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April 14, 2020

VIA U.S. MAIL ONLY

Robert D. Breton, Chair
Planning and Transportation Commission
City of Mission Viejo
200 Civic Center
Mission Viejo, CA 92691

William P. Curley, III, City Attorney
Lozano Smith
200 Civic Center
Mission Viejo, CA 92691

Re: Planned Development Permit PDP2019-311 and Planned Development Permit PDP2019-312
Amended

Dear Chairman Breton, Planning Commissioners, and City Attorney,

I am an environmental attorney, representing Zen Honeycutt, a Mission Viejo homeowner and the Executive Director of Moms Across America.

The above applications came on at the Planning Commission meeting on February 10, 2020 and were continued at the request of the applicant to March 9, 2020 which were again continued due to the Shelter in Place Order, until May 11, 2020.

I write to you to urge the Planning Commission to reject these applications at the May 11, 2020 session.

Mission Viejo is a unique city in that its architectural integrity has been accomplished by design, including the undergrounding of utility lines, including power, telephone and cables. The light poles in the City were designed to resemble mission bells with a curled flourish atop each pole to add a historic element to the design. The integrity of this design element would be destroyed by placing any small cell antenna atop any light poles.

The historic character of the City, which is world renown, would be further diminished by erection of new poles festooned with wires and topped by small cell antennas. Such proposals should be rejected by the City based on architectural and design aesthetics.

The City should reject the above applications and update the local ordinance to require new Telecommunication Utilities to be undergrounded, based on aesthetics of long term, historical city planning, and preservation of residential character and city property values.

Further, if the City and its residents wish to have these 4/5G small cell facilities by the hundreds throughout the city, the city must do everything in its power to protect, not only the health of the residents, but the economic exposure of the City. Thus, all permits to install such equipment should require the permittee to carry a policy of Pollution Insurance, naming the City as an additional insured, which insurance will carry \$1 million, per occurrence, coverage for EMF exposure caused illnesses. This would protect the City, its commissioners and council members, from personal injury lawsuits and the City coffers from being depleted due to lawsuits for harm from constant radio frequency exposure to our residents.

Potentially, the amount of damages (likely in the tens of millions of dollars) from lawsuits by residents for harm due to the constant exposure to radio frequency radiation forced upon them by the City's decision to allow the installation of the small cell facilities, is a much greater threat to the City than the lawsuits from the telecoms for permit approval.

General liability policies of insurance carry a pollution exclusion which defines EMF exposure as a form of pollution and excludes it from coverage. Thus, the telecom company must produce proof of pollution coverage which includes EMF induced illnesses, in order to adequately protect the City.

Indemnity is a form of "self insurance" offered by the telecom companies which may only be viable depending on the cash reserves of the permittee and therefore should be additional to the requirement of insurance.

Liability of the City for Denying the Permits

The City of Mission Viejo needs to understand its power to control its own destiny.

The cities of Ross, Mill Valley and Fairfax, in Marin County, have enacted ordinances that have limited or prohibited small cell installation in residential neighborhoods.

The threats from the telecom companies that any attempt to restrict deployment will result in lawsuits are hollow and specious.

The Telecommunications Act of 1996, 47 USC 332 7 which establishes federal preemption over small cell deployment, carries no monetary remedy for violations of the act. In other words, if

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the City prohibits deployment for the “wrong” reason, the only remedy in court is an injunction requiring the City to issue a permit.

The telecom companies cannot sue the city for monetary damages, penalties, or even attorney fees if they prevail.

“A public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.” Calif. Government Code Section 818.2

“County's statutory immunity for damages for delaying the approval of an application to install or use a solar energy system precluded landowner from relying on county's alleged violation of the statute prohibiting such delay as a failure to discharge a mandatory duty supporting recovery of damages from county under the Tort Claims Act (TCA)”. Arterberry v. County of San Diego (App. 4 Dist. 2010) 106 Cal.Rptr.3d 743, 182 Cal.App.4th 1528.

Section 1983 remedies, including right to attorney fees for prevailing party under § 1988, are unavailable in suit to enforce rights granted by Telecommunications Act; Act's conferral of right to sue is presumed to entitle successful plaintiff to usual remedies, which do not include attorney fees. PrimeCo Personal Communications, Ltd. Partnership v. City of Mequon, C.A.7 (Wis.) 2003, 352 F.3d 1147.

The City can and should deny the current applications.

Furthermore, since the applicants propose to erect unsightly and architecturally disruptive cell towers and poles, the application should not only have a certificate of insurance with coverage for EMF induced illness, but also a 5 year master plan for what will be done with any new technology when the Starlink satellite 5G system, which has been approved by the FCC to the tune of 1 million antennas on the ground, becomes deployed.

Will the towers and antennas become obsolete and be abandoned? Will they need to be replaced by new satellite antennas? These questions should be addressed in the application materials.

The City should deny the applications and maintain Mission Viejo as one of the most beautiful and safest cities in America.

Respectfully submitted,

POLLOCK & JAMES, LLP



Mark S. Pollock

cc: Client