

Document for City Council and Planning Commissioners
Regarding “Small” Cell Wireless Telecommunication Facilities
(send separately)

Recommendation to residents: Request a 1 hour study session before the City Council to discuss this following crucial issues which cannot be fully covered in detail in 3 minutes. You can make a presentation with a lawyer, engineer, doctor etc and fully discuss the resident’s perspective in order to support your Commissioners or Council to make the best decision.

Have 10 people say the following 10 points in a city commissioner or city council meeting or study session. Three minutes each point to be flushed out ASAP in a separate expanded document. This document is more concise and useful for a one on one meeting with council members, study session or for submission as a letter.

*Information for your presentation can be found on EHTrust.org,
5GCrisis.com, Mystreetmychoice.org, and soon, MomsAcrossAmerica.org*

We, The Residents of Our City, Request the Following Course of Action be Taken by our City Commissioners and City Council Regarding Any “Small” Cell Wireless Telecommunication Facility Applications or Construction.

Note: In this document a “small” cell wireless telecommunication facility will be referred to as sWTF.

REQUESTED COURSE OF ACTION

The City’s best course of action is to obtain a tolling agreement or moratorium on current and future applications and construction until the rulings of the lawsuits against the FCC are released, the two bills which may abolish the FCC guidelines are voted upon, and the rulings or regulations are included in the updated ordinance for underground telecommunication utilities.

We, residents of our city, are submitting for City Commissioner's information -for the legal record - the following points for consideration in decision making:

1. **LAWSUITS AND LEGISLATION** - There are currently 3 lawsuits filed against the FCC regarding sWTFs , one of which will be concluded within a few months. There are currently 2 bills HR 530, S.2012 which move to abolish the nearly 30 year old FCC guidelines and update them. Prudent city planning would include the results of these lawsuits and bills which may result in significant regulation changes, restrictions of operation or allowance of a moratorium on sWTFs. Any rush to approve structures in our city may result in useless, unsightly structures in our city. We ask the city to come to a tolling agreement with the applicants or state a moratorium until these legal and legislative matters are settled.

2. **INSURANCE** - There have been multiple lawsuits filed by the residents against city council members of various cities for neglecting to protect the health and safety of the residents from harm from radio frequencies (RFs) of sWTFs. These lawsuits could bankrupt a city or city council members. This is happening because the carriers do not have RF insurance. All applicants must be required to carry RF insurance and secondary insurance in order to protect the city from similar lawsuits. This Insurance must cover EMF physical, psychological and or emotional damage and list the City as an additional insured under the policy.

3. **HEALTH IMPLICATIONS** - **The applicants say that these sWTFs are "Safe according to FCC Standards"** (actually they are guidelines) and this statement means absolutely nothing...the **FCC guidelines** were created 24 years ago and do NOT include healthy, safety or environmental impact. **Numerous health issues, including headaches, confusion, fatigue, stroke, cancer, and infertility** - have been reported and documented from the frequencies of 2,3,4 and 5G. Resources on EHTrust.org

The City has the obligation to consider (but not make decision upon) impacts which may affect the Health, Safety and General welfare of its

citizens.

Consider- according to a Supreme Court decision, T-Mobile West, at pp. 355-356, the following side note is important for city planning: “For example, lines or equipment might, generate **noise, cause negative health consequences,** or create **safety** concerns.”

NOT considering health and approving sWTFs near residences, has resulted in lawsuits from residents in other cities against the city. These lawsuits are much more serious than the slap-on-the-wrist lawsuits that Telecom may try. These sWTF lawsuits can and will bankrupt city council members and/or our city coffers. Therefore, it is the duty of the city planners and council to delay and prevent construction of sWTFs for as long as possible.

4. **ENVIRONMENTAL IMPACT** - The environmental impact is being disregarded in the application of construction and operation of most sWTFs. The National Resource Defense Fund (NRDC) sued the FCC and won- meaning it is required for applicants of sWTF construction and operation to conduct an environmental assessment according to the National Environmental Policy Act [NEPA](#). Birds, bees, insects, pollinators and plants have been shown to be impacted by the radio frequencies emitted from these sWTFs and must be considered in the location and amount of effective radiated power emissions. Plants are weakened and become more frail (ie: flammable) which can lead to increased fire hazards.
5. **FIRES and EMERGENCY RESPONSE** - Wireless telecommunication facilities have started fires. NexG, whose equipment on a top-heavy pole was partly to blame for the 2007 Malibu Canyon fire has agreed to pay [\\$14.5 million](#) for damages and maintenance. Birds can also [build nests on the top of poles](#) and start fires. In this current climate, or any climate, our city must require utilities to be underground to prevent fires, loss of life, businesses and property. SWTFs are above ground and can be compromised during extreme weather conditions, causing fires or limiting service for emergency response. The far safer, faster, more secure and reliable option is public fiber optics.

6. LOCAL CHOICE- INTERNATIONAL FIREFIGHTER ASSOCIATION

MORATORIUM ON WTFS - The International Firefighters Association (IFFA) has restricted sWTFs from being placed on their premises. This was after sWTFs were installed on a Firefighter facility, on the premise that they need the best technology to receive communications. The firefighters reported headaches, fatigue, confusion and even lost their way to common locations. Thus, the IFFA declared a moratorium on further construction of any WTFS (small cell or macro) on their premises. If they don't want it, why should we be forced to have an unnecessary service? Do we live in a democracy with a free market?

7. CITY MASTER PLAN - 5 YEAR PLAN FROM APPLICANTS - The aesthetics and reputation of our cities are a major factor in our appeal to new businesses, property value, and tourism. Our city planners and residents must know the plans of the applicants for sWTF or telecommunication utilities. The current applicants and future applicants must be required to supply a 5 year plan with locations and reasons why. Approving construction without a City Master Plan which incorporates multiple carriers and their 5 year plans would not be prudent city planning nor responsible to the residents.

8. ALLOWING TELECOMMUNICATIONS SERVICE - Our city can have faster, safer, more secure and reliable service. We are not denying service to residents or the applicant's ability to do business, we simply want any additional telecommunications service to be provided in a manner which does not compromise our city's aesthetics, safety, health of residents and wildlife. We have sufficient text and call service, meaning emergency services, with the current 4G service in our city. The current Telecommunications Act only requires local municipalities to allow installation of telecommunications facilities which support text and call service, not data downloading. In addition, the promised faster download speeds of data, like movies, from 8 seconds to 4 seconds, is not necessary, nor is it a service worth compromising our city's aesthetics, safety, and health.

Underground telecommunication utilities are in alignment with our city planning, historically, and aesthetic reputation - above-ground is not. By updating City ordinance to require additional telecommunications utilities to be UNDERground, (Title I - Internet -) The City is *not prohibiting* telecommunications service because fiber-optics to the premises (FTTP) fulfills any and all service needs.

Title II - Voice/Text, the City *already has full coverage* without any significant gap in coverage.*

- 9. EMS ADA DISABILITY ACCOMMODATION** - The city must provide accommodation for Electromagnetic Sensitivity. The only way to fully accommodate EMS disability in our city is to require further telecommunications utilities to be underground. Otherwise, above ground facilities mean that a EMS disabled person could not live, shop, eat in restaurants, visit neighbors, or work in most areas of our city. If the city commissioners and/or city council choose to potentially violate the ADA by permitting above-ground sWTFs, the ordinance must, at least, include a notification to all occupants of any building within 1000 feet of the construction of the proposed construction informing them of their right to submit a request for accommodation. The city will then engage in meaningful discussion with any resident or occupant of a building with EMS who has submitted a request. In the event that the city finds that as a result the antenna should not be located near that home, the application shall be rejected.
- 10. Our City's Hands are NOT "tied."**- Telecom companies will have you believe "Your hands are tied," that you cannot do anything other than allow them to construct and operate as many small cell towers as they wish, because they have invested billions of dollars in increasing their network in order to increase their profits. It is NOT true that our city does not have jurisdiction. **You do have jurisdiction.**

The City has the right to regulate the Operation of any network deployed, separate and apart from the "Placement, construction and modification" of a system.

According to 47 US Code 332C, under the Senate Bill F652*, the Telecommunications Act 1996 specifically omits the word “**operations**” from preemption from regulation of a local municipality. This omission reserves that term for states and cities to legally regulate operations of facilities.

See Plan C for regulating operations if the city chooses to depart from historical city planning practices and allow above-ground telecommunications utilities.

Therefore, PLAN C includes that the City may approve construction according to ordinance requirements (distance and setbacks) AND OPERATION will be regulated through fulfillment of a conditional use permit which will include the California Environmental Quality Act (CEQA) compliance, time restrictions, power levels and other requirements. (see below)

We Residents, formally and legally request the following course of action for the aesthetics, safety, and health of our city and its residents:

Plan A - Determine as a city, that underground telecommunications are the best option for the aesthetics, safety and health of our city, residents and wildlife. Update ordinance to require additional Telecommunication Utilities to be underground based on aesthetics of long term, historical city planning and preservation of residential and city property value.

Plan B - Enact a tolling agreement or moratorium until FCC lawsuits are ruled upon and include the potential new requirements in an updated urgency ordinance which includes Plan A, underground telecommunications.

Plan C - Risk the aesthetics, safety and health of our city, residents and wildlife. Approve construction of WTFs but require a conditional use permit (no shot clock), with quality analysis, which includes SEQUA, operation times (1), and power levels (2). (See below in point 13 of PLAN C ordinance updates)

Plan A ORDINANCE Recommendations:

1. Clarify that all Wireless Telecommunication Facilities going forward are to be referenced as Telecommunications Utilities. Utilities in our city going forward, shall be UNDERGROUND and the ordinance shall be updated to reflect the historical preservation of city aesthetics.
2. The ordinance shall require additional telecommunications to prove gap in coverage of text and call service before additional construction of telecommunication utilities are approved.
3. Any additional upgrades to service can best be accomplished through fiber-optic cables which are safe, fast, secure and withstand power outages.

Plan B/C ORDINANCE Recommendations Only:

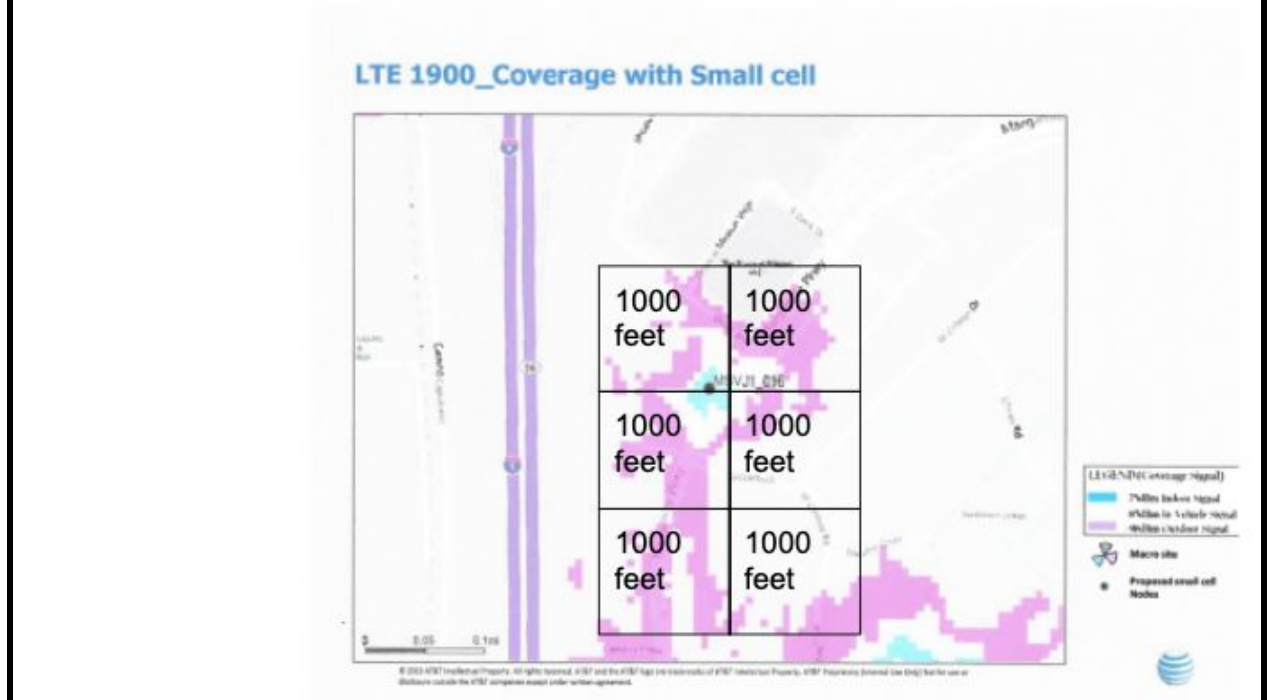
City Wireless Telecommunications Facilities Ordinance Update Requests

- 1) A five-year master plan is required by all applicants. Applicants must supply sufficient reasons for placement in each location.**
- 2) Stated general policy of intending to permit only the minimum network necessary/required by law.**
- 3) Specific preamble describing the values of the City to be protected and recognizing that the Policy does not protect against health/safety with respect to Radio Frequencies (RF).**
- 4) Adopt a clause for least-preferred locations: all locations within 2000 feet of a Restricted Site Location and 2000 feet from a home.**
- 5) Restricted Site Locations: residence, playgrounds, elderly facilities, healthcare facilities and schools, which include day care, pre-school, K-12 and specialty schools where minors congregate.**
- 6) Third-party expert review of applications/exception requests.**

- 7) **Mandatory, consistent, third-party RF emissions testing.**
- 8) **Expert fire-safety review and shorter permit terms for facilities in high fire risk zones. Placement near trees would be non preferred.**
- 9) **Clear exception request standards must be defined.**
- 10) **RF injury insurance coverage, including secondary insurance in the event of a lawsuit for adverse health effects or property value loss is required.**
- 11) **Add a clause that states that permits are conditioned on continued applicability of FCC rules (to allow for revocation or modification if lawsuits against FCC prevail) or state law changes.**
- 12) **Ordinance must include affirmative FHAA/ADA accommodation commitment. Include a notification to all occupants of any sWTF construction within 1000 feet of the construction of the proposed construction informing them of their right to submit a request for accommodation. The city will then engage in meaningful discussion with the applicant. In the event that the city finds that as a result the antenna should not be located near that home, the application shall be rejected.**

Please note that Los Altos has denied 13 applications and they have not been sued by the applicants.
- 13) **If the city chooses to compromise our city's aesthetics, safety and health, and risk lawsuits from residents by approving construction of sWTFs, approval of application for sWTF construction would only happen after FCC lawsuits have been ruled upon and bills HR 530 and S. 2012 have been voted upon. Estimated time is one year from now. The updated ordinance would include the current technology regulations, (1) operation time restrictions, (2) power level emissions, (3) resident and school setbacks, and (4) reasonable distance between the construction of WTFS. This update will require a tolling agreement with the applicant.**

Small Cell Coverage- 2000 - 3000 ft



According to the applicants own data, their map of small cell LTE 100 (page 40 of 90 of application in Mission Viejo, CA) coverage reaches 2000-3000 feet. Therefore reasonable terms in the ordinance to specify distance are as follows:

- (1) Operation times for WTFs within 2000 feet of residential areas would be from 8 AM to 5 PM. Operation time for WTFs in commercial or industrial areas would be 6 AM to 6 PM
- (2) Levels of power would be set to a limit of 0.1 Watts of ERP for the total from all antennas and frequencies in the antenna shroud, keeping into consideration the frequency noise, which must be updated and reflected up on Muni Code Chapter 9.22. — [Noise Standards](#).
- (3) Setbacks from homes, daycares, schools and places where children congregate should be 2000 feet.
- (4) Distance between poles should be 4000 feet. Search radius should also be 4000 feet.

Plan C Implications: If the city chooses *not* to require telecommunication utilities to be underground as other utilities are required to be, it must acknowledge that the City becomes liable for lawsuits regarding placement, property value decrease, health impacts, fire losses, security and privacy issues, endangered species and animal welfare, and damages to property. The construction company contracted by the applicant is typically a LLC, and therefore escapes liability, leaving the City vulnerable to residents seeking remediation.

Also see:

Safe & Healthy Mission Viejo presentation- Zen Honeycutt

**No Significant Gap in coverage will be presented at April 13 hearing*

Further information:

The City has the jurisdiction to regulate operations and therefore, power:

- **Power** means the maximum Effective Radiated Power that leaves the shroud or covering of the antenna.

By setting a limit of 0.1 Watts of ERP for the total from all antennas and frequencies in the antenna shroud, our city can preserve the quiet enjoyment of streets because it will require the Wireless Cos. to take away their 4-foot antennas and replace them with 4" antennas.

This will preserve the quiet enjoyment of streets and the signal will go down the street a half-mile down, receiving five bars on a cell phone, allowing everyone to make a call.

Service from WTFs is sufficient with 0.1 Watt limit of Effective Radiated Power -- just like the FCC limit for Class B devices such as home Wireless Routers. **The FCC already limits** the ERP of Class B devices to 0.1 Watt ERP because they know a neighbor that is 25 to 50 feet away cannot generate electromagnetic noise high enough to interfere with my home environment.

IF a city allows these WTF poles 25 to 50 feet away from a home, we need them to behave like a good neighbor.

If the city does not restrict the distance to be at least 2000 feet away from a dwelling, the City can preserve the quiet enjoyment of streets by passing a local Ordinance that caps each small WTF to no more than 0.1 Watt ERP.

4. The City has the obligation to consider the “Quiet Enjoyment of streets.”

p. 8-9 of T Mobile v San Francisco case

Read <http://scientists4wiredtech.com/compare>

And

<https://scientists4wiredtech.com/2019-ca-supreme-court-decision-t-mobile-v-san-francisco/>

. . . the City has inherent local police power to determine the appropriate uses of land within its jurisdiction. That power includes the authority to establish aesthetic conditions for land use . . . We also disagree with plaintiffs’ contention that section 7901’s incommode clause limits their right to construct [telephone] lines only if the installed lines and equipment would obstruct the path of travel. Contrary to plaintiffs’ argument, the incommode clause need not be read so narrowly.

As the Court of Appeal noted, the word “ ‘incommode’ ” means “ ‘to give inconvenience or distress to: disturb.’ ” (T-Mobile West, supra, 3 Cal.App.5th at p. 351, citing Merriam-Webster Online Dict., available at <http://www.merriam-webster.com/dictionary/incommode> [as of April 3, 2019].)8 The Court of Appeal also quoted the definition of “incommode” from the 1828 version of Webster’s Dictionary. Under that definition, “incommode” means “ ‘[t]o give inconvenience to; to give trouble to; to disturb or molest in the quiet enjoyment of something, or in the facility of acquisition.’ ” (T-Mobile West, supra, 3 Cal.App.5th at p. 351, citing Webster’s Dict. 1828—online ed., available

at <http://www.webstersdictionary1828.com/Dictionary/incommod e> [as of April 3, 2019].)

For our purposes, it is sufficient to state that the meaning of *incommod* has not changed meaningfully since section 7901's enactment. Obstructing the path of travel is one way that telephone lines could disturb or give inconvenience to public road use. **But travel is not the sole use of public roads; other uses may be incomed beyond the obstruction of travel.** (*T-Mobile West*, at pp. 355-356.) For example, lines or equipment might

- generate **noise**,
- **cause negative health consequences**, or
- create **safety** concerns.

All these impacts could disturb public road use, or disturb its quiet enjoyment.

Links to important studies

National Toxicology Program

<https://ehtrust.org/cell-phone-radiation-is-associated-with-dna-damage-in-pee-r-reviewed-analysis-of-ntp-study/>

Ramazzini Study

<https://ehtrust.org/worlds-largest-animal-study-on-cell-tower-radiation-confirms-cancer-link/>

BioInitiative Report Updated 2014-2019

<https://bioinitiative.org/>

Professor Martin Pall PhD.

<https://www.emfacts.com/2018/08/martin-palls-book-on-5g-is-available-online/>

Ruling on case No, 18-1129 and Case No, 18-1051 are of utmost importance.

Fires:

14.5 million dollar payout

<https://www.latimes.com/local/la-xpm-2013-feb-22-la-me-power-pole-settlement-20130223-story.html>

Birds building nests on cell tower and starting fire

<https://www.opb.org/news/article/fire-damages-cell-tower-kills-two-ospreys/>

INSURANCE ISSUE

Subject: Every Verizon Annual Report says that its insurers no longer cover the company for litigation involving Wireless Technology - especially 5G, which known to be lethal to animals

[Verizon Annual Report - expecting litigation](#)

This is stated every year in this industry's annual reports. Insurers dropped them for EMF litigation many years ago.

EMF and EHS News

Verizon 2019 Annual Report:

'We are subject to a substantial amount of litigation...In addition, our wireless business also faces personal injury and wrongful death lawsuits relating to alleged health effects of wireless phones or radio frequency transmitters. We may incur significant expenses in defending these lawsuits. In addition, we may be required to pay significant awards or settlements.'

<https://www.verizon.com/about/investors/sec-filings>

VERIZON COMMUNICATIONS INC

FORM 10-K (Annual Report)

Filed 02/21/20 for the Period Ending 12/31/19

We are subject to a significant amount of litigation, which could require us to pay significant damages or settlements.

We are subject to a substantial amount of litigation, including, from time to time, shareholder derivative suits, patent infringement lawsuits, antitrust class actions, wage and hour class actions, personal injury claims, property claims, and lawsuits relating to our advertising, sales, billing and collection practices. In addition, our wireless business also faces personal injury and wrongful death lawsuits relating to alleged health effects of wireless phones or radio frequency transmitters. We may incur significant expenses in defending these lawsuits. In addition, we may be required to pay significant awards or settlements.

Thank you for your generous consideration and dedication!