFR Rules Changed; Appeal Pending

- FCC 2014 Implementing Order set detailed parameters for EFRs, including in public rights-of-way (codified in 47 CFR § 1.6100)
- **Two subsequent orders**
 - Clarifications Order (FCC 20-75) adopted on 6/9/2020
 - Re-defines “concealment” to exclude ordinary concealment (such as hiding an antenna on the back of a roof or installing it under a tree line). Protections for concealment elements only apply to stealth facilities
 - Limit of 4 ground-mounted cabinets applies separately to *each* EFR and is not cumulative
 - Excludes from definition of “cabinet” smaller pieces of equipment in their own housing.
 - Order is in effect, appeal pending: League of Cal. Cities et al. v. FCC, No. 20-71765 (9th Cir. 2021)
 - Court has agreed to FCC request to keep case on hold until 11/11/2022
 - Expansions Order (FCC 20-153)
 - Adopted on 10/27/2020 and in effect, modifying rules for macro sites only – expanded definition of “site” to all excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction



Other Recent Litigation

T-Mobile v. City of San Francisco et al., No. 20-CV-08139 (N.D. Cal. 2021)

- T-Mobile sued City seeking court order to issue the permits and approve pending and future applications w/in 60 days. **Ruling:**
 - City not required to issue permits for EFR applications after T-Mobile sent deemed granted notice because the Spectrum Act only prohibits State or local governments from denying qualifying applications (*but note statute says “may not deny, and shall approve”*)
 - No affirmative obligations imposed but T-Mobile’s deemed granted applications should be treated as granted
 - City barred from imposing penalties or preventing T-Mobile from proceeding with installations for applications deemed granted because City didn’t act w/in 60 days



Other Recent Litigation

Los Angeles SMSA Ltd Partnership dba Verizon v. City of Malibu, No. 2:21-cv-01827-PSG-PVC (C.D. Cal. 2021)

- Verizon submitted an EFR application to City in 2020
 - City and Verizon did not agree on eligibility as EFR
 - City believed it denied application and pursued incompleteness items for collocation multiple times
 - Verizon believed City did not act and sent deemed granted letter for EFR
 - Court agreed that City staff acted to deny EFR within shot clock and Verizon failed to pursue court remedy within 30 days of EFR denial so court action was untimely
 - On appeal to Ninth Circuit



Other Recent Litigation

GTE Mobilnet of CA LP v. Carmel-by-the-Sea, No. 5:22-cv-00347 (N.D. Cal. 2022)

- Verizon submitted an application to City seeking to replace existing wood utility pole with a new wood pole and add SWF
 - PC denied; Verizon appealed; CC denied
- Verizon sued (*not to challenge merits of denial but*) claiming City failed to act
 - Claimed that “in writing” under § 332(c)(7)(B)(iii) requires an issued written denial *delivered* to applicant
 - Claimed it should be entitled to approval under agreement with city
 - Court rejected Verizon’s arguments
 - Held City timely acted by making final decision *available* before deadline and that there was no delivery requirement in federal law
 - Verizon has appealed to Ninth Circuit



Other Recent Litigation

***West Virginia v. EPA*, No. 5:22-cv-00347 (597 U.S. ____ (2022))**

- Supreme Court decision reminds us Major Questions Doctrine puts limit on judicial deference to federal agency rulemaking authority
 - “Precedent teaches that there are “extraordinary cases” in which the “history and the breadth of the authority that [the agency] has asserted,” and the “economic and political significance” of that assertion, provide a “reason to hesitate before concluding that Congress” meant to confer such authority. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 159–160. See, e.g., *Alabama Assn. of Realtors v. Department of Health and Human Servs.*, 594 U. S. ____, ____; *Utility Air Regulatory Group v. EPA*, 573 U. S. 302, 324; *Gonzales v. Oregon*, 546 U. S. 243, 267; *National Federation of Independent Business v. OSHA*, 595 U. S. ____, ____.
- Under this body of law, known as the major questions doctrine, given both separation of powers principles and a practical understanding of legislative intent, the agency must point to “clear congressional authorization” for the authority it claims. *Utility Air*, 573 U. S., at 324. Pp. 16–20.”
- Under the major questions doctrine, administrative agencies must be able to point to “clear congressional authorization” when they claim the power to make decisions of vast “economic and political significance.”
- Here the majority rejected the EPA’s attempt to regulate carbon dioxide emissions from existing coal- and natural-gas-fired power plants under existing statutory authority





Thank you.

Gail A. Karish
Partner



Best Best & Krieger



Company/BestBestKrieger



@BBKlaw



BEST BEST & KRIEGER
ATTORNEYS AT LAW



Wireless

Proposed Ordinance

Planning Commission
August 9, 2022



THE CITY OF
MONTEREY

Background

March 15, 2018 Planning Commission Meeting:

Staff recommendation to the Planning Commission to deny 10 of the 13 small cell applications. The applicant (ExteNet) then withdrew 12 of the 13 applications. The one that was not withdrawn (277 Mar Vista Drive @ 7 Cuesta Vista Drive) was recommended for approval by the staff. Public comment was received from 38 members of the public in opposition and the Planning Commission denied the application.

April 4, 2018: Susan Nine forwarded the Monterey Vista Neighborhood Association re-draft of the City's wireless ordinance.



THE CITY OF
MONTEREY

Background

April 17, 2018 City Council Meeting:

Direct the Planning Commission to: 1) Consider Options for Strengthening the City's Wireless Application Requirements; and 2) Make a Recommendation to the City Council that is Consistent with Federal Regulations

June 26, 2018: Planning Commission recommended the City Council create a wireless subcommittee



THE CITY OF
MONTEREY

Background

July 17, 2018 City Council received a report on the risks of a moratorium ordinance.

Council discussed; directed staff to: expedite an amendment of the current ordinance with advice of a subcommittee; Come back to the Council on August 7, 2018 meeting with a plan for the ordinance to approved in November or December and a timeline for ordinance process; and when feasible, pursue incremental modifications to the Ordinance

August 7, 2018: City Council appointed a Wireless Subcommittee



THE CITY OF
MONTEREY

Background

August 23, 2018

August 30, 2018

September 6, 2018

September 12, 2018

September 13, 2018

September 18, 2018 – City Council authorized joining a coalition of communities represented by Best, Best & Krieger (Joe VanEaton, Esq.) to challenge the FCC proposed orders that will, among other things, limit local control over small cell facilities and drastically reduce wireless permitting timelines. This case is commonly referred to as the Portland litigation.



THE CITY OF
MONTEREY

Background

September 19, 2018 – recommended ordinance changes to the
Planning Commission

September 25, 2018 – ordinance changes considered by the
Planning Commission

October 1, 2018

October 18, 2018 – City Council adopts ordinance changes

October 19, 2018

October 26, 2018

October 29, 2018



THE CITY OF
MONTEREY

Background

October 29, 2018

November 2, 2018

November 9, 2018

November 16, 2018

November 19, 2018

November 27, 2018 Planning Commission approved wireless checklist.

November 30, 2018

December 7, 2018



THE CITY OF
MONTEREY

Background

December 10, 2018

December 17, 2018

December 21, 2018

May 17, 2019 – encroachment ordinance introduction

July 8, 2019 – further encroachment ordinance discussion and
changes to wireless ordinance

July 9, 2019

September 5, 2019



THE CITY OF
MONTEREY

Background

September 6, 2019 (4-1 vote to recommend ordinance to the planning commission)

October 15, 2019, staff request Council dissolve wireless subcommittee:

A motion was introduced by Councilmember Albert, and seconded by Councilmember Haffa, to postpone dissolving the Dissolve Wireless Telecommunications Subcommittee for 45 days with the intent that the committee will have the chance to see the final wireless ordinance and the encroachment ordinance before they go to the Planning Commission. Councilmember Smith offered an amendment to make the timeline "up to 45 days," which was approved by the mover and seconder.



Background

December 4, 2019

December 5, 2019

December 17, 2019, the City Council dissolved the subcommittee

February 4, 2020 Council passes encroachment ordinance. This ordinance requires undergrounding of all utilities, telecommunications and non-telecommunications, in all new development and for existing utilities that are part of a redevelopment project.

August 12, 2020 – 9th Circuit ruling in the Portland matter.

September 28, 2020 – Coalition of Cities (including Monterey) Petition for the full appellate court to review the ruling in the Portland litigation.



THE CITY OF
MONTEREY

Background

October 22, 2020 – 9th Circuit denied request to review ruling in the Portland litigation

March 22, 2021 – Coalition of Cities petition the United States Supreme Court for review of the ruling in the Portland litigation.

June 28, 2021 – United States Supreme Court denies request to review 9th Circuit decision in the Portland litigation.

April 26, 2022 – Planning Commission meeting on the wireless subcommittee's draft ordinance.

June 28, 2022 Planning Commission meeting was cancelled because, sadly, Joe VanEaton, Esq. died.

August 9, 2022 Planning Commission meeting



THE CITY OF
MONTEREY

Purpose of Tonight's Meeting

Open Hearing for Public Comment

Discuss Ordinance

Ultimately, make a recommendation to the City Council



THE CITY OF
MONTEREY

Monterey ordinance

Bruce Hollenbeck [REDACTED]

Tue 8/9/2022 1:26 AM

To: Oncall Planning <planning@monterey.org>

 1 attachments (20 KB)

Monterey planning ordinance letter#2.pdf;

[You don't often get email from [REDACTED] Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Please distribute to all Planning Commissioners and enter into the record.

Thank you,

Christy Hollenbeck

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Sent from my iPad

Tuesday, August 9, 2022

Dear Planning Commissioners,

I urge the Planning Commission to NOT recommend approval of the staff-revised wireless ordinance that “is not as strong as possible” and that does not reflect Community values. I recommend that the draft ordinance be updated and rewritten by expert, pro-resident telecom attorney, Andrew Campanelli.

1. Staff removed the Wind Load Safety Test required by the Wireless Ordinance Subcommittee’s draft.
2. Staff included language that allows noise-creating equipment to be added post application approval for a project that was initially approved without noise-creating equipment.
3. The RF Compliance Report requirements merit the more detailed and stringent language provided by the Campanelli ordinance.
4. Staff did not add the requested requirement that the applicant must provide Drive Test data to substantiate any claim of Prohibition/Effective Prohibition/ significant coverage gap to get around ordinance requirements, requiring only confusing self-generated propagation maps. Even the FCC has determined that these propagation maps are easily manipulated, highly inaccurate and unreliable. When Verizon wanted to locate thirteen towers in our neighborhood claiming effective prohibition of services would result, a Drive Test revealed existing 100% connectivity and coverage throughout the neighborhood.
5. The Wireless Ordinance Subcommittee’s draft required that staff post all wireless application filings on the City's website according to a specified time frame to alert the public of pending wireless facilities. Staff changed this language to give them discretionary authority whether to and when to post notifications of application filings.
6. Staff omitted any minimum setback requirement of facilities from residences and schools.
7. Staff created more liberal design element requirements for public right-of-way locations from what is in the current ordinance. On utility poles the current

ordinance only allows a two foot increase in pole height by antennas and radomes. The staff's draft allows a four foot increase in height and more if needed to provide clearance from power lines. The current ordinance only allows pole-mounted equipment to extend ten inches from centerline while the staff draft allows equipment to extend fifteen inches from surface. The current ordinance states that outdoor ground-mounted equipment associated with base stations shall be avoided whenever feasible. In the current draft, ground-mounted equipment is the preferred option over pole-mounted equipment. This will result in ugly metal equipment boxes littering street frontage of buildings and residences, blocking sidewalks and parking spaces.

8. Staff omitted all mock-up requirements. The representatives of the Wireless Ordinance Subcommittee required mock-ups in their final document.

9. The Wireless Ordinance employs many legal and technical terms and acronyms not readily understood by lay persons. MVNA requested numerous terms be explained in the definitions section of the ordinance, but none were changed or added to make it more understandable to the public, putting the public at a severe disadvantage to the lawyers representing the trillion dollar telecom industry.

11. The staff is proposing that only an administrative permit is necessary to install temporary cell towers -- for example for large events -- without notice to nearby neighbors or businesses, without any RF radiation reports to insure safety, nor minimum setbacks from businesses or residential structures.

12. The staff version does not require applicants to provide necessary evidence to prove a significant coverage gap exists and has removed the requirement that applicants must demonstrate the non-existence of less invasive alternative locations. This draft states that wireless facilities in residential neighborhoods require an effective prohibition showing, but they have removed the necessity to prove an existing significant coverage gap!

Thank you,
Christy Hollenbeck

capturedagency_alster.pdf

christy hollenbeck [REDACTED]

Tue 8/9/2022 10:22 AM

To: Oncall Planning <planning@monterey.org>

[You don't often get email from [REDACTED] Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Please enter into the record and distribute to all Planning Commissioners.

Thank you,

Christy Hollenbeck

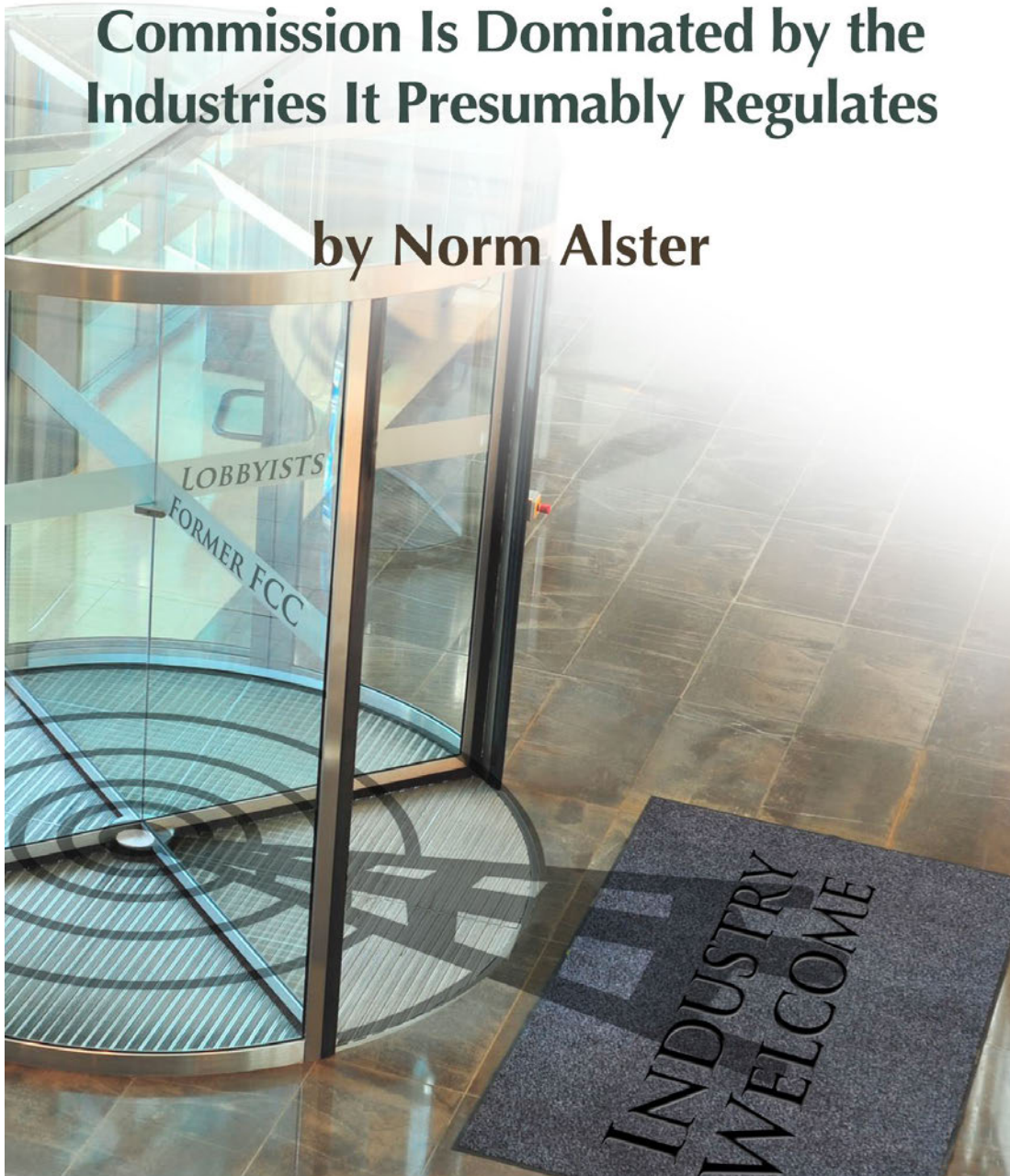
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Sent from my iPad

Captured Agency:

How the Federal Communications
Commission Is Dominated by the
Industries It Presumably Regulates

by Norm Alster



www.ethics.harvard.edu

Captured Agency

How the Federal Communications Commission Is Dominated
by the Industries It Presumably Regulates

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Chapter One: The Corrupted Network

Renee Sharp seemed proud to discuss her spring 2014 meeting with the Federal Communications Commission.

As research director for the non-profit Environmental Working Group, Sharp doesn't get many chances to visit with the FCC. But on this occasion she was able to express her concerns that lax FCC standards on radiation from wireless technologies were especially hazardous for children.

The FCC, however, should have little trouble dismissing those concerns.

Arguing that current standards are more than sufficient and that children are at no elevated risk from microwave radiation, wireless industry lobbyists don't generally have to set up appointments months in advance. They are at the FCC's door night and day.

Indeed, a former executive with the Cellular Telecommunications Industry Association (CTIA), the industry's main lobbying group, has boasted that the CTIA meets with FCC officials "500 times a year."¹

Sharp does not seem surprised. "There's no question that the government has been under the influence of industry. The FCC is a captured agency," she said.²

Captured agency.

That's a term that comes up time and time again with the FCC. Captured agencies are essentially controlled by the industries they are supposed to regulate. A detailed look at FCC actions—and non-actions—shows that over the years the FCC has granted the wireless industry pretty much what it has wanted. Until very recently it has also granted cable what it wants. More broadly, the FCC has again and again echoed the lobbying points of major technology interests.

Money—and lots of it—has played a part. The National Cable and Telecommunications Association (NCTA) and CTIA have annually been among Washington's top lobbying spenders. CTIA alone lobbied on at least 35 different Congressional bills through the first half of 2014. Wireless market leaders AT&T and Verizon work through CTIA. But they also do their own lobbying, spending nearly \$15 million through June of 2014, according to data from the Center for Responsive Politics (CRP). In all, CTIA, Verizon, AT&T, T-Mobile USA, and Sprint spent roughly \$45 million lobbying in 2013. Overall, the Communications/Electronics sector is one of Washington's super heavyweight lobbyists, spending nearly \$800 million in 2013-2014, according to CRP data.

But direct lobbying by industry is just one of many worms in a rotting apple. The FCC sits at the core of a network that has allowed powerful moneyed interests with limitless access a variety of ways to shape its policies, often at the expense of fundamental public interests.

As a result, consumer safety, health, and privacy, along with consumer wallets, have all been overlooked, sacrificed, or raided due to unchecked industry influence. The cable industry has consolidated into giant local monopolies that control pricing while leaving consumers little choice over content selection. Though the FCC has only partial responsibility, federal regulators have allowed the Internet to grow into a vast hunting grounds for criminals and commercial interests: the go-to destination for the surrender of personal information, privacy and identity. Most insidious of all, the wireless industry has been allowed to grow unchecked and virtually unregulated, with fundamental questions on public health impact routinely ignored.

Industry controls the FCC through a soup-to-nuts stranglehold that extends from its well-placed campaign spending in Congress through its control of the FCC's Congressional oversight committees to its persistent agency lobbying. "If you're on a committee that regulates industry you'll be a major target for industry," said Twaun Samuel, chief of staff for Congresswoman Maxine Waters.³ Samuel several years ago helped write a bill aimed at slowing the revolving door. But with Congress getting its marching orders from industry, the bill never gained any traction.

Industry control, in the case of wireless health issues, extends beyond Congress and regulators to basic scientific research. And in an obvious echo of the hardball tactics of the tobacco industry, the wireless industry has backed up its economic and political power by stonewalling on public relations and bullying potential threats into submission with its huge standing army of lawyers. In this way, a coddled wireless industry intimidated and silenced the City of San Francisco, while running roughshod over local opponents of its expansionary infrastructure.

On a personal level, the entire system is greased by the free flow of executive leadership between the FCC and the industries it presumably oversees. Currently presiding over the FCC is Tom Wheeler, a man who has led the two most powerful industry lobbying groups: CTIA and NCTA. It is Wheeler who once supervised a \$25 million industry-funded research effort on wireless health effects. But when handpicked research leader George Carlo concluded that wireless radiation did raise the risk of brain tumors, Wheeler's CTIA allegedly rushed to muffle the message. "You do the science. I'll take care of the politics," Carlo recalls Wheeler saying.⁴

Wheeler over time has proved a masterful politician. President Obama overlooked Wheeler's lobbyist past to nominate him as FCC chairman in 2013. He had, after all, raised more than \$700,000 for Obama's presidential campaigns. Wheeler had little trouble earning confirmation from a Senate whose Democrats toed the Presidential line and whose Republicans understood Wheeler was as industry-friendly a nominee as they could get. And while Wheeler, at the behest of his Presidential sponsor, has taken on cable giants with his plans for net neutrality and shown some openness on other issues, he has dug in his heels on wireless.

Newly ensconced as chairman of the agency he once blitzed with partisan pitches, Wheeler sees familiar faces heading the industry lobbying groups that ceaselessly petition the FCC. At CTIA, which now calls itself CTIA - The Wireless Association, former FCC commissioner Meredith Atwell Baker is in charge.

Wireless and Cable Industries Have the FCC Covered



And while cell phone manufacturers like Apple and Samsung, along with wireless service behemoths like Verizon and AT&T, are prominent CTIA members, the infrastructure of 300,000 or more cellular base stations and antenna sites has its own lobbying group: PCIA, the Wireless Infrastructure Association. The President and CEO of PCIA is Jonathan Adelstein, another former FCC commissioner. Meanwhile, the cable industry's NCTA employs former FCC chairman Michael Powell as its president and CEO. Cozy, isn't it?

FCC commissioners in 2014 received invitations to the Wireless Foundation's May 19th Achievement Awards Dinner. Sounds harmless, but for the fact that the chief honoree at the dinner was none other than former wireless lobbyist but current FCC Chairman Tom Wheeler. Is this the man who will act to look impartially at the growing body of evidence pointing to health and safety issues?

The revolving door also reinforces the clout at another node on the industry-controlled influence network. Members of congressional oversight committees are prime targets of

industry. The cable industry, for example, knows that key legislation must move through the Communications and Technology Subcommittee of the House Energy and Commerce Committee. Little wonder then that subcommittee chairman Greg Walden was the second leading recipient (after Speaker John Boehner) of cable industry contributions in the last six years (through June 30, 2014). In all, Walden, an Oregon Republican, has taken over \$108,000 from cable and satellite production and distribution companies.⁵ But he is not alone. Six of the top ten recipients of cable and satellite contributions sit on the industry's House oversight committee. The same is true of senators on the cable oversight committee. Committee members were six of the ten top recipients of campaign cash from the industry.⁶

Cable & Satellite Campaign Contributions

Top House Recipients Funded

Recipient	Amount
John A. Boehner	\$135,425
Greg Walden	\$108,750
Bob Goodlatte	\$93,200
John Conyers Jr.	\$84,000
Mike Coffman	\$82,137
Fred Upton	\$73,500
Lee Terry	\$65,916
Henry A. Waxman	\$65,000
Cory Gardner	\$64,500
Anna G. Eshoo	\$60,500

Cellular Industry Campaign Contributions

Top House Recipients Funded

Recipient	Amount
Henry A. Waxman	\$41,500
Scott H. Peters	\$40,300
Greg Walden	\$35,750
Fred Upton	\$32,250
Bob Goodlatte	\$31,250
Lee Terry	\$29,600
Anna G. Eshoo	\$27,000
Doris O. Matsui	\$25,500
John Shimkus	\$24,000
Peter J. Roskam	\$21,100

Cable & Satellite Campaign Contributions

Top Senate Recipients Funded

Recipient	Amount
Edward J. Markey	\$320,500
Kirsten E. Gillibrand	\$194,125
Mitch McConnell	\$177,125
Harry Reid	\$175,600
Charles E. Schumer	\$175,450
Mark L. Pryor	\$172,950
Michael F. Bennet	\$159,000
Richard Blumenthal	\$148,800
Claire McCaskill	\$138,185
Mark Udall	\$136,625

Cellular Industry Campaign Contributions

Top Senate Recipients Funded

Recipient	Amount
Edward J. Markey	\$155,150
Mark R. Warner	\$74,800
Harry Reid	\$73,600
Mark L. Pryor	\$71,900
Roy Blunt	\$57,400
John McCain	\$56,261
Charles E. Schumer	\$53,300
Roger F. Wicker	\$51,300
Barbara Boxer	\$49,578
Kelly Ayotte	\$43,333

The compromised FCC network goes well beyond the revolving door and congressional oversight committees. The Washington social scene is one where money sets the tone and throws the parties. A look at the recent calendar of one current FCC commissioner shows it would take very disciplined and almost saintly behavior on the part of government officials to resist the lure of lavishly catered dinners and cocktail events. To paraphrase iconic investigative journalist I.F. Stone, if you're going to work in Washington, bring your chastity belt.

All that free liquor, food and conviviality translates into the lobbyist's ultimate goal: access. "They have disproportionate access," notes former FCC commissioner Michael Copps. "When you are in a town where most people you see socially are in industry, you don't have to ascribe malevolent behavior to it," he added.⁷

Not malevolent in motive. But the results can be toxic. And blame does not lie solely at the feet of current commissioners. The FCC's problems predate Tom Wheeler and go back a long way.

Indeed, former Chairman Newton Minow, enduringly famous for his 1961 description of television as a "vast wasteland," recalls that industry manipulation of regulators was an issue even back then. "When I arrived, the FCC and the communications industry were both regarded as cesspools. Part of my job was to try to clean it up."⁸

More than 50 years later, the mess continues to pile up.

Chapter Two: Just Don't Bring Up Health

Perhaps the best example of how the FCC is tangled in a chain of corruption is the cell tower and antenna infrastructure that lies at the heart of the phenomenally successful wireless industry.

It all begins with passage of the Telecommunications Act of 1996, legislation once described by South Dakota Republican senator Larry Pressler as “the most lobbied bill in history.” Late lobbying won the wireless industry enormous concessions from lawmakers, many of them major recipients of industry hard and soft dollar contributions. Congressional staffers who helped lobbyists write the new law did not go unrewarded. Thirteen of fifteen staffers later became lobbyists themselves.⁹

Section 332(c)(7)(B)(iv) of the Act remarkably—and that adverb seems inescapably best here—wrests zoning authority from local governments. Specifically, they cannot cite health concerns about the effects of tower radiation to deny tower licenses so long as the towers comply with FCC regulations.

Congress Silences Public

Section 332(c)(7)(B)(iv) of the Communications Act provides:

No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

In preempting local zoning authority—along with the public's right to guard its own safety and health—Congress unleashed an orgy of infrastructure build-out. Emboldened by the government green light and the vast consumer appetite for wireless technology, industry has had a free hand in installing more than 300,000 sites. Church steeples, schoolyards, school rooftops, even trees can house these facilities.

Is there any reason to believe that the relatively low level radiofrequency emissions of these facilities constitute a public health threat? Certainly, cell phones themselves, held close to the head, have been the focus of most concern on RF emissions. Since the impact of RF diminishes with distance, industry advocates and many scientists dismiss the possibility that such structures pose health risks.

But it's not really that simple. A troubling body of evidence suggests exposure to even low emission levels at typical cellular frequencies between 300 MHz and 3 GHz can have a wide range of negative effects.

In a 2010 review of research on the biological effects of exposure to radiation from cell tower base stations, B. Blake Levitt and Henry Lai found that “some research does exist to warrant caution in infrastructure siting.”¹⁰ They summarized the results on one 2002 study that compared the health of 530 people living at various distances within 300 meters of cell towers with a control group living more than 300 meters away. “Results indicated increased symptoms and complaints the closer a person lived to a tower. At <10 m, symptoms included nausea, loss of appetite, visual disruptions, and difficulties in moving. Significant differences were observed up through 100 m for irritability, depressive tendencies, concentration difficulties, memory loss, dizziness, and lower libido.”¹¹

A 2007 study conducted in Egypt found similar results. Levitt and Lai report, “Headaches, memory changes, dizziness, tremors, depressive symptoms, and sleep disturbance were significantly higher among exposed inhabitants than controls.”¹²

Beyond epidemiological studies, research on a wide range of living things raises further red flags. A 2013 study by the Indian scientists S. Sivani and D. Sudarsanam reports: “Based on current available literature, it is justified to conclude that RF-EMF [electro magnetic fields] radiation exposure can change neurotransmitter functions, blood-brain barrier, morphology, electrophysiology, cellular metabolism, calcium efflux, and gene and protein expression in certain types of cells even at lower intensities.”¹³

The article goes on to detail the effects of mobile tower emissions on a wide range of living organisms: “Tops of trees tend to dry up when they directly face the cell tower antennas. . . . A study by the Centre for Environment and Vocational Studies of Punjab University noted that embryos of 50 eggs of house sparrows were damaged after being exposed to mobile tower radiation for 5-30 minutes. . . . In a study on cows and calves on the effects of exposure from mobile phone base stations, it was noted that 32% of calves developed nuclear cataracts, 3.6% severely.”¹⁴

Does any of this constitute the conclusive evidence that would mandate much tighter control of the wireless infrastructure? Not in the estimation of industry and its captured agency. Citing other studies—often industry-funded—that fail to establish health effects, the wireless industry has dismissed such concerns. The FCC has typically echoed that position.

Keep in mind that light regulation has been one factor in the extraordinary growth of wireless—CTIA says exactly that in a Web post that credits the Clinton Administrations light regulatory touch.

July 25, 2013



CTIA is an international nonprofit trade association that has represented the wireless communications industry since 1984.

But our position as the world's leader was no accident. It started with the Clinton Administration that had the foresight to place a "light regulatory touch" on the wireless industry, which was in its infancy at the time. That light touch has continued through multiple Administrations.

Obviously, cellular technology is wildly popular because it offers many benefits to consumers. But even allowing for that popularity and for the incomplete state of science, don't some of these findings raise enough concern to warrant some backtracking on the ham-fisted federal preemption of local zoning rights?

In reality, since the passage of the 1996 law, the very opposite has occurred. Again and again both Congress and the FCC have opted to stiffen—rather than loosen—federal preemption over local zoning authority. In 2009, for example, the wireless industry convinced the FCC to impose a "shot clock" that requires action within 90 days on many zoning applications. "My sense is that it was an industry request," said Robert Weller, who headed up the FCC's Office of Engineering and Technology when the shot clock was considered and imposed.¹⁵

And just last November, the FCC voted to further curb the rights of local zoning officials to control the expansion of antenna sites. Again and again, Congress and the FCC have extended the wireless industry carte blanche to build out infrastructure no matter the consequences to local communities.

The question that hangs over all this: would consumers' embrace of cell phones and Wi-Fi be quite so ardent if the wireless industry, enabled by its Washington errand boys, hadn't so consistently stonewalled on evidence and substituted legal intimidation for honest inquiry? (See Appendix for online study of consumer attitudes on wireless health and safety.)

Document searches under the Freedom of Information Act reveal the central role of Tom Wheeler and the FCC in the tower siting issue. As both lobbyist and FCC chairman, Wheeler has proved himself a good friend of the wireless industry.

In January of 1997, CTIA chieftain Wheeler wrote FCC Wireless Telecommunications Bureau Chief Michele C. Farquhar citing several municipal efforts to assert control over siting. Wheeler, for example, asserted that one New England state had enacted a law requiring its Public Service Commissioner to issue a report on health risks posed by wireless facilities.¹⁶ He

questions whether such a study—and regulations based on its results—would infringe on FCC preemption authority.

FCC bureau chief Farquhar hastily reassured Wheeler that no such study could be consulted in zoning decisions. “Therefore, based on the facts as you have presented them, that portion of the statute that directs the State Commissioner to recommend regulations based upon the study’s findings would appear to be preempted,”¹⁷ the FCC official wrote to Wheeler. She emphasized that the state had the right to do the study. It just couldn’t deny a siting application based on anything it might learn.

The FCC in 1997 sent the message it has implicitly endorsed and conveyed ever since: study health effects all you want. It doesn’t matter what you find. The build-out of wireless cannot be blocked or slowed by health issues.

Now let’s fast forward to see Wheeler on the other side of the revolving door, interacting as FCC chairman with a former FCC commissioner who is now an industry lobbyist.

A March 14, 2014 letter¹⁸ reveals the chummy relationship between Wheeler and former commissioner Jonathan Adelstein, now head of PCIA, the cellular infrastructure lobbying group. It also references FCC Chairman Wheeler seeking policy counsel from lobbyist Adelstein:

Wheeler Still Willing to Help

From: Jonathan Adelstein [mailto:adelstein@pcia.com]
Sent: Friday, March 14, 2014 12:24 PM
To: [REDACTED]
Cc: Renee Gregory; Jonathan Campbell
Subject: How to Spur Wireless Broadband Deployment

Tom – It was great to see you the other night at the FCBA event, and wonderful to see how much fun you’re having (if that’s the right word). I know I enjoyed my time there (thanks to your help with Daschle in getting me that role in the first place!).

Thanks for asking how we think the FCC can help spur wireless broadband deployment. The infrastructure proceeding perfectly tees up many of the top issues the FCC needs to address. As you requested, I’ve summarized briefly in the attached letter some of the key steps you can take now.

“Tom – It was great to see you the other night at the FCBA event, and wonderful to see how much fun you’re having (if that’s the right word). I know I enjoyed my time there (thanks to your help with Daschle in getting me that role in the first place!).”

“Thanks for asking how we think the FCC can help spur wireless broadband deployment,” the wireless lobbyist writes to the ex-wireless lobbyist, now running the FCC.

Adelstein's first recommendation for FCC action: "*Amend its rules to categorically exclude DAS and small deployments* [Ed. note: these are compact tower add-ons currently being widely deployed] *from environmental and historic review.*" Adelstein outlined other suggestions for further limiting local antenna zoning authority and the FCC soon did its part. Late last year, the agency proposed new rules that largely (though not entirely) complied with the antenna industry's wish list.

James R. Hobson is an attorney who has represented municipalities in zoning issues involving the FCC. He is also a former FCC official, who is now of counsel at Best, Best and Krieger, a Washington-based municipal law practice. "The FCC has been the ally of industry," says Hobson. Lobbyist pressure at the FCC was intense even back in the 70s, when he was a bureau chief there. "When I was at the FCC, a lot of my day was taken up with appointments with industry lobbyists." He says of the CTIA that Wheeler once headed: "Their reason for being is promoting the wireless industry. And they've been successful at it."¹⁹

The FCC's deferential compliance has allowed industry to regularly bypass and if necessary steamroll local authorities. Violation of the FCC-imposed "shot clock," for example, allows the wireless license applicant to sue.

The FCC's service to the industry it is supposed to regulate is evidently appreciated. The CTIA web site, typically overflowing with self-congratulation, spreads the praise around in acknowledging the enabling contributions of a cooperative FCC. In one brief summation of its own glorious accomplishments, CTIA twice uses the word "thankfully" in describing favorable FCC actions.

In advancing the industry agenda, the FCC can claim that it is merely reflecting the will of Congress. But the agency may not be doing even that.

Remember the key clause in the 96 Telecom Act that disallowed denial of zoning permits based on health concerns? Well, federal preemption is granted to pretty much any wireless outfit on just one simple condition: its installations must comply with FCC radiation emission standards. In view of this generous carte blanche to move radiation equipment into neighborhoods, schoolyards and home rooftops, one would think the FCC would at the very least diligently enforce its own emission standards. But that does not appear to be the case.

Indeed, one RF engineer who has worked on more than 3,000 rooftop sites found vast evidence of non-compliance. Marvin Wessel estimates that "10 to 20% exceed allowed radiation standards."²⁰ With 30,000 rooftop antenna sites across the U.S. that would mean that as many as 6,000 are emitting radiation in violation of FCC standards. Often, these emissions can be 600% or more of allowed exposure levels, according to Wessel.

Antenna standards allow for higher exposure to workers. In the case of rooftop sites, such workers could be roofers, painters, testers and installers of heating and air conditioning

equipment, to cite just a few examples. But many sites, according to Wessel, emit radiation at much higher levels than those permitted in occupational standards. This is especially true of sites where service providers keep adding new antenna units to expand their coverage. “Some of these new sites will exceed ten times the allowable occupational radiation level,” said Wessel.²¹ Essentially, he adds, this means that nobody should be stepping on the roof.

“The FCC is not enforcing its own standard,” noted Janet Newton, who runs the EMF Policy Institute, a Vermont-based non-profit. That group several years ago filed 101 complaints on specific rooftop sites where radiation emissions exceeded allowable levels. “We did this as an exercise to hold the FCC’s feet to the fire,” she said. But the 101 complaints resulted in few responsive actions, according to Newton.²²

Former FCC official Bob Weller confirms the lax—perhaps negligible is the more appropriate word—FCC activity in enforcing antenna standards. “To my knowledge, the enforcement bureau has never done a targeted inspection effort around RF exposure,” he said.²³ Budget cuts at the agency have hurt, limiting the FCC’s ability to perform field inspections, he added. But enforcement, he adds, would do wonders to insure industry compliance with its limited regulatory compliance requirements. “If there were targeted enforcement and fines issued the industry would pay greater attention to ensuring compliance and self-regulation,” he allowed.

Insurance is where the rubber hits the road on risk. So it is interesting to note that the rating agency A.M. Best, which advises insurers on risk, in 2013 topped its list of “emerging technology-based risks” with RF Radiation:

“The risks associated with long-term use of cell phones, although much studied over the past 10 years, remain unclear. Dangers to the estimated 250,000 workers per year who come in close contact with cell phone antennas, however, are now more clearly established. Thermal effects of the cellular antennas, which act at close range essentially as open microwave ovens can include eye damage, sterility and cognitive impairments. While workers of cellular companies are well trained on the potential dangers, other workers exposed to the antennas are often unaware of the health risks. The continued exponential growth of cellular towers will significantly increase exposure of these workers and others coming into close contact with high-energy cell phone antenna radiation,” A.M. Best wrote.²⁴

So what has the FCC done to tighten enforcement? Apparently, not very much. Though it does follow up on many of the complaints filed against sites alleged to be in violation of standards it takes punitive actions very rarely. (The FCC did not provide answers to written questions on details of its tower enforcement policies.)

The best ally of industry and the FCC on this (and other) issues may be public ignorance.

An online poll conducted for this project asked 202 respondents to rate the likelihood of a series of statements.²⁵ Most of the statements were subject to dispute. Cell phones raise the risk of certain health effects and brain cancer, two said. There is no proof that cell phones are harmful, another declared. But among the six statements there was one statement of indisputable fact: “The U.S. Congress forbids local communities from considering health effects when deciding whether to issue zoning permits for wireless antennae,” the statement said.

Though this is a stone cold fact that the wireless industry, the FCC and the courts have all turned into hard and inescapable reality for local authorities, just 1.5% of all poll respondents replied that it was “definitely true.”

Public ignorance didn’t take much cultivation by the wireless industry on the issue of local zoning. And maybe it doesn’t matter much, considering the enormous popularity of wireless devices. But let’s see how public ignorance has been cultivated and secured—with the FCC’s passive support—on the potentially more disruptive issue of mobile phone health effects.

Chapter Three: Wireless Bullies and the Tobacco Analogy

Issues of cable and net neutrality have recently attracted wide public attention (more on that in Chapter Six). Still, the bet here remains that future judgment of the FCC will hinge on its handling of wireless health and safety issues.

And while the tower siting issue is an egregious example of an industry-dominated political process run amuck, the stronger health risks appear to reside in the phones themselves. This is an issue that has flared up several times in recent years. Each time, industry has managed to beat back such concerns. But it's worth noting that the scientific roots of concern have not disappeared. If anything, they've thickened as new research substantiates older concerns.

The story of an FCC passively echoing an industry determined to play hardball with its critics is worth a further look. The CTIA's own website acknowledges the helpful hand of government's "light regulatory touch" in allowing the industry to grow.²⁶

Former congressman Dennis Kucinich ventures one explanation for the wireless industry's success in dodging regulation: "The industry has grown so fast its growth has overtaken any health concerns that may have gained attention in a slow growth environment. The proliferation of technology has overwhelmed all institutions that would have attempted safety testing and standards," Kucinich said.²⁷

But the core questions remain: Is there really credible evidence that cell phones emit harmful radiation that can cause human health problems and disease? Has the FCC done an adequate job in protecting consumers from health risks? Or has it simply aped industry stonewalling on health and safety issues?

Before wading into these questions, some perspective is in order.

First, there's simply no denying the usefulness and immense popularity of wireless technology. People depend on it for safety, information, entertainment and communication. It doesn't take a keen social observer to know that wireless has thoroughly insinuated itself into daily life and culture.

The unanswered question, though, is whether consumers would embrace the technology quite so fervently if health and safety information was not spun, filtered and clouded by a variety of industry tactics.

To gain some insight into this question, we conducted an online survey of 202 respondents, nearly all of whom own cell phones, on Amazon's Mechanical Turk Web platform (see [Appendix](#)). One striking set of findings: many respondents claim they would change behavior—reduce wireless use, restore landline service, protect their children—if claims on health dangers of wireless are true.

It is not the purpose of this reporter to establish that heavy cell phone usage is dangerous. This remains an extremely controversial scientific issue with new findings and revised scientific conclusions repeatedly popping up. Just months ago, a German scientist who had been outspoken in denouncing the view that cell phones pose health risks reversed course. In an April 2015 publication, Alexander Lerchl reported results confirming previous research on the tumor-promoting effects of electromagnetic fields well below human exposure limits for mobile phones. “Our findings may help to understand the repeatedly reported increased incidences of brain tumors in heavy users of mobile phones,” the Lerchl team concluded.²⁸ And in May 2015, more than 200 scientists boasting over 2,000 publications on wireless effects called on global institutions to address the health risks posed by this technology.

But the National Cancer Institute still contends that no cell phone dangers have been established. A representative of NCI was the sole known dissenter among the 30 members of the World Health Organization’s International Agency for Research on Cancer (IARC) when it voted to declare wireless RF “possibly carcinogenic.”²⁹ If leading scientists still can’t agree, I will not presume to reach a scientific conclusion on my own.

IARC RF working group: Official press release



International Agency for Research on Cancer



PRESS RELEASE
N° 208

31 May 2011

**IARC CLASSIFIES RADIOFREQUENCY ELECTROMAGNETIC FIELDS AS
POSSIBLY CARCINOGENIC TO HUMANS**

Lyon, France, May 31, 2011 -- The WHO/International Agency for Research on Cancer (IARC) has classified radiofrequency electromagnetic fields as **possibly carcinogenic to humans (Group 2B)**, based on an increased risk for **glioma**, a malignant type of brain cancer, associated with wireless phone use.

But let's at least look at some of the incriminating clues that health and biology research has revealed to date. And let's look at the responses of both industry and the FCC.

The most widely cited evidence implicating wireless phones concerns gliomas, a very serious type of brain tumor. The evidence of elevated risk for such tumors among heavy cell phone users comes from several sources.

Gliomas account for roughly half of all malignant brain tumors, which are relatively rare. The annual incidence of primary malignant brain tumors in the U.S. is only 8.2 per 100,000 people, according to the International Radio Surgery Association.

Still, when projected over the entire U.S. population, the public health impact is potentially very significant.

Assuming roughly four new glioma cases annually in the U.S. per 100,000 people, yields over 13,000 new cases per year over a total U.S. population of 330 million. Even a doubling of that rate would mean 13,000 new gliomas, often deadly, per year. A tripling, as some studies have found, could mean as many as 26,000 more new cases annually. Indeed, the respected online site Medscape in January 2015 reported results of Swedish research under the headline: *Risk for Glioma Triples With Long-Term Cell Phone Use*.³⁰

And here's some eye-opening quantitative perspective: the wars in Iraq and Afghanistan, waged now for more than a decade each, have together resulted in roughly 7,000 U.S. deaths.

Preliminary—though still inconclusive—research has suggested other potential negative health effects. Swedish, Danish and Israeli scientists have all found elevated risk of salivary gland tumors. One Israeli study suggested elevated thyroid cancer risk. Some research has found that men who carry their phones in their pockets may suffer sperm count damage. One small study even suggests that young women who carry wireless devices in their bras are unusually vulnerable to breast cancer.

And while industry and government have never accepted that some portion of the population is unusually sensitive to electromagnetic fields, many people continue to complain of a broad range of symptoms that include general weakness, headaches, nausea and dizziness from exposure to wireless.

Some have suggested that the health situation with wireless is analogous to that of tobacco before court decisions finally forced Big Tobacco to admit guilt and pay up. In some ways, the analogy is unfair. Wireless research is not as conclusively incriminating as tobacco research was. And the identified health risks with wireless, significant as they are, still pale compared with those of tobacco.

But let's not dismiss the analogy outright. There is actually a very significant sense in which the tobacco-wireless analogy is uncannily valid.

People tend to forget that the tobacco industry—like the wireless industry—also adopted a policy of tone-deaf denial. As recently as 1998, even as evidence of tobacco toxicity grew overwhelming, cigarette maker Phillip Morris was writing newspaper advertorials insisting there was no proof smoking caused cancer.

It seems significant that the responses of wireless and its captured agency—the FCC—feature the same obtuse refusal to examine the evidence. The wireless industry reaction features stonewalling public relations and hyper aggressive legal action. It can also involve undermining the credibility and cutting off the funding for researchers who do not endorse cellular safety. It is these hardball tactics that look a lot like 20th century Big Tobacco tactics. It is these hardball tactics—along with consistently supportive FCC policies—that heighten suspicion the wireless industry does indeed have something to hide.

Begin with some simple facts issuing from meta-analysis of cellular research. Dr. Henry Lai, emeritus professor of bioengineering at the University of Washington, has reviewed hundreds of published scientific papers on the subject. He wanted to see how many studies demonstrated that non-ionizing radiation produces biological effects beyond the heating of tissue. This is critical since the FCC emission standards protect only against heating. The assumption behind these standards is that there are no biological effects beyond heating.

But Dr. Lai found that just over half—actually 56%—of 326 studies identified biological effects. And the results were far more striking when Dr. Lai divided the studies between those that were industry-funded and those that were independently funded. Industry-funded research identified biological effects in just 28% of studies. But fully 67% of non-industry funded studies found biological effects (Insert Slide—Cell Phone Biological Studies).

A study conducted by Swiss and British scientists also looked at how funding sources affected scientific conclusions on the possible health effects of cell phone usage. They found that of studies privately funded, publicly funded and funded with mixed sponsorship, industry-funded studies were “least likely to report a statistically significant result.”³¹ “The interpretation of results from studies of health effects of radiofrequency radiation should take sponsorship into account,” the scientists concluded.³²

So how does the FCC handle a scientific split that seems to suggest bias in industry-sponsored research?

In a posting on its Web site that reads like it was written by wireless lobbyists, the FCC chooses strikingly patronizing language to slight and trivialize the many scientists and health and safety experts who’ve found cause for concern. In a two page Web post titled “Wireless Devices and Health Concerns,” the FCC four times refers to either “some health and safety interest groups,” “some parties,” or “some consumers” before in each case rebutting their presumably groundless concerns about wireless risk.³³ Additionally, the FCC site references the World Health Organization as among those organizations who’ve found that “the weight of scientific

evidence” has not linked exposure to radiofrequency from mobile devices with “any known health problems.”

Yes, it’s true that the World Health organization remains bitterly divided on the subject. But it’s also true that a 30 member unit of the WHO called the International Agency for Research on Cancer (IARC) was near unanimous in pronouncing cell phones “possibly carcinogenic” in 2011. How can the FCC omit any reference to such a pronouncement? Even if it finds reason to side with pro-industry scientists, shouldn’t this government agency also mention that cell phones are currently in the same potential carcinogen class as lead paint?

Now let’s look a bit more closely at the troublesome but presumably clueless crowd of “some parties” that the FCC so cavalierly hastens to dismiss? Let’s begin with **Lennart Hardell**, professor of Oncology and Cancer Epidemiology at the University Hospital in Orebro, Sweden.

Until recently it was impossible to gain any real sense of brain tumor risk from wireless since brain tumors often take 20 or more years to develop. But the cohort of long-term users has been growing. In a study published in the International Journal of Oncology in 2013, Dr. Hardell and Dr. Michael Carlberg found that the risk of glioma—the most deadly type of brain cancer—rose with cell phone usage. The risk was highest among heavy cell phone users and those who began to use cell phones before the age of 20.³⁴

Indeed, those who used their phones at least 1640 hours (which would be roughly 30 minutes a day for nine years) had nearly three times the glioma incidence. Drs. Hardell and Carlberg also found that gliomas tend to be more deadly among heavy wireless callers.³⁵

Perhaps of greatest long-term relevance, glioma risk was found to be four times higher among those who began to use mobile phones as teenagers or earlier. These findings, along with the established fact that it generally takes decades for tumors induced by environmental agents to appear, suggest that the worst consequences of omnipresent wireless devices have yet to be seen.

In a 2013 paper published in *Reviews on Environmental Health*, Drs. Hardell and Carlberg argued that the 2011 finding of the IARC that identified cell phones as a “possibly carcinogenic” needs to be revised. The conclusion on radiofrequency electromagnetic fields from cell phones should now be “cell phones are not just a possible carcinogen.” They can now be “regarded as carcinogenic to humans” and the direct cause of gliomas (as well as acoustic neuromas, a less serious type of tumor).³⁶ Of course, these views are not universally accepted.

The usual spin among industry supporters when presented with research that produces troubling results is along the lines of: “We might pay attention if the results are duplicated.” In fact, the Hardell results were echoed in the French CERENAT study, reported in May of 2014. The CERENAT study also found higher risk among heavy users, defined as those using their phones at least 896 hours (just 30 minutes a day for five years). “These additional data support

previous findings concerning a possible association between heavy mobile phone use and brain tumors,” the study concluded.³⁷

Cell phones are not the only wireless suspects. Asked what he would do if he had policy-making authority, Dr. Hardell swiftly replied that he would “ban wireless use in schools and pre-schools. You don’t need Wi-Fi,” he noted.³⁸ This is especially interesting in view of the FCC’s sharply hiked spending to promote and extend Wi-Fi usage, as well as its consistent refusal to set more stringent standards for children (more on all this later). But for now let’s further fill out the roster of the FCC’s unnamed “some parties.”

Martin Blank is a Special Lecturer in Physiology and Cellular Biophysics at Columbia University. Unlike Dr. Hardell, who looks at broad epidemiological effects over time, Dr. Blank sees cause for concern in research showing there is biological response at the cellular level to the type of radiation emitted by wireless devices. “The biology tells you unequivocally that the cell treats radiation as a potentially damaging influence,” Dr. Blank said in a late 2014 interview.³⁹

“The biology tells you it’s dangerous at a low level,” he added. Though some results have been difficult to replicate, researchers have identified a wide range of cellular responses including genetic damage and penetration of the blood brain barrier. Dr. Blank specifically cited the “cellular stress response” in which cells exposed to radiation start to make proteins.

It is still not clear whether biological responses at the cellular level translate into human health effects. But the research seems to invalidate the basic premise of FCC standards that the only biological effect of the type of radiation produced by wireless devices is tissue heating at very high power levels. But the standards-setting agencies “ignore the biology,” according to Dr. Blank. He describes the FCC as being “in industry’s pocket.”⁴⁰

Sweden’s Lund University is annually ranked among the top 100 universities in the world. **Leif Salford** has been chairman of the Department of Neurosurgery at Lund since 1996. He is also a former president of the European Association for Neuro-Oncology. In the spring of 2000, Professor Salford told me that wireless usage constituted “the world’s largest biological experiment ever.”⁴¹

He has conducted numerous experiments exposing rats to cellular-type radiation. Individual experiments have shown the radiation to penetrate the blood-brain barrier, essential to protecting the brain from bloodstream toxins. Professor Salford also found that rats exposed to radiation suffered loss of brain cells. “A rat’s brain is very much the same as a human’s. They have the same blood-brain barrier and neurons. We have good reason to believe that what happens in rat’s brains also happens in humans,” he told the BBC in 2003. Dr. Salford has also speculated that mobile radiation could trigger Alzheimer’s disease in some cases but emphasized that much more research would be needed to establish any such causal relationship. Does this man deserve to be dismissed as one of a nameless and discredited group of “some parties?”

And what about the **American Academy of Pediatrics (AAP)**, which represents 60,000 American doctors who care for children? In a December 12, 2012 letter to former Ohio Congressman Dennis Kucinich, AAP President Dr. Thomas McInerny writes: “Children are disproportionately affected by environmental exposures, including cell phone radiation. The differences in bone density and the amount of fluid in a child’s brain compared to an adult’s brain could allow children to absorb greater quantities of RF energy deeper into their brains than adults.”⁴²

In a subsequent letter to FCC officials dated August 29, 2013, Dr. McInerny points out that “children, however, are not little adults and are disproportionately impacted by all environmental exposures, including cell phone radiation.” Current FCC exposure standards, set back in 1996, “do not account for the unique vulnerability and use patterns specific to pregnant women and children,” he wrote. (Insert slide: A Plea from Pediatricians). Does an organization representing 60,000 practitioners who care for children deserve to be brushed off along with “some health and safety interest groups?”

So what is the FCC doing in response to what at the very least is a troubling chain of clues to cellular danger? As it has done with wireless infrastructure, the FCC has to this point largely relied on industry “self-regulation.” Though it set standards for device radiation emissions back in 1996, the agency doesn’t generally test devices itself. Despite its responsibility for the safety of cell phones, the FCC relies on manufacturers’ good-faith efforts to test them. Critics contend that this has allowed manufacturers undue latitude in testing their devices.

Critics further contend that current standards, in place since cell phones were barely in use, are far too lax and do not reflect the heavy usage patterns that have evolved. Worse still, industry is allowed to test its own devices using an imprecise system that makes no special provision for protecting children and pregnant women. One 2012 study noted that the procedure widely used by manufacturers to test their phones “substantially underestimates” the amount of RF energy absorbed by 97% of the population, “especially children.” A child’s head can absorb over two times as much RF energy. Other persons with smaller heads, including women, are also more vulnerable. The authors recommend an alternative computer simulation technique that would provide greater insight into the impact of cellular radiation on children and on to the specific RF absorption rates of different tissues, which vary greatly.⁴³

Acting on recommendations of the General Accounting Office, the FCC is now reconsidering its standards for wireless testing and allowed emissions. On the surface, this may seem to represent an effort to tighten standards to promote consumer health and safety. But many believe the FCC’s eventual new standard will actually be weaker, intensifying any health risk from industry’s self-reported emission levels. “They’re under great pressure from industry to loosen the criteria,” notes Joel Moskowitz, director of the Center for Family and Community Health at UC Berkeley’s School of Public Health.⁴⁴ One fear is that the FCC could measure the allowed radiation absorption level (SAR) over a wider sample of tissue, effectively loosening the

standard allowable energy absorption. One FCC official, who asked that his name not be used, contended that a decision had not yet been made to loosen the standard.

But to this point, there is little evidence the FCC is listening to anyone beyond its familiar friends in the wireless industry. Carl Blackman, a scientist at the Environmental Protection agency until retiring in 2014, notes that the FCC does rely to some degree on an inter-agency governmental group for advice on health matters. The group includes, for example, representatives from the EPA and the FDA.

Blackman served on that advisory group and he says that it has been divided. Though some government advisers to the FCC find evidence of wireless health risks convincing, others remain skeptical, said Blackman. Root of the skepticism: even though numerous researchers have found biological and health effects, the mechanism for action by non-ionizing radiation on the human body has still not been identified. “I don’t think there’s enough of a consensus within the Radio Frequency Inter-agency Working Group for them to come out with stricter standards,” he says.⁴⁵

But political pressures also figure mightily in all this. The EPA, notably, was once a hub of research on RF effects, employing as many as 35 scientists. However, the research program was cut off in the late 80s during the Regan presidency. Blackman says he was personally “forbidden” to study health effects by his “supervisory structure.”⁴⁶ He termed it “a political decision” but recognized that if he wanted to continue to work at the EPA he would have to do research in another area.

Blackman is cautious in imputing motives to the high government officials who wanted his work at EPA stopped. But he does say that political pressure has been a factor at both the EPA and FCC: “The FCC people were quite responsive to the biological point of view. But there are also pressures on the FCC from industry.” The FCC, he suggests, may not just be looking at the scientific evidence “The FCC’s position—like the EPA’s—is influenced by political considerations as well.”⁴⁷

Still, the FCC has ultimate regulatory responsibility and cannot indefinitely pass the buck on an issue of fundamental public health. Remarkably, it has not changed course despite the IARC classification of cell phones as possibly carcinogenic, despite the recent studies showing triple the glioma risk for heavy users, despite the floodtide of research showing biological effects, and despite even the recent defection of core industry booster Alex Lerchl. It is the refusal of both industry and the FCC to even acknowledge this cascade of warning signs that seems most incriminating.

Of course, industry behavior goes well beyond pushing for the FCC’s willful ignorance and inaction. Industry behavior also includes self-serving public relations and hyper aggressive legal action. It can also involve undermining the credibility of and cutting off the funding for researchers who do not endorse cellular safety. It is these hardball tactics that recall 20th century Big Tobacco tactics. It is these tactics that heighten suspicion that the wireless industry does

indeed have a dirty secret. And it is those tactics that intensify the spotlight on an FCC that so timidly follows the script of the fabulously wealthy, bullying, billion-dollar beneficiaries of wireless.

Chapter Four: You Don't Need Wires To Tie People Up

So let's look a little more deeply at some of the actions of an industry group that boasts of 500 meetings a year with the FCC. Lobbying is one thing. Intimidation is another. CTIA has shown its skill at—and willingness to use—both.

Outright legal bullying is a favored tactic. The City of San Francisco passed an ordinance in 2010 that required cell phone manufacturers to display more prominently information on the emissions from their devices. This information was already disclosed—but often buried—in operator manuals and on manufacturer websites. The idea was to ensure that consumers saw information already mandated and provided.

Seeing this as a threat to its floodtide of business, the industry sued the City of San Francisco. The City, fearing a prolonged legal fight with an industry that generates hundreds of billions of dollars in annual revenue, backed down.

On May 12, 2015, Berkeley, California's City Council unanimously passed a similar ordinance. Joel Moskowitz, director of the Center for Family and Community Health at the University of California-Berkeley's School of Public Health, has been involved in the effort. Berkeley, he says, didn't want to run into the same legal threats that paralyzed San Francisco. So it tried to draft the most inoffensive and mild language possible. The proposed Cell Phone Right to Know ordinance: "To assure safety, the Federal Government requires that cell phones meet radio frequency (RF) exposure guidelines. If you carry or use your phone in a pants or shirt pocket or tucked into a bra when the phone is ON and connected to a wireless network, you may exceed the federal guidelines for exposure to RF radiation. This potential risk is greater for children. Refer to the instructions in your phone or user manual for information about how to use your phone safely."⁴⁸

Sounds pretty inoffensive, no? Not to the CTIA, which indicated that it was prepared to sue, according to Berkeley City Attorney Zach Cowan.⁴⁹ (On June 8th, CTIA did indeed sue the City of Berkeley.)

Well, from the industry point of view, why not throw around your weight? Smash mouth legal tactics have been highly successful thus far as industry has managed to throttle several efforts to implicate manufacturers in cases where heavy users suffered brain tumors.

But one current case has advanced in district court in Washington to the point where the judge allowed plaintiffs to present expert witness testimony. The industry response: file a legal action seeking to invalidate long-held court methods for qualifying expert witnesses.

This is a very rich industry that does not hesitate to outspend and bully challengers into submission. Meanwhile, amidst the legal smoke and medical confusion, the industry has

managed to make the entire world dependent on its products. Even tobacco never had so many hooked users.

Such sustained success in the face of medical doubt has required industry to keep a lid on critics and detractors. Many scientists who've found real or potential risk from the sort of microwave radiation emanating from wireless devices have learned there is a price to be paid for standing up to the industry juggernaut. A few prominent examples:

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In 1994, University of Washington researchers Henry Lai and N.P. Singh found that rats exposed to microwave radiation suffered DNA damage to their brain cells. This was a scary finding since DNA damage can lead to mutations and possibly cancer.

The reaction from industry was swift. Motorola was at that time the U.S. market leader in cell phones. In a memorandum obtained by the journal *Microwave News*, Motorola PR honcho Norm Sandler outlined how the company could "downplay the significance of the Lai study." One step: "We have developed a list of independent experts in this field and are in the process of recruiting individuals willing and able to reassure the public on these matters," Sandler wrote. After outlining such measures, he concluded that Motorola had "sufficiently war-gamed" the issue. The practices of lining up industry-friendly testimony and "war-gaming" researchers who come up with unfavorable results have been persistent themes with this industry.

Motorola "War-Games" Bad News

Motorola, Microwaves and DNA Breaks: "War-Gaming" the Lai-Singh Experiments

"We have developed a list of independent experts in this field and are in the process of recruiting individuals willing and able to reassure the public on these matters."

"I think we have sufficiently war-gamed the Lai-Singh issue..."

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After Lai's results were published, Motorola decided to sponsor further research on microwaves and DNA damage. Oftentimes, lab results cannot be reproduced by other

researchers, particularly if experiments are tweaked and performed a bit differently. Non-confirming studies raise doubt, of course, on the original work.

Motorola lined up Jerry Phillips, a scientist at the Veteran's Administration Medical Center in Loma Linda, California, and Phillips tested the effect of radiation at different frequencies from those tested by Lai and Singh. Nevertheless, Phillips found that at some levels of exposure, DNA damage increased, while at other levels it decreased. Such findings were "consistent" with the sorts of effects produced by chemical agents, Phillips said in an interview.⁵⁰ In some cases, the radiation may have activated DNA repair mechanisms, reducing the overall microwave effect. But what was important, Phillips explained, is that there were *any* biological effects at all. The wireless industry has long contended—and the FCC has agreed—that there is no evidence that non-ionizing radiation at the frequencies and power levels used by cell phones is biologically active.

Understanding the potential impact of "biological effect" findings, Motorola again turned to damage control, said Phillips. He recalls receiving a phone call from a Motorola R&D executive. "I don't think you've done enough research," Phillips recalls being told. The study wasn't ready for publication, according to the Motorola executive. Phillips was offered more money to do further research without publishing the results of what he'd done.

But Phillips felt he'd done enough. Despite warnings for his own boss to "give Motorola what it wants," Phillips went ahead and published his findings in 1998. Since then, Phillips' industry funding has dried up. Meanwhile, as many other researchers report, government funding to do independent research on microwave radiation has dried up, leaving the field at least in the U.S. to industry-funded scientists. "There is no money to do the research," Said Phillips. "It's not going to come from government because government is controlled by industry."⁵¹

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Om P. Gandhi is Professor of Electrical and Computer Engineering at the University of Utah and a leading expert in dosimetry—measurement of non-ionizing radiation absorbed by the human body. Even before cell phones were in wide use, Professor Gandhi had concluded that children absorb more emitted microwave radiation. "The concentration of absorbed energy is 50 to 80% greater," he explained.⁵²

These conclusions were not acceptable to Professor Gandhi's industrial sponsors. In 1998, he recalls, an executive from a cell phone manufacturer—which he did not want to identify—told him directly that if he did not discontinue his research on children his funding would be cut off. Professor Gandhi recalled replying: "I will not stop. I am a tenured professor at the University of Utah and I will not reject my academic freedom." Professor Gandhi also recalled some of his thought process: "I wasn't going to order my students to alter their results so that I can get funding." His industry sponsors cancelled his contract and asked for a return of funds.

Professor Gandhi believes that some cell phone users require extra protection because their heads are smaller and more absorptive. “Children, as well as women and other individuals with smaller heads absorb more concentrated energy because of the proximity of the radiating antenna to the brain tissue,” he said. And yet the FCC has not acted to provide special protection for these groups. Asked why not, Professor Gandhi conceded that he doesn’t know. He does note, however, that recent standards-setting has been dominated by industry representatives.⁵³

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While the mobile industry refuses to admit to even the possibility that there is danger in RF radiation, giant insurance companies see things differently. Several insurers have in recent years issued reports highlighting product liability risk with cell phones. This is important because it is evidence that where money is on the line professionals outside the industry see the risk of legal liability.

Legal exposure could be one reason—perhaps the central one—the industry continues to stonewall. Should legal liability be established, one key question will be how much wireless executives knew—and at what point in time. Meanwhile, the combination of public relations denials, legal intimidation and the selective application of pressure on research follows a familiar pattern. “The industry is basically using the tobacco industry playbook,” UC Berkeley’s Moskowitz said in a recent radio interview.⁵⁴

That playbook has thus far been highly successful in warding off attention, regulation and legal incrimination.

Chapter Five: \$270 Billion . . . and Looking for Handouts

The FCC's network of corruption doesn't just shield industry from needed scrutiny and regulation on matters of public health and safety. Sometimes it just puts its hand directly into the public pocket and redistributes that cash to industry supplicants.

Such is arguably the case with the Universal Service Fund. Originally established to extend telephone service to rural and urban areas that industry would find difficult or uneconomical to wire, the USF is now shifting from subsidizing landline phone service to subsidizing the extension of broadband Internet. USF monies also support the Lifeline program, which subsidizes cell phone service to low-income consumers, and the E-Rate program, which subsidizes Internet infrastructure and service to schools and libraries.

Since 1998, more than \$110 billion has been allocated to Universal Service programs, notes Charles Davidson, director of the Advanced Communications Law & Policy Institute at New York Law School. The FCC has allocated over \$40 billion to the E-Rate program alone.

Who pays the freight for these high-cost programs? You do.

Technically, landline and wireless phone companies are assessed for the Universal Service fund's expenditures. But the FCC also allows those companies to pass on such charges to their subscribers, which they do. Both landline and wireless subscribers pay a monthly Universal Service charge that is tacked on to their phone bills. That charge has been rising and recently amounted to a 16% surcharge on interstate calls.

Consumers who pay for these programs might be interested to learn that both the E-Rate and Lifeline programs have been riddled with fraud. Government watchdogs have repeatedly found the programs to be inefficient and prone to inflated and fraudulent claims. But the programs have been a windfall for tech and telecom industry beneficiaries. Wherever the FCC presides, it seems, these industries reap a windfall.

The General Accounting Office (GAO) has issued several reports citing fraud, waste and mismanagement, along with inadequate FCC oversight of the subsidy program. Bribery, kickbacks and false documentation can perhaps be expected in a handout program mandated by Congress and only indirectly supervised by the FCC.

But the scope of fraud has been impressive. The most striking corruption has marred the E-Rate program, which subsidizes Internet hardware, software and service for schools and libraries, and the Lifeline cell phone subsidies.

In recent years, several school districts have paid fines to settle fraud cases involving bribery, kickbacks, non-competitive bidding of contracts and false documentation in the E-Rate

program. More eye opening perhaps are the settlements of fraud claims by tech giants like IBM, Hewlett Packard and AT&T. The HP case, for example, involved some colorful bribery allegations, including gifts of yachts and Super Bowl tickets. HP settled for \$16 million. An HP official and a Dallas Independent School District official both received jail sentences.

The Lifeline program has also been riddled with fraud. A Wall Street Journal investigation of the five top corporate beneficiaries of Lifeline showed that 41% of more than 6 million subsidy claimants “couldn’t demonstrate their eligibility or didn’t respond to requests for certification.”⁵⁵ AT&T, Verizon, and Sprint Nextel were three of the major Lifeline beneficiaries.

The FCC has initiated several efforts to clean up USF programs and seems honestly determined to bring greater accountability and efficiency to its subsidy efforts. Nevertheless, problems with fraud persist, as reported recently by the FCC’s own top investigator.

Congress established the FCC’s Office of Inspector General in 1989 to “provide objective and independent investigations, audits and reviews of the FCC’s programs and operations.” Here’s what the FCC’s internal investigative unit said in a September 30, 2014 report to Congress about its Office of Investigation (OI): “*The bulk of the work of OI involves investigating and supporting civil and criminal investigations/prosecutions of fraud in the FCC’s federal universal service program.*”⁵⁶



OFFICE OF INVESTIGATION

The bulk of the work of OI involves investigating and supporting civil and criminal investigations/prosecutions of fraud in the FCC’s federal universal service program.

Fraud—as pervasive and troubling as it has been—is just one of the problems with the programs of universal service. It may not even be the fundamental problem. More fundamental issues concern the very aim, logic and efficiency of programs to extend broadband and wireless technology at public expense. Though the aims of extending service to distant impoverished areas seem worthy on the surface, there are many reasons to think the major beneficiaries of these programs are the technology companies that win the contracts.

Lobbyists have long swarmed over the FCC looking to get an ever-growing piece of the USF honeypot. An FCC report on meetings with registered lobbyists details a 2010 meeting with representatives of the International Society for Technology in Education and other education lobbyists. Topics discussed, according to the FCC report, included “the need to raise the E-Rate’s annual cap.”⁵⁷

The CTIA, leaving no stone unturned in its efforts to pump up member revenues, last year responded to a House hearing on the USF by grouching that “current USF-supported programs skew heavily toward support of wireline services. . . . The concentration of USF monies to support wireline services is inconsistent with technological neutrality principles and demonstrated consumer preferences,” CTIA wrote..⁵⁸ An industry that generates hundreds of billions of dollars in equipment and service revenues annually bellies up for a bigger slice of the \$8 billion a year USF.

The grouching has paid off. The FCC recently announced that it will raise spending on E-Rate from what had been a cap of \$2.4 billion a year to \$3.9 billion. A significant portion of new outlays will go to Wi-Fi—yet another wireless industry victory at the FCC. But the CTIA is by no means the only industry group pressing the FCC.

Leading the roster of active lobbyists on E-Rate issues is the Software and Information Industry Association. Beginning in 2006, SIAA led all lobbyists with 54 mentions of E-Rate in its filings, according to the Center for Responsive Politics. SIAA board members include executives from tech heavyweights Google, Oracle and Adobe Systems.

Tech business leaders—many of them direct beneficiaries of FCC programs—made a direct pitch to FCC Chairman Wheeler last year to hike E-Rate funding. “The FCC must act boldly to modernize the E-Rate program to provide the capital needed to upgrade our K-12 broadband connectivity and Wi-Fi infrastructure within the next five years,” the executives wrote.⁵⁹

There were dozens of corporate executive signees to this letter, including the CEOs of many Fortune 500 giants. But let’s just consider the participation of three: top executives of Microsoft, Google and HP all joined the call to expand E-Rate subsidies. Consider the simple fact that these three tech giants alone had revenues of \$270 billion—more than a quarter of a trillion dollars—in a recent four-quarter period. Together, they produced nearly \$40 billion in net income. And yet their top executives still thought it necessary to dun the FCC—and really, they were surreptitiously hitting up the public—for ramped-up spending on what was then a \$2.4 billion a year program.

Is that greed? Arrogance? Or is it simply behavior conditioned by success in repeatedly getting what they want at the public trough? Almost never mentioned in these pleas for higher subsidies is the fact that ordinary American phone subscribers are the ones footing the bill for the E-Rate program—not the FCC or the telecom industry.

Much of the added spending, as noted, will go towards the installation of wireless networks. And yet Wi-Fi does not have a clean bill of health. When Lennart Hardell, professor of Oncology and Cancer Epidemiology at the University Hospital in Orebro, Sweden, was asked what he would do if given policy authority over wireless health issues, he replied swiftly that he would “ban wireless use in schools and pre-school.” Noting that there are wired alternatives, Professor Hardell flatly stated: “You don’t need Wi-Fi.”⁶⁰ And yet the FCC, prodded by an industry ever on the lookout for incremental growth opportunities, is ignoring the health of youngsters to promote expanded Wi-Fi subsidies in schools across the U.S.

And what about the merit of the program itself? Overlooking the fraud and lobbying and Wi-Fi safety issues for a moment, shouldn’t schools and libraries across the country be equipped with the best electronic gear, accessing the Internet at the fastest speeds? Doesn’t the government owe that to its younger citizens, especially those disadvantaged by the long-referenced digital divide?

Well, maybe. But answers to these questions hinge on even more fundamental question: Do students actually learn more or better with access to the latest high-speed electronic gadgetry?

It would be foolish to argue that nobody benefits from access to high-speed Internet. But the benefits are nowhere near as broad or rich as corporate beneficiaries claim. Some researchers, for example, have concluded that computers don’t seem to have positive educational impact—they may even have negative impact—when introduced into the home or freely distributed to kids from low income backgrounds.

Duke University researchers Jacob Vigdor and Helen Ladd studied the introduction of computers into North Carolina homes. They found that the academic performance of youngsters given computers actually declined. “*The introduction of home computer technology is associated with modest but statistically significant and persistent negative impacts on student math and reading test scores,*” the authors wrote in a National Bureau of Economic Research Working Paper.⁶¹ The impact was actually most negative on the poorer students.

A study in the *Journal of International Affairs* examined the impact of the global One Laptop Per Child Program (OLPC), which has distributed millions of computers to children around the world. Researchers Mark Warschauer and Morgan Ames conclude: “*The analysis reveals that provision of individual laptops is a utopian vision for the children in the poorest countries, whose educational and social futures could be more effectively improved if the same investments were instead made on more proven and sustainable interventions. Middle- and high-income countries may have a stronger rationale for providing individual laptops to children, but will still want to eschew OLPC’s technocratic vision. In summary, OLPC represents the latest in a long line of technologically utopian schemes that have unsuccessfully attempted to solve complex social problems with overly simplistic solutions.*”⁶²

Can One Laptop Per Child Save the World's Poor?

"...In summary, One Laptop Per Child represents the latest in a long line of technologically utopian development schemes that have unsuccessfully attempted to solve complex social problems with overly simplistic solutions."

Access to computers in the home may not work educational magic. But what about computers in the classroom? Don't they have educational value there?

The anecdotal evidence is mixed at best. Consider how students in Los Angeles, newly equipped with flashy iPads at a mind-boggling taxpayer cost of more than \$1 billion, went about using the new tools to improve their educational performance. "Instead of solving math problems or doing English homework, as administrators envisioned, more than 300 Los Angeles Unified School District students promptly cracked the security setting and started tweeting, posting to Facebook and playing video games."⁶³

But let's cut through the self-serving corporate claims and the troubling anecdotes to hear from someone who actually has had extensive and unique field experience. Kentaro Toyama was co-founder of Microsoft's research lab in India. Over more than five years he oversaw at least a dozen projects that sought to address educational problems with the introduction of computer technology. His conclusion: "The value of technology has been over-hyped and over-sold."

The most important factor in improving schools, says Toyama, now the W.K Kellogg Associate Professor of Community Information at the University of Michigan, is good teachers. Without good, well-trained teachers, adequate budgets and solid school administration, technology does little good. "Technology by itself never has any kind of positive impact," he said.⁶⁴

The only schools in his experience that benefited from increased technology investment were those where "the teachers were very good, the budgets adequate." The richer schools, in essence. But as both Vigdor and Warschauer found, the introduction of technology has by itself little if any positive effect. For a public conditioned to believe in the virtues of new technology, such testimony is a bracing dose of cold reality.

But what about cost? Doesn't technology in the schools more efficiently replace alternative investments? Cost reductions are often the most persuasive argument for technology, Toyama agrees. But even these have been overstated. The costs of introducing new technology run far beyond initial hardware and software investments, said Toyama. In reality, the total costs of ownership—including maintenance, training, and repair—typically run to five or ten times the initial cost, according to Toyama. He said of the investment in technology for cost benefits: "I would say that in the long run—and even in the medium run and the short-run—that's probably the worst and most misguided conclusion to come to."⁶⁵

He adds: "The inescapable conclusion is that significant investments in computers, mobile phones and other electronic gadgets in education are neither necessary nor warranted for most school systems. In particular, the attempt to use technology to fix underperforming class rooms . . . is futile. And for all but wealthy, well-run schools, one-to-one computer programs cannot be recommended in good conscience."⁶⁶

But that doesn't keep industry lobbyists from recommending them. And it hasn't kept the FCC for spending scores of billions subsidizing technology to the very groups least likely to benefit from it.

Unmoved by the arguments of researchers and educators like Vigdor, Warschauer, and Toyama, the FCC keeps moving to increase technology subsidies. Ignoring research that disputes the value of technology in closing the so-called "digital divide," the FCC has even pioneered a new slogan: "the Wi-Fi gap."

In announcing that it was lifting E-Rate's annual budget from \$2.4 billion to \$3.9 billion and stepping up investment in wireless networking, FCC chairman Wheeler exulted that "10 million students are going to experience new and better opportunities."⁶⁷ The impact on consumer pocketbooks (and potentially on youngsters' health from daily Wi-Fi exposure) were not mentioned.

The two Republican members of the FCC did at least recognize the pocketbook impact. "It always seems easier for some people to take more money from the American people via higher taxes and fees rather than do the hard work," said Commissioner Michael O'Reilly.⁶⁸

The subsidized provision of high-speed Internet service is yet another pet project of the FCC. Julius Genachowski, chairman from 2009 to 2013, championed the transition of the USF from landline phone service to broadband. Universal broadband Internet connections would begin to absorb the monies collected from consumers to extend basic phone service.

As with government subsidies for cell phone service, classroom technology, and Wi-Fi, there are basic questions about the wisdom of subsidizing broadband. Charles Davidson and Michael Santorelli of the New York Law School found that spending billions to extend broadband is a flawed approach since there are many largely ignored reasons people choose not to adopt

broadband. “Everybody is pushing broadband non-stop,” noted Davidson, director of the Law School’s Advanced Communications Law and Policy Institute. “I think the FCC is focused on the wrong set of issues,” he said.⁶⁹

Already, he explained, over 98% of Americans have access to wired or wireless broadband. The issue is not one of supply. It’s one of demand. Many people—for a variety of reasons—don’t really care about broadband, he contends. Price is one issue. Also powerful factors—but given almost no attention—are privacy and security concerns. “In our view, they should be focused on barriers to meaningful broadband utilization: privacy and security,” said Davidson.⁷⁰

But consumer privacy (more on this subject in Chapter Seven) has no well-funded lobby with limitless access to the FCC.

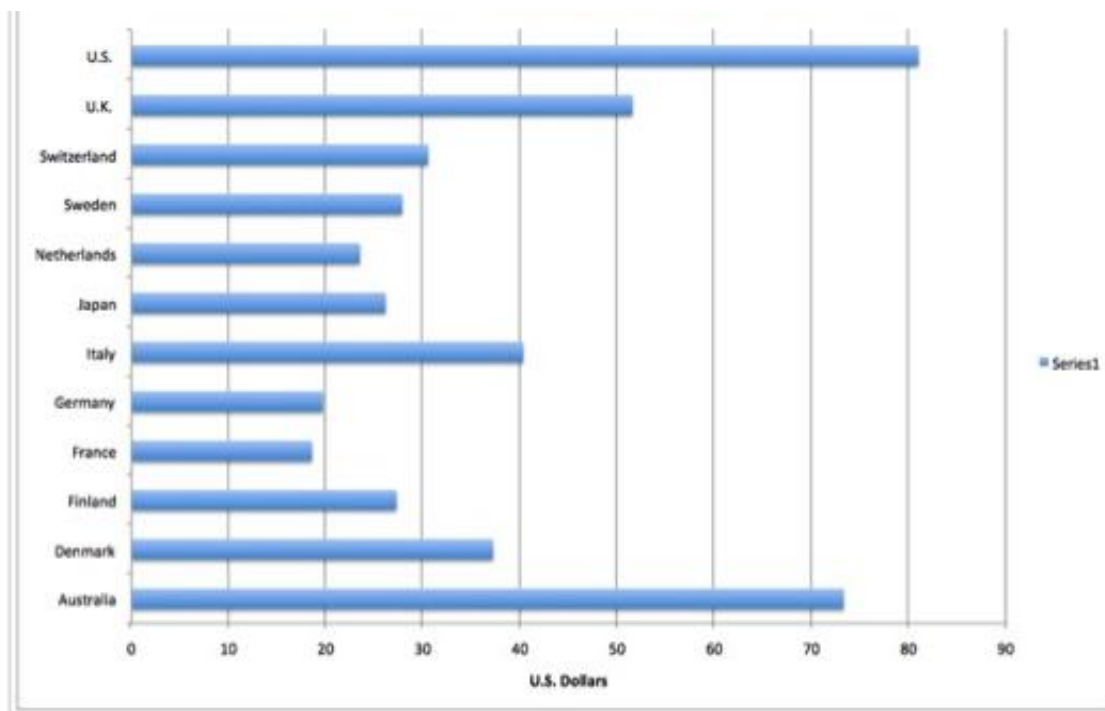
Chapter Six: The Cable Connection

The network has also been active in diluting FCC control of the cable television industry. Over the years, cable has devolved into major de facto local monopolies. Comcast and Time Warner Cable, whose merger proposal was dropped in April, are dominant forces in both cable television and broadband Internet subscriptions. Somehow, though, they have managed to steer clear of one another in specific markets, giving each pricing power where it faces little local competition.

It's interesting that cable companies annually rank in consumer polls among the “most hated” or “most disliked” American corporations. Indeed, Comcast and Time Warner Cable often top the “most hated” list.⁷¹ Why would these companies—providers of the TV programming that has so expanded consumer options in recent decades—be so widely scorned? After all, the U.S. has been a leader in developing both cable technology and diverse television programming.

The problem is that it hasn't been anything close to a leader in bringing down subscriber prices. Industry consultants typically measure pricing by the metric of average revenue per subscriber. Industry trackers at IHS compared the price of U.S. pay television (which includes satellite services) to those in more than 60 other countries. U.S. prices were the highest, with only Australia even coming close. The average revenue per subscriber in the U.S. in 2013 was \$81. But in France it was just \$18.55. In Germany it was \$19.68. In Japan it was just over \$26.

Pay TV Monthly Revenue Per Person:



And U.S. cable prices have risen in recent years at rates three or more times the rate of inflation. This has been going on for some time. From 1995 to 2013 cable rates increased at a 6.1% annual clip. The Consumer Price Index, by contrast, rose by just 2.4% annually. Former FCC commissioner Michael Copps says the FCC shares a major part of the blame. “The FCC is as culpable for allowing that as much as the companies for imposing it,” he said.⁷²

One area where the FCC has contributed to the problem is in its traditional rubber-stamping of merger agreements. The proposed Comcast/Time Warner Cable deal has been shelved, largely because of Justice Department reservations. But a long run of earlier FCC-sanctioned deals allowed Comcast and Time Warner Cable to grow to the market dominance—and attendant pricing power—they currently command.

Lofty monthly cable bills pinch consumers. But it’s more than that. Subscribers paying \$80 a month are often paying for a lot of channels they don’t watch and don’t want. The FCC has never required cable operators to charge for what consumers actually want to watch. Kevin Martin, who chaired the FCC from 2005 to 2009, pushed to “debundle” programming in hopes of lowering bills. But the issue was never resolved. Only recently have viable competitive alternatives to cable’s “bundled” packages become available. The satellite service Dish, for example, months ago introduced its Sling offering that enables consumers to opt for smaller and cheaper packages.

In fairness to cable operators, it should be pointed that programmers often require operators to take unwanted or fledgling channels along with their stars. New York cable operator Cablevision Systems filed suit against Viacom in 2013, charging that in order to get popular channels like MTV and Nickelodeon it was also forced to take low-rated channels like Nicktoons and VH1 Soul. But the simple truth is that no matter who is to blame, the cable consumer pays high prices, typically for some programming he doesn’t want. As it often does when powerful interests pursue dubious practices, the FCC has for the most part idly stood by.

Still, the FCC isn’t entirely to blame. Some factors in the growth of the cable giants cannot be laid at its doorstep. Local municipalities often granted monopoly or duopoly status in granting franchises to cable network builders. With the huge capital investments required to cable metropolitan areas, this once seemed to make sense.

And over the years, the cable giants have used a variety of tactics to weaken what little local competition they may have had. Active lobbyists on the local level, the cable giants have managed to convince a growing number of states to outlaw municipal systems that could threaten private corporate incumbents. The FCC for many years declined to tangle with the states in this matter, partly due to the opposition of Republican commissioners. But the Wheeler-led Commission did vote recently to override state laws that limit the build-out of municipal cable systems.

Still, many years of industry subservience will be difficult to swiftly undo. One linchpin merger shows how FCC decision-making has been thoroughly undermined by the revolving door, lobbying, and carefully targeted campaign contributions. All conspired in Comcast's pivotal 2011 buyout of NBC Universal, a deal which reinforced Comcast's domination of both cable and broadband access. This deal also set the stage for the recent headline-grabbing acrimony over the issue of net neutrality.

In 2011, mighty Comcast proposed to acquire NBC Universal. A series of mergers including the 1986 acquisition of Group W assets and the 2002 acquisition of AT&T's cable assets had already vaulted Comcast into cable market leadership. In bidding for NBC Universal, a huge step towards vertical integration, Comcast was once again raising the stakes. NBC Universal would give Comcast a treasure trove of programming, including valued sports content like NFL football and the Olympics.

Suddenly, the issue was not just cable subscriber base size—where Comcast had already bought its way to dominance. NBC Universal would also allow Comcast to consolidate its growing power as a broadband Internet provider. And with NBC Universal's programming assets, Comcast would gain new leverage when negotiating prices to carry the competing programming content of rivals. This would prompt a new round of debate over net neutrality. Couldn't a programming-rich Comcast slow down rival services—or charge them more to carry their programming?

To short-circuit any potential opposition to the merger, Comcast assembled a superstar cast of lobbyists. As Susan Crawford reports in her 2013 book, “Comcast hired almost eighty former government employees to help lobby for approval of the merger, including several former chiefs of staff for key legislators on congressional antitrust committees, former FCC staffers and Antitrust Division lawyers, and at least four former members of Congress.”⁷³ Such “profligate hiring,” Crawford observes, pretty much silenced the opposition to the deal. If Comcast had already retained one member of a lobbying firm, the firm could not under conflict of interest rules object to the deal. And Comcast had locked up key lobbying shops. Money was both weapon and silencer.

Of course, Comcast had always been a big spender on lobbying, with outlays exceeding \$12 million every year since 2008. Lobbying costs peaked in 2011 at \$19.6 million, according to the Center for Responsive Politics.

For its part, the FCC had a long history of approving most media mergers. So it was hardly a great surprise when the agency, after exacting some relatively minor concessions from Comcast, rubber-stamped the deal. Comcast would thus broaden its footprint as local monopoly distributor of cable. And with its new programming assets, it would enhance its leverage in negotiating deals to carry its rivals' programming. It would also fortify its position of growing strength as broadband Internet gatekeeper.

The most telling footnote to the deal would come just four months later. FCC Commissioner Meredith Atwell Baker, who voted to approve the merger in January 2011, left the FCC to become a top-tier Comcast lobbyist in May. It was the ultimate—and perhaps most telling—glide of the revolving door.

Baker's was a high-profile defection. But it was neither the first nor the last. Comcast had successfully convinced other FCC officials to take their expertise and government contacts to the cable giant. Comcast has long been a master at spinning the revolving door to its own advantage. "Comcast has been very good at hiring everyone who is very smart," said Crawford.⁷⁴

Approval of the NBC Universal deal was another in the long string of FCC merger approvals that made Comcast a nationwide monopolist that could dictate both pricing and viewer programming choice.

But the deal may have had another unintended consequence. It set the stage for Comcast's subsequent battles on net neutrality. "Those mergers gave additional oomph to the issue of net neutrality," noted former commissioner Copps. Speaking specifically of Comcast's buyout of NBC Universal, IHS senior analyst Eric Brannon agreed. "That merger laid the grounds for net neutrality."

In allowing Comcast to acquire major programming assets, the deal would sharpen questions about the power of gatekeepers like Comcast to control the flow of traffic from rival Web services. So in bowing to lobbyist pressure, the FCC would bring on itself a whole new set of pressures by focusing public attention on the issue of net neutrality.

With activists rounding up comments from the public and hip TV personalities like HBO's John Oliver also beating the drums, net neutrality quickly grew into a popular issue that won the support of President Obama, and by proxy, his hand-picked appointee Tom Wheeler. When the FCC ruled in February of 2015 that it would seek Title II authority to regulate the Internet and presumably block any favoritism by broadband gatekeepers, it seemed to finally cast its lot with the public against steamrolling corporate interests

The issue had simmered for years but reached full boil when movie purveyor Netflix, which had argued that its service was slowed down by Comcast, signed a side deal ensuring better download speeds for its wares. This triggered an outburst of public concern that Comcast was now in position to operate "fast" and "slow" lanes, depending on whether a rival programmer could afford to ensure that Comcast provide adequate download speed.

With nearly 4 million comments—many supplied or encouraged by public interest groups—filed to the FCC, net neutrality was a bankable political issue. And there's no question, net neutrality attracted public interest because it gave cable viewers—long furious at the treatment by the monopolists who send them monthly bills—issues of both viewing pleasure and economics.

But it also fed into the longstanding sentimental but increasingly unrealistic view of the Internet as the last bastion of intellectual freedom. Internet romanticists have long seen the Web as a place that somehow deserves special rules for breaking the stranglehold of traditional media and offering exciting new communications, information retrieval and shopping efficiencies.

Yes, the Internet is a modern marvel. This is beyond dispute. But some of the favors it has won from government over the years have had unfortunate unintended consequences.

In the 1990s, for example, net access providers were repeatedly exempted as an “infant industry” from paying access charges to the Baby Bells even though they had to connect users through local phone networks. The long distance companies were then paying as much as \$30 billion a year for the privilege. But the Internet was exempted.

As the late 90s approached, the Internet was no longer an infant industry. Still, the exemption from access charges was extended. That exemption essentially allowed AOL in the late 90s to offer unlimited unmetered online time, a key factor in boosting usage and siphoning advertisers from print media. Why buy an ad in print that might get viewed with the transitory flip of a page when you can get round-the-clock attention online?⁷⁵ FCC decisions to grant the Internet access-charge exemptions arguably accelerated the decline of print media and much of the quality journalism print advertising could once support.

Meanwhile, retailers on the Internet were making inroads into brick and mortar retail business with the help of a Supreme Court-sanctioned exemption from collecting sales tax.⁷⁶ This judicial coddling of the Internet was the death knell for many smaller mom and pop local businesses, already challenged to match online pricing. And that’s not all. The special favors continue virtually every year, as Congress proposes and/or passes legislation to extend special tax exemptions to Internet services.

Well, maybe tax breaks aren’t such a bad idea for such an innovative and transformational emerging technology. For all its faults, the Internet—gateway to all goods, repository of all things, wizardly guide to all knowledge, enabler of universal self-expression—is undeniably cool.

But let’s not deny that the combination of tax advantages and deregulation was toxic. Allow an industry to emerge with advantages over useful existing industries that largely play by the rules—well, maybe that can be rationalized. But then fail to hold the upstart industry to the same rules, allowing it more leeway to trample fundamental rights because it has the technical capacity to do so. Well, then you have a cruel Faustian bargain.

With the see-no-evil deregulatory gospel loosing all constraints, the Web would devolve into a playground for corporate snoops and criminals. For all its wonders, the Internet comes at a cost: the loss of control over personal data, the surrender of personal privacy, sometimes even the confiscation of identity.

Perhaps the most favorable consequence of net neutrality—and one that has gotten surprisingly little attention—is that it could set the stage for privacy reform. (More on this in Chapter Seven). The FCC can now choose to exercise its Title II powers to enforce privacy standards over broadband Internet. Privacy is one area where the FCC has done a pretty good job in the past.

Worth remembering, though, is that the hard-fought public victory over Net Neutrality may be transitory. AT&T and others have threatened to go to court to upend the FCC rules. And there's a fair chance a Republican Congress will legislate against Title II.

Meanwhile, though, one supreme irony has begun to unfold in the marketplace.

Modern-day laissez fair ideologues love to invoke the wisdom of markets as represented by the “mysterious hand” of Adam Smith. Unfortunately, in the absence of effective regulation, the putatively wise “mysterious hand” generally seems to work its magic for those with huge financial resources and the political access it buys.

In the current cable situation, however, the mysterious hand may actually be working in consumer-friendly ways. Years of regulation that favored the cable companies have now backfired as the market reacts to monopolistic pricing and content control.

Whereas cable giants have commanded premium monthly subscriber prices to deliver packages of largely unwatched channels, the market is now beginning to burst with new “debundled” options that are whittling away at cable's vast subscriber base.

Satellite service Direct TV, as noted, now offers its streaming video Sling TV package of popular networks that includes live sports and news. Amazon, Apple, CBS, HBO, Netflix, Sony, and others offer a variety of streaming video options that allow viewers to cut the cable cord. Suddenly, consumers have the cherry-picking capability that bundled—and expensive—cable packages have never allowed.

In this case, at least, the unintended consequences of the FCC's pro-industry policies may be producing an unexpected pro-consumer twist.

Chapter Seven: What about Privacy?

Has any issue gotten as much lip service—and as little meaningful action?

For all the various congressional bills, corporate self-regulatory schemes and presidential Privacy Bill of Rights proposals, the simple truth remains that no personal information is safe on the Internet. Data brokers have built a multi-billion dollar business exchanging information used to build profiles of Net users. Your shopping and surfing habits, your health history, your banking data, your network of social ties, perhaps even your tax filings are all potentially exposed online. Both legal and criminal enterprises amass this information. And it doesn't go away.

At any given moment people you don't know somehow know where you are. They may very well know when you made your last bank deposit, when you had your last asthma attack or menstrual period. Corporations encourage and pay for every bit of information they can use or sell. Creepy? Perhaps, but as Jeff Chester, president of the Center for Digital Democracy points out: "The basic business model that drives online is advertising."⁷⁷

The FCC largely escapes blame on this one. It is the Federal Trade Commission that has had primary responsibility for protecting Internet privacy. The FCC does have some limited authority, which, some critics say, could have been exercised more vigorously. But for the most part the FCC is not to blame for the rampant online abuse of personal privacy and identity.

The FCC does however have privacy authority over the phone, cable and satellite industries. Until recently, at least, the FCC has kept privacy issues at bay among the companies in these industries. "The FCC has generally taken privacy very seriously," noted Harold Feld, a senior vice president at the non-profit Public Knowledge.⁷⁸

But dynamics now in place suggest that privacy may be the next great testing ground for the FCC. A new chance, perhaps, to champion public interest. Even before the opportunity for privacy enforcement under Title II regulatory powers, the FCC faces new challenges from phone companies, now itching to monetize their vast consumer data stashes the way Net companies have. The commonly used term is "Google envy."

"Until now, ISPs (Internet Service Providers) have mostly not gotten into hot water on privacy—but that's changing," observed Jonathan Mayer, a fellow at the Center for Internet and Society.⁷⁹ Verizon and AT&T, major providers of mobile Internet access, have each introduced "super cookies" that track consumer behavior even if they try to delete older, less powerful, forms of cookies. AT&T is actually charging its customers an extra \$30 a month *not* to be tracked.

Showdowns loom.

In adopting Title II to enforce net neutrality, the FCC has made broadband Internet access a telecom service subject to regulation as a “common carrier.” This reclassification means that the FCC could choose to invoke privacy authority under Title II’s Section 222. That section, previously applied to phone and cable companies, mandates the protection of consumer information. Such information—called CPNI for Customer Proprietary Network Information—has kept phone companies from selling data on whom you call, from where you call and how long you spend on the phone. Consumers may have taken such protection for granted on their phone calls. But they have no such protection on their Internet activity—which, as noted, has been a multi-billion dollar safe house hideaway for corporate and criminal abusers of personal privacy.

Now, though, the FCC could put broadband Internet communications under Section 222 protection. To Scott Cleland, a telecom industry consultant who has often been ahead of the analytic pack, this would be a momentous decision.

When the smoke clears—and it hasn’t yet—the FCC could make consumer identifiers like IP addresses the equivalent of phone numbers. Suddenly, the Internet companies that have trafficked in all that personal data would be subject to the same controls as the phone and cable companies.

Cleland argues that the risk for privacy abuses extends beyond broadband access providers like Comcast and Verizon to Internet giants like Google and Facebook that have until now flourished with all that personal data. “They are at risk and they are going to live under the uncertainty their business model could be ruled illegal by the FCC,” Cleland said.⁸⁰

Much has been written about the legal challenges broadband access providers intend to mount against the FCC’s new rules. But Cleland argues that a very different type of legal action could engulf companies that have benefited from the use and sale of private data. Trial lawyers, he argues, will see opportunity in rounding up massive class action suits of Internet users whose privacy has been violated. What sorts of privacy abusers face legal action? Anyone who has “collected CPNI via some type of cookie,” according to Cleland.

“Right now, edge providers like Google, Facebook and Twitter are at risk of being sued by trial lawyers,” he said.⁸¹

Sounds great for consumers who care about privacy on the Internet and how it has been abused. But the FCC, Cleland was reminded, has never been a consumer advocate. “Bingo,” replied Cleland. That’s what makes the FCC’s potential move into privacy protection so important and so surprising, he suggests.

There are other signs that the FCC under Tom Wheeler might actually become more consumer-friendly on the issue of data privacy. While Wheeler has brought some former associates from lobbying groups to the FCC, he has also peppered his staff with respected

privacy advocates. Indeed, he named Gigi Sohn, longtime president of the non-profit Public Knowledge, as Counsellor to the Chairman in April.

Another appointee with a privacy background is Travis LeBlanc, head of the FCC's Enforcement Bureau. In previous employment in California's Office of the Attorney General, LeBlanc was active in enforcing online privacy. LeBlanc has stated an interest in privacy and has already taken action against two firms that exposed personal information—including social security numbers—on unprotected Internet servers.

But many aspects of LeBlanc's approach to regulating Internet privacy under Title II remain unclear. Unfortunately, the FCC declined repeated requests to make LeBlanc available for an interview. (It also declined to answer written questions on its enforcement intentions in both privacy and cell tower infrastructure emissions.)

It remains to be seen if LeBlanc and his superiors at the FCC are really willing to take on privacy enforcement. Such a stance would require great courage as the entire Internet infrastructure is built around privacy abuse. It is also questionable whether the FCC would have the courage to challenge Google—a rare corporate ally in the battles over Net Neutrality.

Chapter Eight: Dependencies Power the Network of Corruption

As a captured agency, the FCC is a prime example of institutional corruption. Officials in such institutions do not need to receive envelopes bulging with cash. But even their most well-intentioned efforts are often overwhelmed by a system that favors powerful private influences, typically at the expense of public interest.

Where there is institutional corruption, there are often underlying dependencies that undermine the autonomy and integrity of that institution. Such is the case with the FCC and its broader network of institutional corruption.

As noted earlier, the FCC is a single node on a corrupt network that embraces Congress, congressional oversight committees and Washington social life. The network ties the public sector to the private through a frictionless revolving door—really no door at all.

Temptation is everywhere in Washington, where moneyed lobbyists and industry representatives throw the best parties and dinners. Money also allows industry to control other important factors, like the research agenda. All of this works together to industry's advantage because—as with other instances of institutional corruption—there are compromising dependencies. Policy makers, political candidates and legislators, as well as scientific researchers are all compromised by their dependence on industry money.

Dependency #1 – So much of the trouble here comes back to the core issue of campaign finance. Cable, cellular and educational tech interests know where to target their funds for maximum policy impact. And the contributions work, seemingly buying the silence of key committee congressmen—even those with past records as progressives. Key recipients of industry dollars include Massachusetts Senator Ed Markey and, until he retired, California Democrat Henry Waxman. Though they have intermittently raised their voices on such issues as data privacy and cellular health and safety, neither has shown any great inclination to follow through and take up what would have to be a long and tough fight on these issues.

Dependency #2 – Democrats might be expected to challenge industry now and then. They traditionally have done so, after all. But this is the post-*Citizens United* era where the Supreme Court has turned government into a giant auction house.

Bid the highest price and you walk home with the prize—your personal congressman, legislative loophole, even an entire political party.

Such is the case with technology industries and the Democrats. The communications/electronics industry is the third largest industry group in both lobbying and campaign contributions, according to the Center for Responsive Politics. In just 2013 and 2014, this industry sector spent well over \$750 million on lobbying.⁸²

Only the finance/insurance/real estate and health industries outspend the tech sector on lobbying. But those industry groups lean Republican. Over 62% of the finance/insurance/real estate campaign contributions go to the GOP. Health contributions lean Republican 57% to 43%. But the technology group leans sharply to Democrats, who got 60% of contributions in the 2013-2014 election cycle.⁸³ The two next largest industry groups—energy/natural resources and agribusiness—also lean heavily Republican. So of the top five industry groups whose money fuels and often tilts elections four are strongly Republican. The Democrats need the tech industry—and they show that dependence with consistent support, rarely raising such public interest issues as wireless health and safety and Internet privacy.

Dependency #3 – Spectrum auctions give the wireless industry a money-making aura. In recent Congressional testimony, an FCC official reminded legislators that the FCC has over the years been a budget-balancing revenue-making force.⁸⁴ Indeed, the auctions of electromagnetic spectrum, used by all wireless communications companies to send their signals, have yielded nearly \$100 billion in recent years. The most recent auction to wireless providers produced the unexpectedly high total of \$43 billion. No matter that the sale of spectrum is contributing to a pea soup of electromagnetic “smog” whose health consequences are largely unknown. The government needs money and Congress shows its appreciation with consistently pro-wireless policies.

Dependency #4 – Science is often the catalyst for meaningful regulation. But what happens when scientists are dependent on industry for research funding? Under pressure from budget cutters and deregulators, government funding for research on RF health effects has dried up. The EPA, which once had 35 investigators in the area, has long since abandoned its efforts.⁸⁵ Numerous scientists have told me there’s simply no independent research funding in the U.S. They are left with a simple choice: work on industry-sponsored research or abandon the field.

Chapter Nine: A Modest Agenda for the FCC

Nobody is proposing that cell phones be banned. Nor does anyone propose the elimination of the Universal Service program or other radical reforms. But there are some steps—and most are modest—that the FCC can take now to right some of the wrongs that result from long years of inordinate industry access and influence:

1. Acknowledge that there may be health risks in wireless communications. Take down the dismissive language. Maturely and independently discuss the research and ongoing debate on the safety of this technology.

2. In recognition of this scientific uncertainty, adopt a precautionary view on use of wireless technology. Require prominent point-of-sale notices suggesting that users who want to reduce health risks can adopt a variety of measures, including headphones, more limited usage and storage away from at-risk body parts.

3. Back off the promotion of Wi-Fi. As Professor Lennart Hardell has noted, there are wired alternatives that do not expose children to wireless risk.

4. Petition Congress for the budgetary additions needed to expand testing of emissions on antenna sites. It was Congress after all that gave industry carte blanche for tower expansion so long as they comply with FCC standards. But there is evidence of vast non-compliance and Congress needs to ensure that tower infrastructure is operating within the law.

5. Acknowledge that children and pregnant women may be more vulnerable to the effects of RF emissions and require special protection.

6. Promote cable debundling as a way to lighten consumer cable bills, especially for those customers who don't care about high-cost sports programming.

7. Apply more rigorous analysis to properly assess the value of technology in education. Evidence continues to pile up that technology in education is not as valuable as tech companies claim. Pay less attention to tech CEOs—pay more attention to the researchers who've actually studied the impact of trendy technology fixes on learning

8. Take over enforcement of personal privacy rights on the Internet. Of all the basic suggestions here, this would require the most courage as it would involve challenging many of the entrenched powers of the Internet.

Chapter Ten: Stray Thoughts

Some concluding thoughts:

Why do so many of the most dubious FCC policies involve technology?

In large part, of course, because the FCC has authority over communications and that is a sector that has been radically transformed—along with so many others—by technology.

Let's be clear, though. The problem is not technology, which unarguably brings countless benefits to modern life. The problem is with the over-extension of claims for technology's usefulness and the worshipful adulation of technology even where it has fearful consequences. Most fundamentally, the problem is the willingness in Washington—for reasons of both venality and naïveté—to give technology a free pass.

Personally, I don't believe that just because something can be done it should heedlessly be allowed. Murder, rape and Ponzi schemes are all doable—but subject to prohibition and regulation. Government regulators have the responsibility to examine the consequences of new technologies and act to at least contain some of the worst. Beyond legislators and regulators, public outrage and the courts can also play a role—but these can be muffled indefinitely by misinformation and bullying.

There are precedents for industries (belatedly perhaps) acting to offset the most onerous consequences of their products. In responding to a mix of litigation, public demand and regulatory requirement, the auto industry, for example, has in the last 50 years substantially improved the safety and environmental footprint of its products.

Padded instrument panels, seat belts, air bags, and crumple zones have all addressed safety issues. Environmental concerns have been addressed with tightened emissions and fuel consumption standards. The response to new safety challenges is ongoing. Before side air bags were widely deployed, sedan drivers side-swiped by much larger SUVs were at vastly disproportionate risk of death and dismemberment.⁸⁶ But the deployment of side air bags has “substantially” reduced the risk of collision deaths.⁸⁷ Overall, auto fatality rates per 100,000 persons have dropped by nearly 60% in the U.S. since 1966.⁸⁸ Today, automakers continue to work on advanced safety features like collision avoidance.

It can be argued that most of these safety improvements came decades after autos were in wide usage and only in response to outrage at Ralph Nader's 1965 revelations on the auto industry.⁸⁹ No matter the catalysts. The simple truth remains that the auto industry—and its regulators—have for the last half-century been addressing safety and environmental issues.

But with the overwhelming application of money and influence, information and communications technologies have almost totally escaped political scrutiny, regulatory control, and legal discipline.

Should the Internet have been allowed to develop into an ultra-efficient tool for lifting personal information that includes financial records, health histories and social security numbers? Should wireless communications be blindly promoted even as new clues keep suggesting there may be toxic effects? Should local zoning authorities and American citizens be stripped of the right to protect their own health? Should education be digitized and imposed just because technology companies want to develop a new market and lock in a younger customer base?

All these questions can perhaps be rolled up in one: do we all just play dead for the corporate lobbyists and spinners who promote the unexamined and unregulated application of their products?

Finally, a word about the structure of the FCC. With five commissioners—no more than three from the same party—the structure seems to make some kind of sense.

But in practice, it works out poorly. The identification of commissioners by party tends to bring out the worst in both Republicans and Democrats. Instead of examining issues with clear-sighted independence, the commissioners seem to retreat into the worst caricatures of their parties. The Republicans spout free market and deregulatory ideology that is most often a transparent cover for support of business interests. The Democrats seems satisfied if they can implement their pet spending programs—extension of broadband wireless to depressed urban and rural schools, cell phone subsidies for low income clients. The result is a Commission that fulminates about ideology and spends heavily to subsidize powerful interests.

Perhaps one solution would be to expand the Commission to seven by adding two public interest Commissioners. The public interest only rarely prevails at the FCC. So it would represent vast improvement if both Republican and Democrat commissioners had to vie for support of public interest representatives in order to forge a majority. The public interest, in other words, would sometimes carry the swing votes.

It's very hard to believe, though, that Congress would ever approve such a plan. It simply represents too much of a threat to the entrenched political power of the two parties. Why would they ever agree to a plan that dilutes that power?

It's also worth noting that the public interest is not always easy to define. Sometimes there are arguably conflicting definitions. Still, an FCC with public interest commissioners is an idea worth consideration. It would at least require party apologists to defend how they so consistently champion the moneyed interests that have purchased disproportionate access and power in Washington.

Appendix—Survey of Consumer Attitudes

What does the public believe about the science and politics of wireless health research? Under what conditions would people change wireless usage patterns? Is the FCC currently trusted to protect public health? How would confirmation of health risks affect trust in the FCC?

These are some of the questions Ann-Christin Posten⁹⁰ and Norm Alster⁹¹ hoped to answer with an April 2015 online survey of 202 respondents. Participants were recruited through Amazon's Mechanical Turk online platform. All were U.S. residents and had achieved qualifying approval rates in prior Mechanical Turk surveys.

Participants were asked how likely they believed the following statements to be true:

Statement 1. Prolonged and heavy cell phone use can have a variety of damaging effects on health.

Statement 2. Prolonged and heavy cell phone use triples the risk of brain tumors.

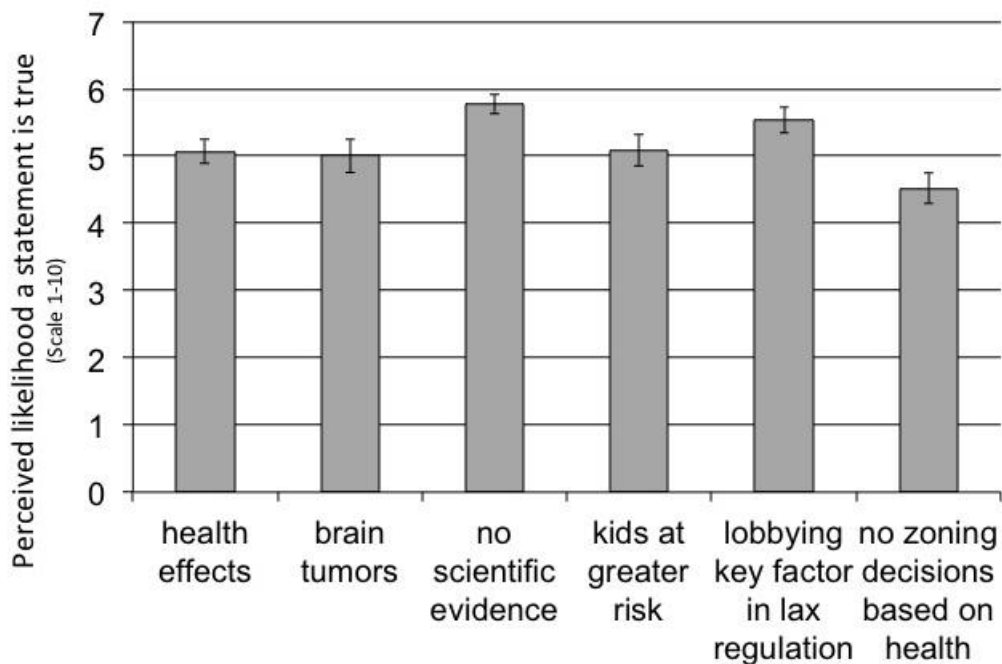
Statement 3. There is no scientific evidence that proves that wireless phone usage can lead to cancer or a variety of other problems.

Statement 4. Children and pregnant women are especially vulnerable to radiation from wireless phones, cell towers and Wi-Fi

Statement 5. Lobbying and campaign contributions have been key factors in keeping the government from acknowledging wireless hazards and adopting more stringent regulation.

Statement 6. The U.S. Congress forbids local communities from considering health concerns when deciding whether to issue zoning permits for wireless antennae.

How likely is it that each of the statements is true?

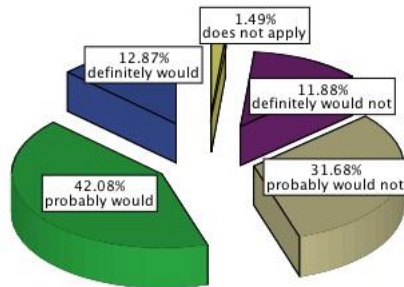


Two findings seem especially interesting:

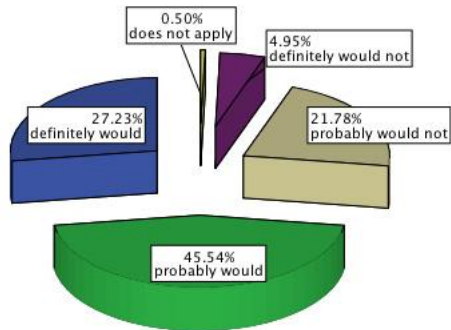
1. Statement 3 received a higher credibility rating than Statements 1 and 2. The different credibility levels are statistically significant. Respondents are more likely to trust in wireless safety than to believe there are general or specific health risks.

2. The only statement that is a matter of uncontested fact is Statement 6 on the outlawing of opposition to antenna sites on health grounds. (All other statements have been both proclaimed and denied.) And yet Statement 6 was least likely to be believed. Just 1.5% of respondents recognized this as an “absolutely true” statement. Over 14% thought this statement was “not true at all.” Answers to this question would seem to reflect public ignorance on the political background to wireless health issues.

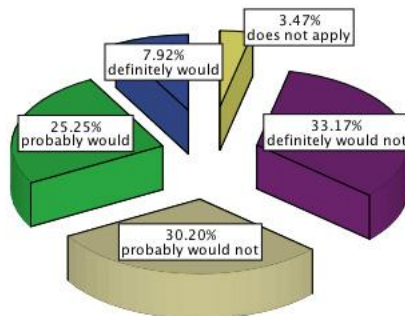
Participants were also asked how they would change behavior if claims of wireless health risks were established as true:



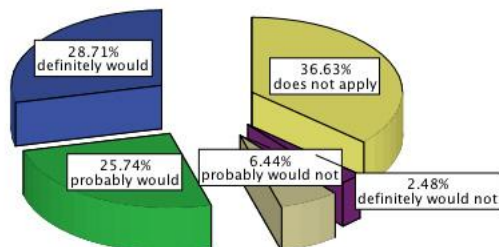
**If statement 1 was true,
I would start using headphones.**



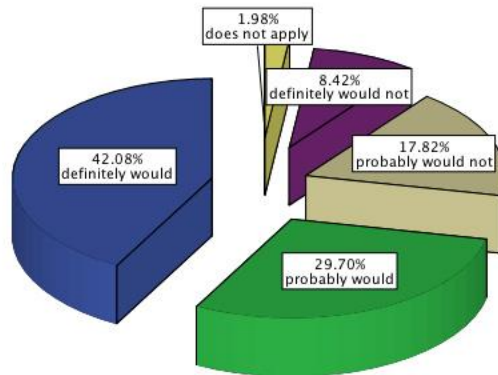
**If statement 1 was true,
I would restrict the amount of time
I spend on the phone.**



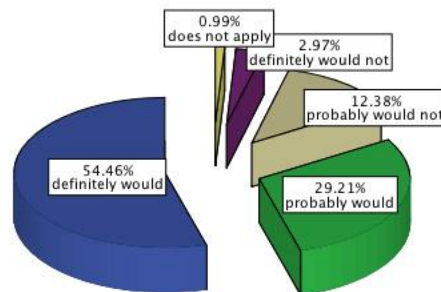
**If statement 1 was true,
I would start up a new land line
account for home use.**



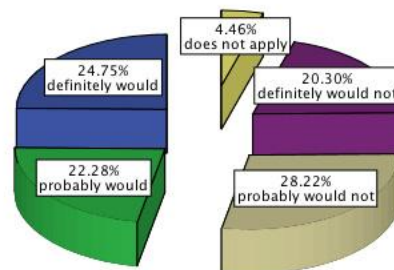
**If statement 1 was true,
I would restrict my children's cell phone use.**



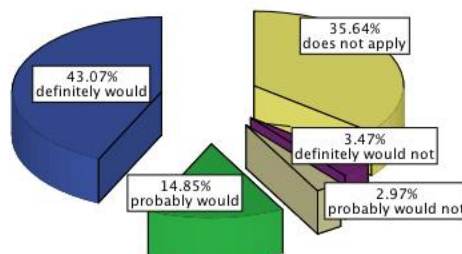
**If statement 2 was true,
I would start using headphones.**



**If statement 2 was true,
I would restrict the amount of time
I spend on the phone.**



**If statement 2 was true,
I would start up a new land line
account for home use.**



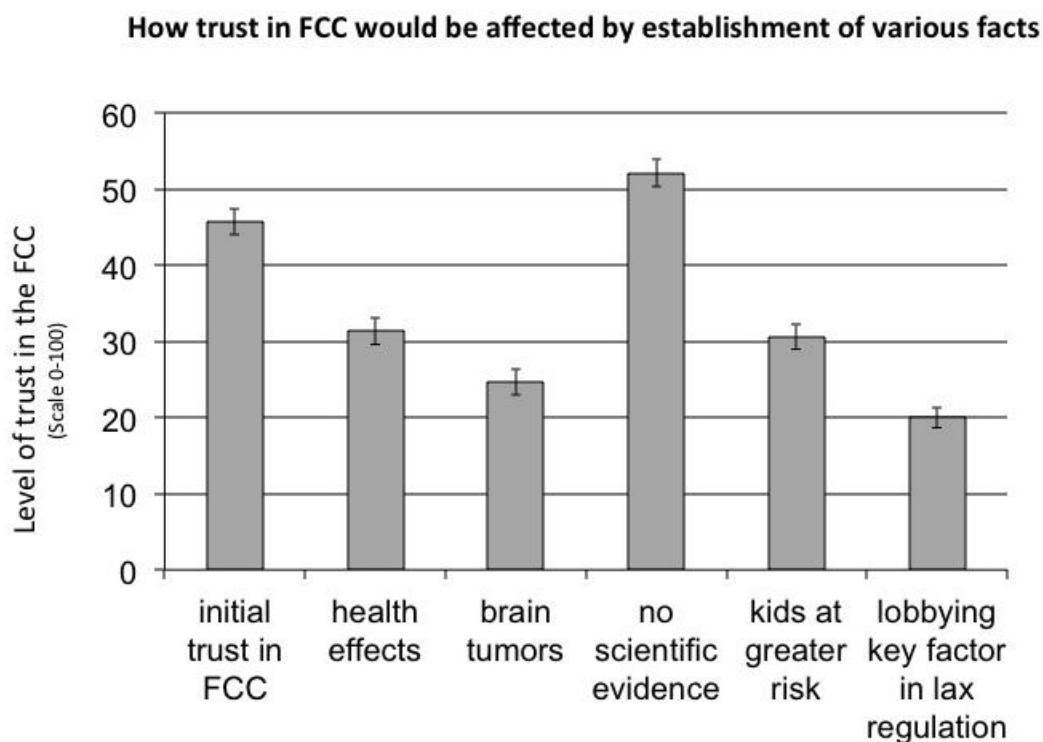
**If statement 2 was true,
I would restrict my children's cell phone use.**

The greatest impact on behavior came when respondents were asked to assume it is true that prolonged and heavy cell phone use triples the risk of brain tumors. More than half said they would “definitely” restrict the amount of time spent on the phone. Just over 43% would “definitely” restrict their children’s phone use. Perhaps most surprisingly, close to 25% would “definitely” start up a new landline phone account. (This last response suggests it may be foolishly premature for the phone giants to exit the landline business just yet.)

The inclination of consumers to change behavior should negative health effects be confirmed suggests the stakes are enormous for all companies that derive revenue from wireless usage.

This survey points to—but cannot answer—some critical questions: Do wireless companies better protect themselves legally by continuing to deny the validity of all troublesome research? Or should they instead be positioning themselves to maintain consumer trust? Perhaps there is greater financial wisdom in listening to the lawyers right now and denying all chance of harm. If so, however, why would anyone seriously concerned about health listen to the industry—or to its captured agency? That’s a question the FCC will eventually need to answer.

Trust could eventually become a central issue. Respondents were initially asked to describe their level of trust in the wireless industry and in the FCC as its regulator. Not surprisingly, establishment of any of the presumed health risks—or confirmation of inordinate industry pressure—resulted in statistically significant diminution of trust in both the industry and the FCC.



On a scale of 1 to 100, the FCC had a mean baseline trust level of 45.66. But if the tripling of brain tumor risk is established as definitely true, that number falls all the way to 24.68. If “lobbying and campaign contributions” have been “key factors” in keeping the government from acknowledging wireless hazards, the trust level in the FCC plummets to 20.02. All results were statistically significant.

It’s clear that at this point confirmation of health dangers—or even of behind-the-scenes political pressures—from wireless will substantially diminish public trust in the FCC. Skeptics might argue that this gives the FCC motive to continue to downplay and dismiss further evidence of biological and human health effects. Those of a more optimistic bent might see in these findings reason to encourage an FCC concerned about public trust to shake itself loose from special interests.

Endnotes

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- ⁷⁹ March 2015 interview with Jonathan Mayer.
- ⁸⁰ April 2015 interview with Scott Cleland.
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- ⁹⁰ Lab Fellow, Edmond J. Safra Center for Ethics, Harvard University.
- ⁹¹ Investigative Journalism Fellow, Project on Public Narrative at Harvard Law School.

Monterey ordinance Aug 9 Planning meeting

christy hollenbeck [REDACTED]

Tue 8/9/2022 10:34 AM

To: Oncall Planning <planning@monterey.org>

[You don't often get email from [REDACTED] Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Please enter into the record and distribute to all planning commissioners.

Thank you

[NOTICE: This message originated outside of the City of Monterey mail system -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Sent from my iPad

Tuesday, August 9, 2022

Dear Planning Commissioners,

I urge the Planning Commission to NOT recommend approval of the staff-revised wireless ordinance that “is not as strong as possible” and that does not reflect Community values. I recommend that the draft ordinance be updated and rewritten by expert, pro-resident telecom attorney, Andrew Campanelli.

1. Staff removed the Wind Load Safety Test required by the Wireless Ordinance Subcommittee’s draft.
2. Staff included language that allows noise-creating equipment to be added post application approval for a project that was initially approved without noise-creating equipment.
3. The RF Compliance Report requirements merit the more detailed and stringent language provided by the Campanelli ordinance.
4. Staff did not add the requested requirement that the applicant must provide Drive Test data to substantiate any claim of Prohibition/Effective Prohibition/significant coverage gap to get around ordinance requirements, requiring only confusing self-generated propagation maps. Even the FCC has determined that these propagation maps are easily manipulated, highly inaccurate and unreliable. When Verizon wanted to locate thirteen towers in our neighborhood claiming effective prohibition of services would result, a Drive Test revealed existing 100% connectivity and coverage throughout the neighborhood.
5. The Wireless Ordinance Subcommittee’s draft required that staff post all wireless application filings on the City's website according to a specified time frame to alert the public of pending wireless facilities. Staff changed this language to give them discretionary authority whether to and when to post notifications of application filings.
6. Staff omitted any minimum setback requirement of facilities from residences and schools.
7. Staff created more liberal design element requirements for public right-of-way locations from what is in the current ordinance. On utility poles the current

ordinance only allows a two foot increase in pole height by antennas and radomes. The staff's draft allows a four foot increase in height and more if needed to provide clearance from power lines. The current ordinance only allows pole-mounted equipment to extend ten inches from centerline while the staff draft allows equipment to extend fifteen inches from surface. The current ordinance states that outdoor ground-mounted equipment associated with base stations shall be avoided whenever feasible. In the current draft, ground-mounted equipment is the preferred option over pole-mounted equipment. This will result in ugly metal equipment boxes littering street frontage of buildings and residences, blocking sidewalks and parking spaces.

8. Staff omitted all mock-up requirements. The representatives of the Wireless Ordinance Subcommittee required mock-ups in their final document.

9. The Wireless Ordinance employs many legal and technical terms and acronyms not readily understood by lay persons. MVNA requested numerous terms be explained in the definitions section of the ordinance, but none were changed or added to make it more understandable to the public, putting the public at a severe disadvantage to the lawyers representing the trillion dollar telecom industry.

11. The staff is proposing that only an administrative permit is necessary to install temporary cell towers -- for example for large events -- without notice to nearby neighbors or businesses, without any RF radiation reports to insure safety, nor minimum setbacks from businesses or residential structures.

12. The staff version does not require applicants to provide necessary evidence to prove a significant coverage gap exists and has removed the requirement that applicants must demonstrate the non-existence of less invasive alternative locations. This draft states that wireless facilities in residential neighborhoods require an effective prohibition showing, but they have removed the necessity to prove an existing significant coverage gap!

Thank you,
Doug Hollenbeck

Wireless Ordinance Draft Review/ Discussion

Dr. Charles Martin [REDACTED]

Tue 8/9/2022 11:06 AM

To: Oncall Planning <planning@monterey.org>

You don't often get email from [REDACTED] [Learn why this is important](#)

Dear Sirs/ Madams,

The Wireless Ordinance draft should be considered a near finished document. Content changes should not be substantially altered or eliminated. The document is the result of endless hours of community discussions and can be understood to be their will. It is a very reasoned plan to achieve safety and service. It should retain the following-

The strongest Wireless Ordinance legally possible. Drive-by testing to prove up there is inadequate coverage as FCC maps may be as low as 16% accurate. Wind load Safety tests need to be done as equipment is added. Cooling fans should be of low decibel only and inaudible to the average person. Posting on the City website must be uniformly done well in advance of application filings. Transmitter unit mock-up must be required for their actual visual impact.

Again due to the strong concern shown by this neighborhood in the past the provision of the ordinance should call for the strongest provision.

Thank you-

Charles Martin

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Planning Commission Wireless Ordinance Hearing 8/9/22

Jeannie Ferrara [REDACTED]

Tue 8/9/2022 5:58 PM

To: Oncall Planning <planning@monterey.org>

Cc: Clyde Roberson <roberson@monterey.org>; Alan Haffa <haffa@monterey.org>; Tyller Williamson <twilliamson@monterey.org>; Dan Albert <albert@monterey.org>; Ed Smith <smith@monterey.org>

August 9, 2022

Planning Department Commissioners
Planning Commissioners
570 Pacific Street
Monterey, CA 93940

RE: Planning Commission Wireless Ordinance Hearing 8/9/22

Dear Planning Department Commissioners:

Please reject the current wireless ordinance as proposed by the city of Monterey staff. In its current state it has many flaws that fail to provide the strongest protection allowable for the homeowners and residents of Monterey. It must include every requirement for EMF safety compliance.

Attorney Andrew Campanelli, the leading expert in the nation on wireless matters, drafted the city of Carmel's wireless ordinance. It includes the strongest possible protections for the homeowners and residents of Carmel. I would like to suggest that the city of Monterey's wireless ordinance be modeled after Carmel's wireless ordinance. Please review the video of Andrew Campanelli defining the problems and solutions to the current wireless situation that we are facing at the following link:

<https://youtu.be/bKqB8wYY7cA>

Drive-by testing should be the minimum requirement to prove there is a gap in service. The FCC has shown that most propagation maps that supposedly measure gaps in service are between 16 to 64% accurate. We want 100% accuracy. If service is sufficient, then there is no need for added cell antennas or towers.

The ordinance must require an independent radio engineer review to verify all the work the applicant submits, just as any other building project plan check requires now. The ordinance must also require some routine unannounced inspection by an independent radio engineer after the equipment is installed and operational to further ensure compliance.

The homeowners and residents of Monterey deserve the same protections provided by Carmel's wireless ordinance drafted by Attorney Andrew Campanelli. Please reject the draft being presented to the planning commission this evening!

Sincerely,

Jeannie Ferrara



Monterey, CA 93940

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Planning Commission Hearing 8/9/22: Wireless Ordinance

Kristin Dotterer [REDACTED]

Tue 8/9/2022 4:15 PM

To: Oncall Planning <planning@monterey.org>

Cc: Clyde Roberson <roberson@monterey.org>; Alan Haffa <haffa@monterey.org>; Tyller Williamson <twilliamson@monterey.org>; Ed Smith <smith@monterey.org>; Dan Albert <albert@monterey.org>

Some people who received this message don't often get email from [REDACTED] [Learn why this is important](#)

Dear Monterey Planning Commissioners:

I urge you to NOT recommend approval of the wireless ordinance that is before you tonight, as it is not as strong as it legally could be in order to retain local control of wireless facilities. At this point after multiple years and countless hours put in by the City Council-appointed Wireless Subcommittee, it is ludicrous that the Subcommittee's draft was changed to this extent and does not reflect public input, including from the research done by the neighborhood (Monterey Vista) that was so affected by the threat of cell towers outside of residents' homes.

It is imperative that the following be corrected before any draft be sent to the City Council:

1. Staff removed the Wind Load Safety Test required by the Wireless Ordinance Subcommittee's draft.
2. Staff included language that allows noise-creating equipment to be added post application approval for a project that was initially approved without noise-creating equipment.
3. The RF Compliance Report requirements merit the more detailed and stringent language provided by the Campanelli ordinance.
4. Staff did not add the requested requirement that the applicant must provide Drive Test data to substantiate any claim of Prohibition/Effective Prohibition/significant coverage gap to get around ordinance requirements, requiring only confusing self-generated propagation maps. Even the FCC has determined that these propagation maps are easily manipulated, highly inaccurate and unreliable. When Verizon wanted to locate thirteen towers in our neighborhood claiming effective prohibition of services would result, a Drive Test revealed existing 100% connectivity and coverage throughout the neighborhood.
5. The Wireless Ordinance Subcommittee's draft required that staff post all wireless application filings on the City's website according to a specified time frame to alert the public of pending wireless facilities. Staff changed this language to give them discretionary authority whether to and when to post notifications of application filings.
6. Staff omitted any minimum setback requirement of facilities from residences and schools.
7. Staff created more liberal design element requirements for public right-of-way locations from what is in the current ordinance. On utility poles the current ordinance only allows a two foot increase in pole height by antennas and radomes. The staff's draft allows a four foot increase in height and more if needed to provide clearance from power lines. The current ordinance only allows pole-mounted equipment to extend ten inches from centerline while the staff draft allows equipment to extend

fifteen inches from surface. The current ordinance states that outdoor ground-mounted equipment associated with base stations shall be avoided whenever feasible. In the current draft, ground-mounted equipment is the preferred option over pole-mounted equipment. This will result in ugly metal equipment boxes littering street frontage of buildings and residences, blocking sidewalks and parking spaces.

8. Staff omitted all mock-up requirements. The representatives of the Wireless Ordinance Subcommittee required mock-ups in their final document.

9. The Wireless Ordinance employs many legal and technical terms and acronyms not readily understood by lay persons. MVNA requested numerous terms be explained in the definitions section of the ordinance, but none were changed or added to make it more understandable to the public, putting the public at a severe disadvantage to the lawyers representing the trillion dollar telecom industry.

11. The staff is proposing that only an administrative permit is necessary to install temporary cell towers -- for example for large events -- without notice to nearby neighbors or businesses, without any RF radiation reports to insure safety, nor minimum setbacks from businesses or residential structures.

12. The staff version does not require applicants to provide necessary evidence to prove a significant coverage gap exists and has removed the requirement that applicants must demonstrate the non-existence of less invasive alternative locations. This draft states that wireless facilities in residential neighborhoods require an effective prohibition showing, but they have removed the necessity to prove an existing significant coverage gap!

Thank you very much for your careful consideration of our community's values.

Sincerely,
Kristin Dotterer
Daniel Dotterer
Monterey Vista Residents

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Please enter into the Public Record

August 11, 2022

To: ALL PLANNING COMMISSIONERS and, CITY COUNCIL MEMBERS

Re: Wireless Ordinance Draft has been changed / Deny approval

Dear Honorable Planning Commissioners and City Council Members,

This is a follow up on the August 9th, 2022, Planning Commission Meeting , that we unfortunately missed regarding the Wireless Ordinance that has once again been changed and weakened by the City Staff. We unite with the numerous residents of Monterey and DO NOT want this draft approved, and please DENY it. Again, the residents want the Wireless Ordinance to be written as strongly as possible, as the Subcommittee of neighbors had originally written it to insure our protection rights.

The Monterey Vista Neighborhood Association has already advised the Planning Commission to NOT recommend approval of the staff-revised wireless ordinance that “is not as strong as possible” for the values and protection rights of the community of neighbors residing here. We completely agree and stand with the community.

Monterey should follow the same example of the City Leaders of Carmel and their residents that are refusing to be bullied by the telecommunications and refuse to have their beautiful town threatened and ruined. As you know from recent news they won a victory against a lawsuit on them by a top telecommunications company as a Federal Judge was in favor of the City of Carmel.

Further, the Carmel Residents recently hired an attorney and expert of telecommunication laws and pro-resident, Mr. Andrew Campanelli. He provided them with a strong and excellent ordinance and you can view Mr. Campanelli's video outlining what a strong wireless ordinance should include here:

(See <https://youtu.be/bKqB8wYY7cA>)

Members of the Monterey Vista Neighborhood Associations also recommended that the draft ordinance be updated and rewritten by telecom attorney, Andrew Campanelli and we absolutely agree with this as he supports the residents and their rights.

In addition, the City Leaders of Calabasas were very wise to have written in their Wireless Ordinance to include a setback rule for cell facilities of 100 feet from any occupied structure for the protection of their residents and city. The beautiful City of Monterey deserves the same protection rights.

It is difficult to understand why this continues to happen, but it must be addressed and repeated here.

The City Staff has changed the Wireless Ordinance from the draft that was reviewed by the Subcommittee of neighbors. This will weaken the Wireless Ordinance and leave the neighbors being forced with cell facilities extremely close to their property and threatened with all the negative issues

that they never wanted from the beginning. Again, here is a running list of some of the major issues in the Wireless Ordinance draft that have been changed and weakened:

1. Staff removed the Wind Load Safety Test required by the Wireless Ordinance Subcommittee's draft.
2. Staff included language that allows noise-creating equipment to be added post application approval for a project that was initially approved without noise-creating equipment.
3. The RF Compliance Report requirements merit the more detailed and stringent language provided by the Campanelli ordinance.
4. Staff did not add the requested requirement that the applicant must provide Drive Test data to substantiate any claim of Prohibition/Effective Prohibition/significant coverage gap to get around ordinance requirements, requiring only confusing self-generated propagation maps. Even the FCC has determined that these propagation maps are easily manipulated, highly inaccurate and unreliable. When Verizon wanted to locate thirteen towers in our neighborhood claiming effective prohibition of services would result, a Drive Test revealed existing 100% connectivity and coverage throughout the neighborhood.
5. The Wireless Ordinance Subcommittee's draft required that staff post all wireless application filings on the City's website according to a specified time frame to alert the public of pending wireless facilities. Staff changed this language to give them discretionary authority whether to and when to post notifications of application filings.
6. Staff omitted any minimum setback requirement of facilities from residences and schools.
7. Staff created more liberal design element requirements for public right-of-way locations from what is in the current ordinance. On utility poles the current ordinance only allows a two foot increase in pole height by antennas and radomes. The staff's draft allows a four foot increase in height and more if needed to provide clearance from power lines. The current ordinance only allows pole-mounted equipment to extend ten inches from centerline while the staff draft allows equipment to extend fifteen inches from surface. The current ordinance states that outdoor ground-mounted equipment associated with base stations shall be avoided whenever feasible. In the current draft, ground-mounted equipment is the preferred option over pole-mounted equipment. This will result in ugly metal equipment boxes littering street frontage of buildings and residences, blocking sidewalks and parking spaces.
8. Staff omitted all mock-up requirements. The representatives of the Wireless Ordinance Subcommittee required mock-ups in their final document.
9. The Wireless Ordinance employs many legal and technical terms and acronyms not readily understood by lay persons. MVNA requested numerous terms be explained in the definitions section of the ordinance, but none were changed or added to make it more understandable to the public, putting the public at a severe disadvantage to the lawyers representing the trillion dollar telecom industry.
11. The staff is proposing that only an administrative permit is necessary to install temporary cell towers -- for example for large events -- without notice to nearby neighbors or businesses, without any RF radiation reports to insure safety, nor minimum setbacks from businesses or residential structures.

12. The staff version does not require applicants to provide necessary evidence to prove a significant coverage gap exists and has removed the requirement that applicants must demonstrate the non-existence of less invasive alternative locations. This draft states that wireless facilities in residential neighborhoods require an effective prohibition showing, but they have removed the necessity to prove an existing significant coverage gap!

The recommendations submitted by MVNA are imperative to creating “the strongest wireless ordinance possible. This is what all the residents wanted that attended the crowded City Council Chambers for the Planning Commission Meeting of March 15, 2018, and is what we all still want! We need strong protection rights to be written into the Wireless Ordinance, so that we will not be bullied or threatened in future days to come, and to ensure the safety and beauty of Monterey, our neighborhood, and our homes.

Thank you to all Planning Commissioners and City Leaders for moving slowly and thoughtfully with this imperative issue for the safety and well-being of all the residents and neighbors here, and for the beautiful sanctuary of Monterey.

With all respect,

Dr. John Adamo

Catherine Adamo

Charisse Carlile

Monterey Residents



Monterey Vista Neighborhood Association

Monterey, CA 93940

Web: montereyvistaneighborhood.org Email: mvneighborhood@gmail.com

August 23, 2022

To Planning Commissioners:

A July 29, 2022 decision was just published, from the United States District Court, E.D. New York, EXTENET SYSTEMS, INC., Plaintiff, v. VILLAGE OF FLOWER HILL.

The Judge ruled that the village's denial of small cell applications was legal and reasonable. In a landmark legal decision, Judge Frederic Block, Senior United States District Judge for the Eastern District of New York found that the Village of Flower Hill, NY, was justified in denying the application of ExteNet (acting as an agent for Verizon Wireless) to place 18 small cell antennas in the Village.

The Judge quoted from the 1996 Telecommunications Act, citing the provision that "nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities."

He noted that other courts have found the Act to be "in many important respects a model of ambiguity or indeed even self-contradiction." Nevertheless, he reasoned, a plain reading of the text supports the claim by the Village that it has acted legally.

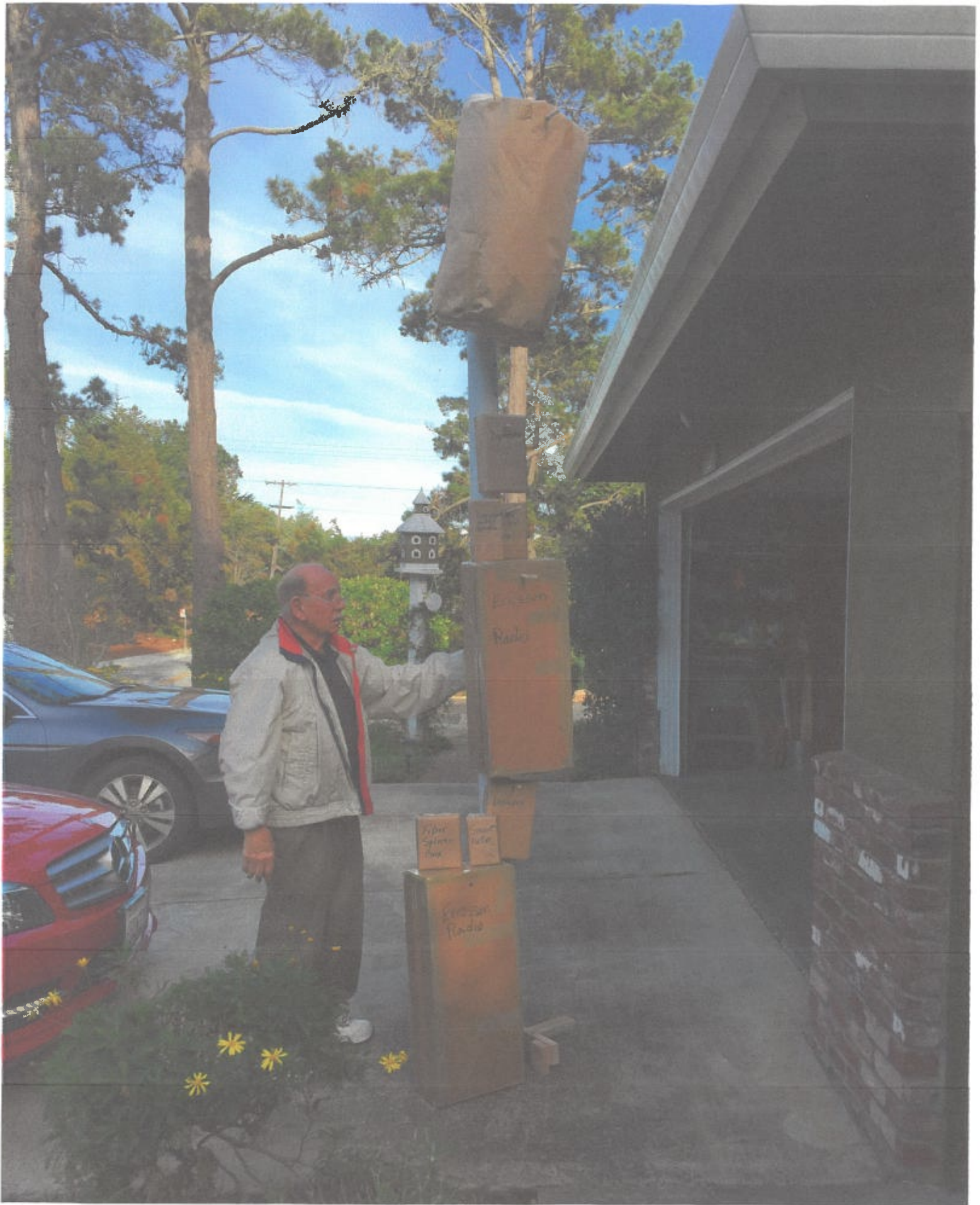
Most importantly, the Judge ruled that the provisions of the 1996 Act do not necessarily apply to the new uses of wireless to provide broadband and other services. "Improved capacity and speed are desirable (and, no doubt, profitable) goals in the age of smartphones," he wrote, "but they are not protected by the Act."

This is an important moment for all those working to limit the reckless deployment of wireless technology into our neighborhoods and homes.

A copy of the judge's decision can be found at <https://casetext.com/case/extenet-sys-v-vill-of-flower-hill>.

Please continue to press for the most protective wireless ordinance in our neighborhoods with standards clearly outlined for proving coverage gaps and need.

Jean Rasch,
President, MVNA



From: [REDACTED]
To: [Oncall Planning](#)
Subject: comment regarding wireless ordinance at tonight's hearing
Date: Tuesday, September 13, 2022 5:01:52 PM

You don't often get email from [REDACTED]. [Learn why this is important](#)

Dear Commissioner's,

I sent you an email and also spoke during the public comment period at your last meeting on this issue. One of my main comments and concerns was regarding the time for giving notice of filing on an application to the public. The provision on this issue in the draft ordinance before you for consideration tonight is still not tight enough. I am very concerned about transparency on such an important issue and strongly urge you to require notice within 5 business days. In this day of electronic transmissions, simply providing notice within this timeframe is a reasonable balance of the public's need to know and staffing resources.

As to other issues, I am a member of the MVNA and I am in agreement with the concerns it has been raising.

Thank you,
Barbara Moore
Monterey homeowner and resident

[NOTICE: This message originated outside of the City of Monterey mail system -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

From: [REDACTED]
To: [Oncall Planning](#)
Subject: Wireless Ordinance meeting.
Date: Tuesday, September 13, 2022 6:55:30 PM
Attachments: [Monterey speech 9-13-22.pdf](#)

Please enter into the record and distribute to planning commissioners.
Thanks.

[NOTICE: This message originated outside of the City of Monterey mail system -- DO NOT
CLICK on links or open attachments unless you are sure the content is safe.]

Sent from my iPad

Dear Planning Commissioners,

As planning commissioners and leaders **you** have a **duty** to **protect** the **health** and **safety** of your community. If you allow this weak ordinance to go through, **you** will be **responsible** when cell towers start going up in front of **children's** bedrooms.

Monterey **needs** to hire an attorney that will write the **strongest** ordinance possible to protect our beautiful community.

Recently I reached out to the **Mayor** of Dalton Gardens, **Idaho** to see how **their** wireless ordinance, written by top telecom attorney, Andrew **Campanelli**, was working out for them. I would like to read you his response:

Hey,

Thanks for reaching out.

Working with Mr Campanelli was **absolutely delightful**. He is **very professional** and **really knows his craft**.

I believe this ordinance is **very important** for the future of our constituents' **health and safety**. This ordinance **does not stop** the telecommunication companies from performing their business **duties**. It **does allow** the City to have a say **where** and **how** these cell towers are **placed**.

As far as it is working so far, it is still too early to tell if the companies will even **file** for a permit in our city because of the **restraints** they will have on them. Time will tell for sure.

If **anyone** has further **questions**, please have them reach out and I will be willing to help in **anyway** I can.

Cheers! Mayor Dan Edwards

Idaho and California are **both** in the **9th circuit** so they are both bound by the **same** circuit court decisions. This means if Idaho can pass a Campanelli ordinance, **we can too**.

Mr Campanelli's ordinance is not designed to stop all wireless facilities, it's designed to

give maximum power to decide where they go.”

Thank you

Christy Hollenbeck

According to **top** telecom attorney, **Andrew Campanelli**, when **Congress** enacted the **Telecommunications** Act of 1996, it **explicitly preserved** to state and local governments the **general authority** to regulate the placement of wireless facilities in their jurisdiction.

Fw: Comment form not working

Ashley Sanks <sanks@monterey.org>

Thu 9/15/2022 12:25 PM

To: Jennifer Cleary <cleary@monterey.org>

Hi Jennifer!

I hope all is well! Not sure if you are the right person for this but I am sure you could point me in the right direction 😊

I happened to check my junk folder (looking for another email) and found this message below from George Scarmon. I am assuming he was unable to leave a comment for the Planning Commission meeting this past Tuesday. I wanted to see if there is anyway this could be added along with the rest of the comments received for this meeting?

Thank you in advance for your help.

Sincerely,

Ashley Sanks

Admin Assistant | City Manager's Office

City of Monterey

T: 831.646.3760 | www.monterey.org

From: George Scarmon [REDACTED]

Sent: Tuesday, September 13, 2022 11:46 AM

To: Ashley Sanks <sanks@monterey.org>

Subject: Comment form not working

You don't often get email from [REDACTED]. [Learn why this is important](#)

We have tried several times to submit a comment regarding tonight's meeting about cell tower ordinance. It keeps saying that I am timed out for your captcha robot verification!

re: Cell tower ordinance and meeting 9/13/2022

We are in favor of the strongest possible requirements and limitations on the addition of or maintenance structures associated with cell towers. Please note this for tonight's meeting regarding this topic. And please, keep these towers out of our neighborhoods. We already have enough power poles and lines that are unsightly! There are two of us at this address:

George Scarmon and Jeanne Clark

[REDACTED]
Monterey CA 93940

[REDACTED]

Sent from [Mail](#) for Windows

[**NOTICE:** This message originated outside of the City of Monterey mail system -- **DO NOT CLICK** on links or open **attachments** unless you are sure the content is safe.]

From: [REDACTED]
To: [Oncall Planning](#)
Subject: Cell towers
Date: Tuesday, September 13, 2022 6:12:58 PM

[You don't often get email from [REDACTED]. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

As an active employed person often requiring good cell reception within all regions of the city of Monterey and beyond, I would like to see improved reception. If that means more cell “ towers “ I am in support of this. You can start with installing one on the pole outside my house!

My signal drops frequently in the midst of an important conversation. Not good

Thank you

Karen Calley,ABR
#00940011 DRE
COLDWELL BANKER.
[REDACTED]

From my iPhone. Apologies for spelling errors.

[NOTICE: This message originated outside of the City of Monterey mail system -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Dear Planning Commissioners,

The map generated by the staff that shows possible locations available for cell tower placement in Monterey if 100' setbacks are added from residences and schools demonstrates that these setbacks would not constitute an effective prohibition because:

1. There are already many approved and/or already built wireless facilities currently in place throughout Monterey that are available for additional collocation within the City limits and immediately adjacent areas. These facilities are already providing robust, adequate and ubiquitous wireless coverage throughout Monterey. These existing or approved facilities will be grandfathered in and allowed to remain as approved under the original ordinance. The Spectrum Act gives carriers access to existing facilities for adding new equipment as Eligible Facility Requests, a preferred option in the proposed ordinance.
2. Effective prohibition is not created by reasonable setbacks, because there remains sufficient alternatives for the addition of new wireless sites shown on the map provided
3. Applicants claiming that effective prohibition would result from adherence to codified setback requirements have the opportunity to prove this on a case by case basis as a way to obtain an exemption from reasonable setback requirements. If the applicant proves to the City's satisfaction that no alternatives exist more than 100 feet from residences or schools and that denial would result in a prohibition of service, applicants may be eligible for an exemption from this requirement on a case by case basis. The Courts do not favor facial challenges to ordinance requirements that do not constitute an outright ban on wireless facilities. They will address ordinance provisions as applied resulting in a possible effective prohibition on a case by case basis.
4. Applicant Site Developers such as Crowne Castle and Extenet who do not themselves provide any wireless services cannot claim that denial would result in effective prohibition of services since they are not service providers. Only Verizon, AT&T, T-Mobile etc. can claim prohibition of services.
5. Many wireless ordinances written for Cities throughout the US by prominent telecommunications attorneys impose similar or more stringent setback requirements. Setbacks up to 500 feet or more are not unusual.
6. The FCC and Courts have distinguished telecommunications (phone calling) services from informational services (internet and broadband), the former subject to the effective prohibition protections of the Telecommunications Act and the latter not. No effective prohibition claim can be upheld in areas with existing adequate telecommunications services (reliable cell phone service).
7. Even with the reasonable setbacks in place, there remain adequate locations available to carriers who demonstrate they will be unable to provide reliable service without additional new wireless facilities, either collocated on existing facilities or in locations that will not violate setback requirements. Effective zoning and City planning require localities to provide appropriate citing locations somewhere in the City or unincorporated areas, not everywhere in cities. It would not, for example be appropriate to allow sewage treatment plants near homes or schools, while still providing appropriate alternatives somewhere else. You don't need to hand over the entire city to the telecom giants resulting in unbridled proliferation and resultant loss of property values and aesthetic character not to mention public safety from increased fire risk and unsafe fall zones. The Telecommunications Act specifically preserves local authority over the "placement, construction and maintenance" of wireless facilities. Modest setbacks fall within this authority and will not, in themselves, constitute a prohibition of service.

Sincerely,

Susan Nine,

Monterey Homeowner & Monterey Vista Representative on the CC's Wireless Subcommittee

Comments in opposition to provisions of the proposed ordinance regarding wireless cell phone antennas in residential areas

Tue 10/25/2022 5:52 PM

To: Oncall Planning <planning@monterey.org>

To: Members of the Planning Commission

I have listened to several of the Commission's previous meetings on this issue. I continue to urge the Commission to follow the City Council's directive to the Commission to create the strongest possible ordinance that protects the interests of residents in areas where these facilities will be allowed. I also urge the Commission to implement the recommendations of the City Council's Wireless Subcommittee to the maximum extent possible within the limitations and restrictions imposed by federal law. To that end, I request you, the Commission members, to broadly interpret any such leeway in these limitations and restrictions when approving the ordinance.

I also have these comments with regard to a few specific provisions of the proposed ordinance before you for consideration tonight.

First and foremost, I request that the public receive early and extensive public notice of any requests for permits for installation of these facilities and that the specifics of such notice be included in the ordinance and not left to the discretion of staff. Without meaning any disrespect or distrust of staff, such notice is too important an issue to be discretionary; it should be set out clearly and specifically in the ordinance and the ordinance should also have enforcement provisions. Transparency is critical.

Second, the ordinance should require 100 foot setbacks of these antenna facilities from people's homes and schools.

Third, requiring the applicants to provide life-sized model mock ups of the proposed equipment is reasonable in order to accurately assess the impact on views, neighborhood character and property values.

Fourth, I am informed that the staff- proposed ordinance also allows substantially higher antennas on rights of way utility poles and greater standoffs of ancillary equipment from poles than is allowed under the currently in-effect ordinance. The ordinance should restrict the height as much as possible so as to lessen aesthetic and visual impacts and limit increased fire and safety risks.

Thank you for considering my comments.

Barbara Moore, Monterey homeowner in the Monte Vista area

Planning Commission tonight, Item #7 Wireless Ordinance

Jean Rasch 

Tue 10/25/2022 12:43 PM

To: Oncall Planning <planning@monterey.org>

Please share this for tonight's Planning Commission meeting. Thank you!

Sincerely,

Jean Rasch

[NOTICE: This message originated outside of the City of Monterey mail system -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

October 25, 2022 Re: Wireless Ordinance

Dear Planning Commissioners:

Set backs

Please support 100' setbacks from residences for small cell tower placement.

This setback policy would not create an effective prohibition because 1) there are many facilities already in place, 2) many alternative locations remain available, 3) vendors can request expansion through the Eligible Facility Request process, and 4) vendors can request an exemption on a case by case basis.

Please leave the burden to prove need on the vendors, rather than placing the burden to host on the residents.

Mock Ups

Mock ups are invaluable to residents for visualizing proposed facilities. These are important. At a minimum, 3D images need to be required in the Ordinance and available easily to the public.

Dropped Coverage Documentation


It is important to include the standards for dropped coverage. We learned from the Verizon 13 in 2018 that data was missing and wrong. We need standards such as mapped drive test data.

Subcommittee Work

I am very concerned that the work of the Wireless Subcommittee is being ignored. This is insulting and continues the sense among many residents that the City does not listen to residents. NCIP is suffering greatly from this malaise, after 1) years of approved projects being ignored by staff or too-slowly implemented (as costs rise) and 2) deappropriation of funds in 2020, and 3) the attempt this year to garner \$2 million from the NCIP budget. Now, the very valuable recommendations of the subcommittee for setbacks and mockups are being ignored. We risk great loss with such attitudes toward public participation.

Mayoral Candidate Statements

We will have a mayor who supports the residents in being heard. Mr. Williamson wants residents heard and respected on the control of their neighborhoods. Mr. Albert has vehemently stated he does not want small cell towers in neighborhoods. Let's avoid going more rounds at the City Council level and get an ordinance that will be supported by the neighborhoods so we don't draw this out further. The Telecommunications Act specifically preserves local authority over the placement, construction and maintenance of wireless facilities. Let's preserve our power, now, at the Planning Commission level.

Sincerely, Jean Rasch 


Verizon Wireless Comments on Wireless Facilities Ordinance - Tonight's Monterey Planning Commission Agenda Item 7

Paul Albritton <pa@mallp.com>

Tue 10/25/2022 11:35 AM

To: Oncall Planning <planning@monterey.org>

Cc: Kimberly Cole <cole@monterey.org>; City Clerk's Office Team <cityclerk@monterey.org>; Christine Davi <davi@monterey.org>

 1 attachments (430 KB)

Verizon Wireless Letter 10.25.22.pdf;

Some people who received this message don't often get email from pa@mallp.com. [Learn why this is important](#)

Dear Planning Commissioners, for tonight's meeting, please find attached our follow-up letter prepared on behalf of Verizon Wireless regarding the draft wireless facilities ordinance.

We urge the Commission to adopt a reasonable 500-foot search distance for preferred locations in the right-of-way, as well as to delete the setbacks from school and residential properties and the required showing of "prohibition" for residential zones.

Thank you.

Paul Albritton
Mackenzie & Albritton, LLP
155 Sansome Street, Suite 800
San Francisco, California 94104
(415) 288-4000
pa@mallp.com

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MACKENZIE & ALBRITTON LLP

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

October 25, 2022

VIA EMAIL

Chair Daniel Fletcher
Vice Chair Stephen Millich
Commissioners Michael Brassfield,
Michael Dawson, Sandra Freeman,
and Terry Latasa
Planning Commission
City of Monterey
580 Pacific Street
Monterey, California 93940

Re: Draft Wireless Communications Facilities Ordinance
Planning Commission Agenda Item 7, October 25, 2022

Dear Chair Fletcher, Vice Chair Millich and Commissioners:

We write again on behalf of Verizon Wireless regarding the draft wireless facilities ordinance (the “Draft Ordinance”). Verizon Wireless is concerned about the new requirement that right-of-way facilities be set back 100 feet from school and residential properties, with a narrow exception requiring applicants to prove that placement within those setbacks is required by federal law. Draft Ordinance § 38-112.4(F)(10)(e). Planning Office staff does not support such setbacks because they would exclude significant portions of Monterey. Further, in our prior letter of September 27, 2022 (attached), we explained why federal law preempts the ordinance requirement for an “effective prohibition” showing and related submittals (such as drive test data) for facilities in residential zones. We urge the Commission to delete the required setbacks and “effective prohibition” showings for right-of-way facilities, and instead adopt a reasonable 500-foot search distance for any preferred options, as we previously suggested.

With respect to small cells, the FCC’s Infrastructure Order adopted a nationwide prohibition of service standard, which has been sustained by federal courts. While in the past, various federal courts of appeal set forth differing prohibition standards for “macro” wireless facilities, the FCC declined to adopt the outdated “coverage gap”-based approach for small cells.¹ Instead, the FCC determined that local actions that “materially inhibit”

¹ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088, ¶ 40 (September 27, 2018).

the goals of “densifying a wireless network, introducing new services or otherwise improving service capabilities” constitute a prohibition of service.² Local governments and other parties filed challenges to the FCC’s Infrastructure Order in several courts of appeal, and the suits were consolidated under the Ninth Circuit Court of Appeal, which upheld the “materially inhibit” standard for small cells.³ The Supreme Court declined to hear local governments’ appeal, so the “materially inhibit” standard is settled law.⁴

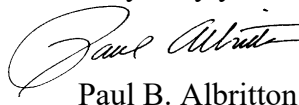
Accordingly, the FCC has already provided the legal basis to support approval of small cells where they enhance service and introduce new services (such as the 5G technology installed in new smartphones). The City cannot require Verizon Wireless to justify the need for its small cells or to submit information such as drive tests, dropped call records or other gap-related data. Draft Ordinance § 38-112.4(E)(3)(v).

The proposed 100-foot setbacks from school and residential properties would clearly contradict the FCC’s findings because they are an outright prohibition of service in broad areas. Both the requirement to show that those setbacks violate federal law and the “effective prohibition” showings for certain zones would set the stage for prolonged legal conflict. Ultimately, the setbacks and “effective prohibition” showings impose hurdles that “materially inhibit” service improvements and exceed the City’s authority according to FCC regulations. We urge the Commission to delete those requirements.

Instead, we again propose that the City apply a reasonable search distance to its location preferences for small cells in the right-of-way, whereby an applicant can use a less-preferred location if there is no technically feasible preferred option within 500 feet along the subject right-of-way. Many California cities have adopted a reasonable search distance, including Concord (250 feet) and San Mateo (500 feet).

Verizon Wireless appreciates the City’s ongoing invitation to provide comment on the Draft Ordinance.

Very truly yours,



Paul B. Albritton

Attachment

cc: Christine Davi, Esq.
Kimberly Cole

² *Id.* at 37.

³ See *City of Portland v. United States*, 969 F.3d 1020, 1035 (9th Cir. 2020).

⁴ See *City of Portland v. United States*, *cert. denied*, 141 S.Ct. 2855 (Mem) (U.S. 2021).

MACKENZIE & ALBRITTON LLP

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

September 27, 2022

VIA EMAIL

Chair Daniel Fletcher
Vice Chair Stephen Millich
Commissioners Michael Brassfield,
Michael Dawson, Sandra Freeman,
and Terry Latasa
Planning Commission
City of Monterey
580 Pacific Street
Monterey, California 93940

Re: Draft Wireless Communications Facilities Ordinance
Planning Commission Agenda Item 6, September 27, 2022

Dear Chair Fletcher, Vice Chair Millich and Commissioners:

We write again on behalf of Verizon Wireless regarding the draft wireless facilities ordinance (the “Draft Ordinance”). Verizon Wireless appreciates the time and effort that the Commission and staff have invested in the Draft Ordinance, and we provide comment on a few topics raised at the recent hearing on September 13 and discussed in the current staff report. We also attach our prior comment letter of August 8, and urge the Commission to adopt our suggestions prior to recommending the Draft Ordinance to the City Council.

School setbacks and location preferences. Schools create high demand for wireless service, but the proposed 150-foot setback from schools would prohibit facilities on certain streets that may optimal locations for service coverage. Small cell facilities pose no more land use impact near schools than other locations. Despite any attempt to justify a school setback for aesthetic reasons, such setbacks are clearly based on concern over radio frequency emissions which is preempted by the federal Telecommunications Act.¹ A prohibitive school setback was a subject of Verizon Wireless’s recent litigation against Los Altos which caused that city to convert its prohibition of facilities near schools to a preference, by which a small cell is allowed on a utility pole adjacent to a school if there is no feasible alternative within 500 feet. Numerous other California cities have adopted a reasonable 500-foot search distance for their various location preferences.

¹ See 47 U.S.C. § 332(c)(7)(B)(iv).

Monterey should consider this approach not only for facilities near schools, but for all of the location standards of Draft Ordinance Section 38-112.4(F)(9). Experience shows that a complicated preference system without a reasonable limit on the search distance for alternatives leads to unwarranted exclusions from large areas. *As we urged in our prior letters, the location preferences should favor industrial and commercial areas over residential and historic areas, while allowing a less-preferred location if there is no feasible preferred option within 500 feet. Further, the City should develop distinct lists of location preferences for the right-of-way and private property sites.*

Drive tests, dropped call data. While staff describes such materials that may prove an “effective prohibition” as optional submittals that are encouraged, Draft Ordinance Section 38-112.4(F)(10) requires an “effective prohibition showing” for many locations, including all residential zones. This inappropriately places City decision-makers in a quasi-judicial role, and they would be free to base denials on any materials listed under Section 38-112.4(E)(3)(v) such as coverage maps, as well as drive tests and dropped call data as now proposed.

However, for small cells in the right-of-way, requiring such demonstrations of service need contradicts Federal Communications Commission (“FCC”) regulations. As described in our prior letters, the FCC determined that small cells are needed for “densifying a wireless network, introducing new services or otherwise improving service capabilities.”² The FCC disfavored a “‘coverage gap’-based approach” to prove the need for a facility, and disregarded federal circuit court interpretations of the federal effective prohibition standard that rely on a “significant gap” in coverage.³ Drive tests and dropped call data are dated metrics for evaluating the need for the service enhancements provided by small cells. *The City can avoid unfounded denials and legal challenges by eliminating requirements to show an “effective prohibition,” and instead adopting the reasonable 500-foot search distance described above.*


Mock-ups. Requiring mock-ups of proposed facilities is burdensome and unnecessary. Mock-ups require additional architectural drawings, structural load calculations and building or encroachment permits. For utility poles, placement of temporary faux equipment would require other utilities to rearrange their equipment attached to a pole, which they are not obligated to perform for non-functional installations. Further, faux equipment could contradict the state’s strict safety regulations for utility poles, Public Utilities Commission General Order 95. Photosimulations and example photos of built facilities provide sufficient representation to allow the public and decision-makers to assess visual impacts.

² See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088, ¶ 37 (September 27, 2018). Federal courts have upheld these FCC requirements. See *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), cert. denied, 141 S.Ct. 2855 (Mem) (U.S. June 26, 2021).

³ *Id.*, ¶¶ 38, 40.

Monterey Planning Commission
September 27, 2022
Page 3 of 3

Verizon Wireless appreciates the opportunity to provide comment, and we urge the Commission to incorporate our suggested revisions prior to recommending the Draft Ordinance to the City Council.

Very truly yours,

Paul B. Albritton

Attachment

cc: Christine Davi, Esq.
Kimberly Cole

PC Meeting Wirelesss Ordinance 10/25/22

[REDACTED]
Tue 10/25/2022 5:45 PM

To: Oncall Planning <planning@monterey.org>

Raymond Meyers

[REDACTED]
Monterey, CA 93906

October 25, 2022

Planning Department Commissioners
Planning Commissioners
570 Pacific Street
Monterey, CA 93940

RE: Planning Commission Wireless Ordinance Hearing 10/25/22

Dear Planning Department Commissioners:

Cellular wireless facilities simply do not belong in residential areas when there are other more appropriate locations to satisfy the need for cellular communication. This should not exclusively include the need for faster or wider broadband for the sake of Internet service. The requisite speeds and bandwidth for Internet services can now be accomplished with wired technologies, such as fiber optics or cable service to the home or business. From within the premises a wireless router can expand the service for personal or business use without causing visual blight or potential adverse effects on the residents.

The City Wireless Ordinance must be as protective and strong as allowable, and we must mandate every requirement for both EMF safety compliance and visual impact be included in the ordinance to protect the general public. As proposed, a setback requirement of 100 feet for any antenna would not amount as a prohibition. Current technologies will allow both 4G LTE and 5G broadcasts on both low and mid bands without the need to locate cellular antennas within residential neighborhoods, especially as close as 100 feet to a building. It is well known that high bands (mm waves) have the highest potential for bandwidth and speed (for wireless Internet services), but require the antennas to be densified in close proximity to the users. This is unnecessary for the public, and appears to be an effort to use public right-of-way for enhancing profits of private industry.

The ordinance should also require models that graphically predict the 2D or 3D field radiation patterns and the topography and elevations of the structures within these patterns so the public can visually see what levels of effective radiated power will occur at various heights and distances from the proposed antennas.

Please reject the City staff changes for the wireless ordinance and continue the 100-foot setback requirement and other provisions to make it as strong as possible.

Regards,
Raymond Meyers

Dear Commissioners,

I was looking over San Anselmo's wireless Ordinance and noticed that they include very detailed insurance requirements. I do not believe similar language is included within the current draft ordinance and think perhaps it should be. I am forward the applicable language for your consideration.

(o) Insurance. At all times relevant to this permit, the permittee shall obtain and maintain insurance policies as follows:

i. Commercial General Liability. Insurance Services Office Form CG 00 01

covering Commercial General Liability ("CGL") on an "occurrence" basis, with limits not less than \$1,000,000 per occurrence or \$2,000,000 in the aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. CGL insurance must include coverage for the following: Bodily Injury and Property

TITLE: WIRELESS COMMUNICATIONS FACILITIES PAGE POLICY NUMBER 22 of 100 6-1

Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground ("UCX") exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; or (iv) contain any other exclusion contrary to the conditions in this permit.

ii. Automotive Insurance. Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if permittee has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

iii. Workers' Compensation. The permittee shall certify that it is aware of the provisions of California Labor Code § 3700, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and further certifies that the permittee will comply with such provisions before commencing work under this permit. To the extent the permittee has employees at any time during the term of this permit, at all times during the performance of the work under this permit the permittee shall maintain insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

iv. Errors and Omissions Policy. The permittee shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the permittee's profession, with limit no less than \$1,000,000 per occurrence or claim. This insurance shall be endorsed to include contractual liability applicable to this permit and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the permittee. "Covered Professional Services" as designed in the policy must specifically include work performed under this permit.

v. Umbrella Policy. If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for CGL or Automobile Liability insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. Permittee shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to the Town indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

TITLE: WIRELESS COMMUNICATIONS FACILITIES PAGE POLICY NUMBER 23 of 100 6-1

vi. Endorsements. The relevant policy(ies) shall name the Town of San Anselmo, its elected/ appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The permittee shall use its best efforts to provide thirty (30) calendar days' prior written notice to the Town of the cancellation or material modification of any applicable insurance policy; provided, however, that in no event shall the permittee fail to provide written notice to the Town within 10 calendar days after the cancellation or material modification of any applicable insurance policy.

vii. Certificates. Before the Town issues any permit, the permittee shall deliver to the Director insurance certificates, in a form satisfactory to the Director, that evidence all the coverage required above. In addition, the permittee shall promptly deliver complete copies of all insurance policies upon a written request by the Town.

(p)

Sincerely,
Susan Nine
Monterey Resident and Homeowner

C-Band Template 1

Wood Pole C-Band Only

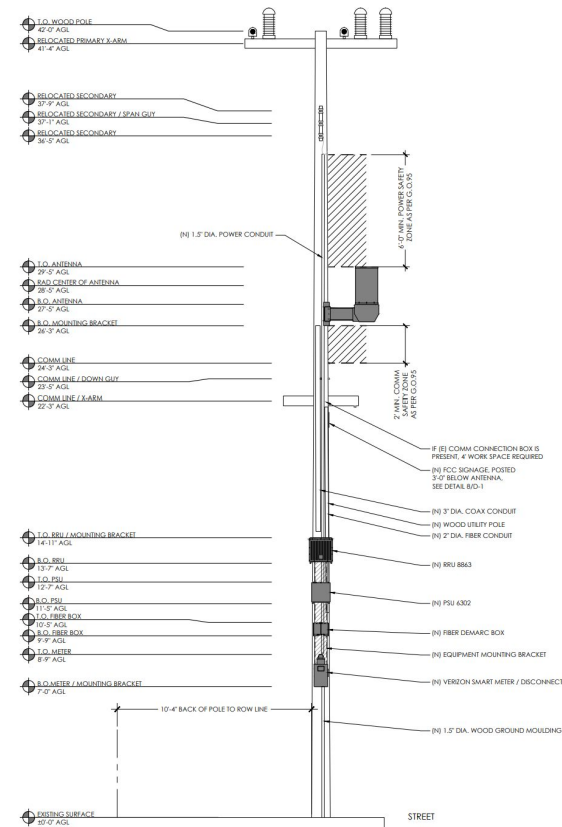
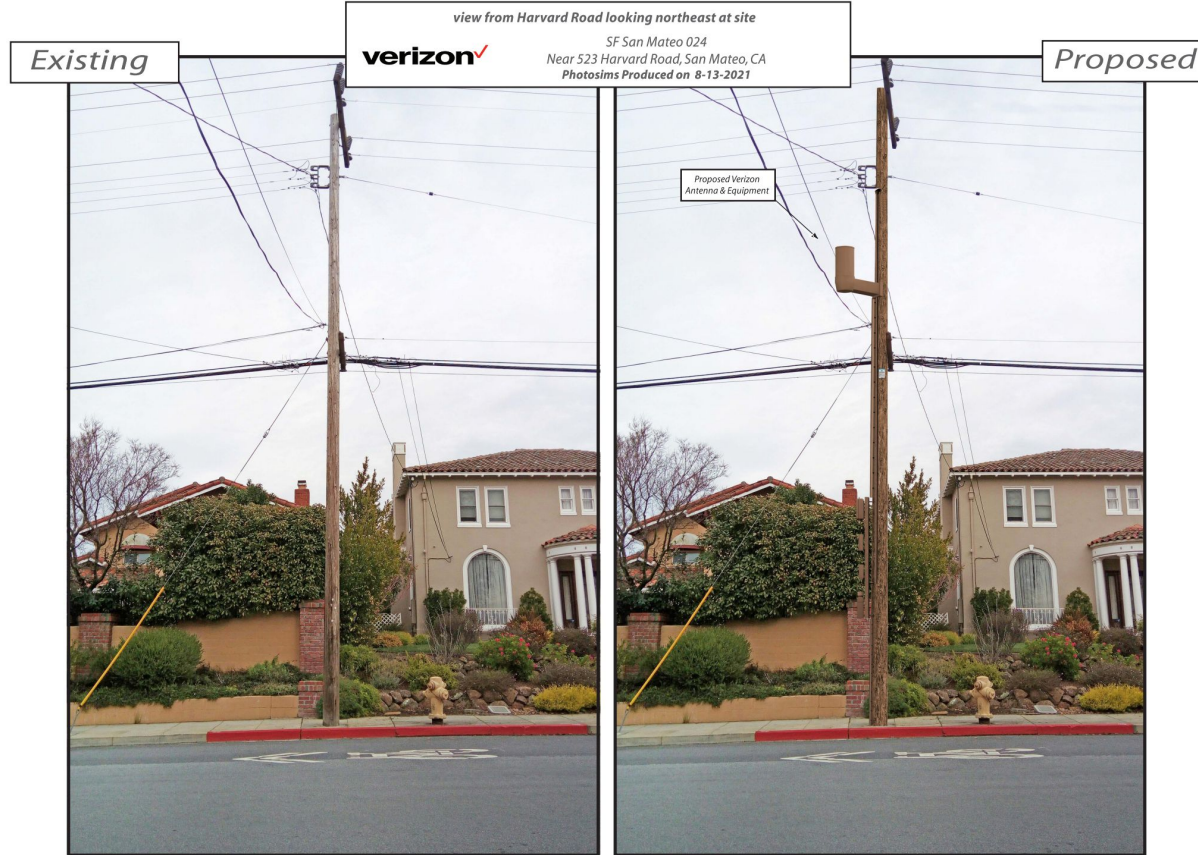
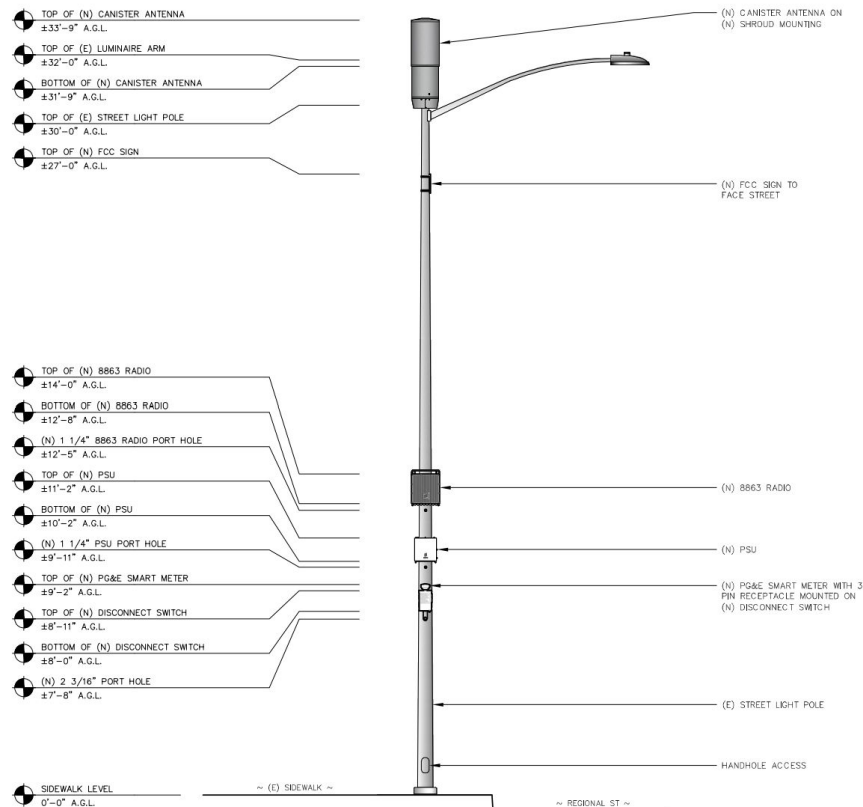


Photo Sim - Wood Pole, C-Band Only



C-Band Template 2

Light Standard C-Band Only



SITE ID: CA_SJ_SANJOSE_DT_816

102 N 9TH ST

SAN JOSE, CA 95112

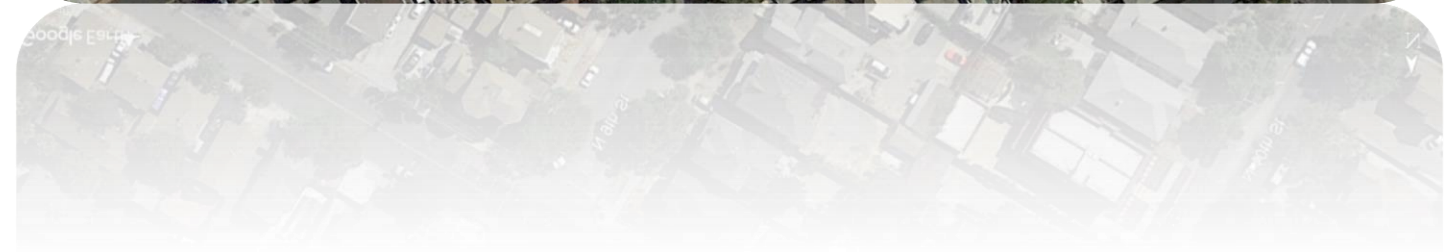
Location Code: 517300

Site Coordinates: 37.341814, -121.883208



PROPOSED SITE LOCATION

CA_SJ_SANJOSE_DT_816



SITE ID: CA_SJ_SANJOSE_DT_816
102 N 9TH ST
SAN JOSE, CA 95112
Location Code: 517300
Site Coordinates: 37.341814, -121.883208



EXISTING



PROPOSED



View 1: Looking Northeast along N 9th St | Produced 12/31/2019

Verizon Wireless Small Cell Designs [Monterey]

Paul Albritton <pa@mallp.com>

Fri 11/11/2022 12:47 PM

To: Kimberly Cole <cole@monterey.org>

Cc: Christine Davi <davi@monterey.org>

 2 attachments (2 MB)

8T C-Band Example.pdf; 16T C-Band Example.pdf;

Some people who received this message don't often get email from pa@mallp.com. [Learn why this is important](#)

Kimberly: In the Planning Commission's October 25, 2022, hearing we understood that standard small cell designs may be included in the City Council's review of the proposed wireless ordinance. In response to your earlier request, I am attaching Verizon Wireless's current small cell designs for wooden poles and metal light standards. These are designs for use with Verizon Wireless's C-Band technology. We hope that the availability of these designs will assist in the preparation of materials for the City Council.

Please feel free to contact us regarding any of these designs or any of our prior comments to the wireless ordinance. We do remain concerned regarding last minute changes to the ordinance by the Planning Commission, particularly with regard to setbacks and demonstration of federal preemption in certain circumstances.

Thank you for your diligent efforts.

Paul

Paul Albritton
Mackenzie & Albritton LLP
155 Sansome Street, Suite 800
San Francisco, California 94104
(415) 288-4000
pa@mallp.com

[**NOTICE:** This message originated outside of the City of Monterey mail system -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

MVNA Suggested Definitions

Comment add/delete	Language change
Add	Adequate Coverage means, as determined by the Planning Commission, that a specific wireless carrier's personal wireless service coverage is such that the vast majority of its customers can successfully use the carrier's personal wireless service the vast majority of the time, in the vast majority of the geographic locations within the City, that the success rate of using their devices exceeds 97%, and that any geographic gaps in a carrier's gaps in personal wireless services are not significant gaps, based upon such factors including, but not limited to, lack of significant physical size of the gap, whether the gap is located upon a lightly traveled or lightly occupied area, whether only a small number of customers are affected by the gap, and/or whether or not the carrier's customers are affected for only limited periods of time. A wireless carrier's coverage shall not be deemed inadequate simply because the frequency or frequencies at which its customers are using its services are not the most preferred frequency of the wireless carrier.
Change	Antenna means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals or electromagnetic waves for the provision of services, including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to, directional antennas, such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and strand-mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.
Change	Base Station means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.4000(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.4000 I(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.4000I(b)(1)(i)-(ii).
Add	Building-mounted means mounted to the side or facade, but not the roof, of a building or another structure such as a water tank, pump station, church steeple, freestanding sign, or similar structure.
Add	Cellular means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites. □
Add	City means City of Monterey.
Add	Collocation means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless telecommunication facility installed at a single site. □
Add	DBM (dBm) means decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. Signal strengths are recorded in negative numbers, and can range from approximately -30 dBm to -110 dBm. The closer the number is to 0, the stronger the cell signal.
Add	Effective Prohibition means a finding by the Planning Commission that, based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence, and the appropriate weight which the Commission deems appropriate to afford same, an applicant has established that an identified wireless carrier does not have adequate coverage as defined hereinabove, but suffers from a significant gap in its personal wireless services within the City and that a proposed installation by that applicant would be the least intrusive means of remedying that gap, such that a denial of the application to install such facility would effectively prohibit the carrier from providing personal wireless services within the City. Any determination of whether an applicant has established, or failed to establish, both the existence of a significant gap and whether its proposed installation is the least intrusive means of remedying such gap, shall be based upon substantial evidence, as is hereinafter defined.
Change	Eligible Facilities Request means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.
Add	Facility means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.
Comment	Mock-up is out of alpha order.
Add	Notice of Effective Prohibition Conditions means a written notice which is required to be provided to the City at the time of the filing of any application, by all applicants at seeking any approval, of any type, for the siting, installation and/or construction of a PWSF, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, commission or body of the City, would constitute an "effective prohibition" within the meaning of the Telecommunications Act, and concomitantly, that a denial of their respective application or request would violate Section 47 U.S.C. § 332(c)(7)(B)(i)(II) of the TCA.
Add	Personal Wireless Services means the same as defined in 47 U.S.C. § 332(c)(7)(Cxi), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
Change	Personal Wireless Service Facilities means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.
Add	Pole means a single shaft of wood, steel, concrete, or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of the Mill Valley Municipal Code.
Add	Probative Evidence means evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the Planning Commission, as the finder-of-fact in determining whether to grant or deny applications for PTSW use permits under this provision of the City Code.

Change	Public Right-of-Way or Right-of-Way means any public street, public way, public alley or public place, laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of the City.
Add	Reviewing Authority means the person or body who has the authority to review and either grant or deny a wireless telecommunications facility permit pursuant to this chapter.
Add	RF Radiation means radiofrequency radiation, that being electromagnetic radiation which is a combination of electric and magnetic fields that move through space as waves, and which can include both Non-Ionizing radiation and Ionizing radiation.
Change	Roof-top mounted means mounted directly on the roof of any building or structure, above the eave line of such building or structure.
Add	Shot Clock means the applicable period which is presumed to be a reasonable period within which the Town is generally required to issue a final decision upon an application seeking special exception approval for the installation or substantial modification of a personal wireless services facility or structure, to comply with Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA.
Add	Site means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.
Change	<p>Small Wireless Facility means a personal wireless service facility that meets all of the following criteria:</p> <ul style="list-style-type: none"> (a) The facility does not extend the height of an existing structure to a total cumulative height of more than fifty (50) feet, from ground level to the top of the structure and any equipment affixed thereto; (b) Each antenna associated with the deployment is no more than three (3) cubic feet in volume; (c) All wireless equipment associated with the facility, including any pre-existing equipment and any proposed new equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume; (d) The facility is not located on tribal land; and (e) The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(I) .
Add	<p>Substantial Change means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location.</p> <ol style="list-style-type: none"> 1. For towers outside the public rights-of-way, a substantial change occurs when: <ul style="list-style-type: none"> a) the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or b) the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or c) the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or d) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site. 2. For towers in the public rights-of-way and for all base stations, a substantial change occurs when: <ul style="list-style-type: none"> a) the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or b) the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or c) the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or d) the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or e) the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground. 3. In addition, for all towers and base stations wherever located, a substantial change occurs when: <ul style="list-style-type: none"> a) the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the zoning administrator; or b) the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section. <p>The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012-the date that Congress passed Section 6409(a).</p>
Add	Substantial Evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.
Add	Telecommunications Tower or Tower means a freestanding mast, pole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas. ☐
Change	Transmission Equipment means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(8), as may be amended, which defines that term as equipment that facilitates transmission for any FCC-licensed or ☐Authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. ☐
Add	Utility Pole means a pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission. ☐