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April 15, 2019

Via E-Mail

City of Manhattan Beach City Council
City Hall
1400 Highland Avenue
Manhattan Beach, CA 90266

Re. AT&T's Comments on Proposed Ordinance Adding Code Chapter 13.04 to the and Proposed Resolution to Regulate Wireless Facilities in Public Rights-of-Way

Dear Mayor Napolitano, Mayor Pro Tem Hersman, and Councilmembers Hadley, Montgomery and Stern:

I write on behalf of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) to provide comments on the city's proposed ordinance to add Chapter 13.04 of the Manhattan Beach Municipal Code regarding wireless facilities in the public rights-of-way ("Proposed Ordinance") and its corresponding proposed resolution to adopt design, location, and development standards for wireless facilities in the public rights-of-way ("Proposed Resolution"). AT&T appreciates that the city recognizes the need to address changes in applicable state and federal laws, including the Federal Communications Commission's *Infrastructure Order*.[1] With more than 70% of Americans relying exclusively or primarily on wireless telecommunications, it is especially important to encourage responsible deployments consistent with applicable law.

Unfortunately, the Proposed Ordinance and Proposed Resolution would establish some new rules at odds with federal and state laws. AT&T respectfully asks that the city consider these and other comments from the wireless industry before adopting the Proposed Ordinance and the Proposed Resolution. AT&T offers the following summary of applicable laws along with specific comments on these proposed regulations.

Key Legal Concepts

The Federal Telecommunications Act of 1996 ("Act") establishes key limitations on local regulations. The Act defines the scope and parameters of the city's review of AT&T's applications. Under the Act, the city must take action on AT&T's applications "within a

[1] *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) ("*Infrastructure Order*").

reasonable period of time."[2] The Act also requires that the city's review of AT&T's applications must be based on substantial evidence.[3] Under the Act, state and local governments may not unreasonably discriminate among providers of functionally equivalent services.[4]

The Act also prohibits a local government from denying an application for a wireless telecommunications facility where doing so would "prohibit or have the effect of prohibiting" AT&T from providing wireless telecommunications services.[5] The FCC has ruled that an effective prohibition occurs when the decision of a local government materially inhibits wireless services.[6] The FCC explained that the "effective prohibition analysis focuses on the service the provider wishes to provide, incorporating the capabilities and performance characteristics it wishes to employ, including facilities deployment to provide existing services more robustly, or at a better level of quality, all to offer a more robust and competitive wireless service for the benefit of the public."[7] Thus, a local government "could materially inhibit service in numerous ways – not only by rendering a service provider unable to provide existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services."[8]

In September 2018, the FCC issued its small cell deployment order and associated rules, which went into effect on January 14, 2019. Under this *Infrastructure Order*, the FCC established a standard for lawful fees, which requires that: "(1) the fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations."[9] Thus, only objectively reasonable costs that are recovered on a nondiscriminatory basis can be included in fees. In addition to establishing a standard for lawful fees, the FCC provides a safe harbor for presumptively reasonable fees: (a) $500 for non-recurring fees for an application including up to five small cells, plus $100 for each small cell beyond five, or $1,000 for non-recurring fees for a new pole to support small cells; and (b) $270 per small cell per year for all recurring fees.[10] The FCC also established a standard for local aesthetic regulations that they must be (1) reasonable (i.e., has to be technically feasible), (2) no more burdensome than those applied to other infrastructure deployments, and (3) objective and published in advance.[11]

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[2] 47 U.S.C. § 332(c)(7)(B)(ii).
[3] 47 U.S.C. § 332(c)(7)(B)(iii).
[4] 47 U.S.C. §332(c)(7)(B)(i)(I).
[5] 47 U.S.C. §332(c)(7)(B)(i)(II).
[6] *See Infrastructure Order* (The FCC rejected the significant gap/least intrusive means test for an effective prohibition that many courts, including the Ninth Circuit, have applied to all wireless facilities); *see also*, *In the Matter of California Payphone Association Petition for Preemption, Etc*., Opinion and Order, FCC 97-251, 12 FCC Rcd 14191 (July 17, 1997).
[7] *Infrastructure Order* at n. 95.
[8] *Id*. at ¶ 37.
[9] *Id*. at ¶ 50.
[10] *Id*. at ¶ 79.
[11] *See id.* at ¶ 86; the FCC delayed the effective date for this aesthetic standard to April 15, 2019 in order to give local governments time to adopt appropriate regulations.

AT&T has a statewide franchise right to access and construct telecommunications facilities in the public rights-of-way. Under Public Utilities Code Section 7901, AT&T has the right to access and construct facilities in public rights-of-way in order to furnish wireless services, so long as it does not "incommode" the public use of the public right-of-way. And under Section 7901.1, AT&T's right is subject only to the city's reasonable and equivalent time, place, and manner regulations.

Key Issues With Both the Proposed Resolution and the Proposed Ordinance

Several design and development criteria under Proposed Ordinance and Proposed Resolution are too subjective to be enforceable under the FCC's aesthetic standard for small cell facilities. For example, Section 13.04.060(c) of the Proposed Ordinance requires designs "to minimize visual impact." And Section 3(A) of the Proposed Resolution requires designs that are "last visible" and "create a uniform look."

The FCC's requirement that aesthetic standards be "objective and published in advance" is necessary to avoid "secret rules."[12] And the FCC explained that regulations must be objective so that they are clearly-defined and readily ascertainable by applicants when submitting requests to place small cells.[13] In other words, an applicant should be able to review the city's design standards and be able to know upon filing whether its application complies. Standards such as "minimize visual impacts" and "create a uniform look" are too subjective to allow an applicant to be sure its proposal complies. Thus, they are unlawful.

Section 3(A) of the Proposed Resolution also authorizes Director of Public Works to use discretion to impose additional requirements. To be enforceable, requirements must be published in advance. In contrast, ad hoc requirements that this section seems to allow are unlawful.

Specific Comments on the Proposed Ordinance

1. Wireless Facility Modifications. AT&T notes that the city uses outdated citations when referring to the FCC's regulations regarding eligible facilities requests under Section 6409(a). Effective January 14, 2019, former 47 C.F.R. § 1.40001 was redesignated as 47 C.F.R. § 1.6100.

2. Definition for "Collocation". The city's definition for collocation in Section 13.04.030 of the Proposed Ordinance tracks the definition with respect to eligible facilities requests. But for all other applications the FCC has made clear that the term "collocation" means attachment to an existing structure whether or not it houses existing wireless facilities and regardless of whether it has been zoned for wireless facilities.[14] To avoid confusion and unnecessary disputes, the city should revise this definition accordingly.

3. Restrictive Scope. Section 13.04.040(A) states that only small cell facilities and eligible facilities qualifying under Section 6409(a) may be permitted under Chapter 13.04. And Section

[12] *Id.* at ¶ 88.
[13] *Id.*
[14] *See id.* at ¶¶ 140.

13.04.080(a)(1)(iii) requires an approval finding that the facility qualifies as a small cell facility. The city cannot dictate infrastructure choices and cannot force wireless providers to provide services through only certain technologies. For example, AT&T has the right to place distributed antenna system nodes in the public rights-of-way. Thus, while the city may establish reasonable and nondiscriminatory standards for wireless service facilities, it cannot ban categories of facilities. These restrictions need to be eliminated.

4. All Permits and Approvals Within the FCC Shot Clock. The Proposed Ordinance requires an applicant to apply for additional permits and approvals, under Section 13.04.040(c), and to secure any necessary agreement with the city, under Section 13.04.090(a)(20). The FCC has made clear that all associated permits and approvals, inclusive of appeals and agreements with municipalities, are subject to the applicable shot clock.[15]

5. Appeals. Section 13.04.050(b) authorizes appeals, which will be heard by a hearing officer and considered de novo. AT&T recognizes that the city has established a short appeal timeframe in order to limit risk in violating the shot clocks. But to be able to decide all permits within the applicable shot clocks for small cell facilities and eligible facilities requests, AT&T recommends the city eliminate appeals for such applications. Both types of applications are administrative and based on objective criteria, so appeals should be unnecessary.

6. Independent Expert. Section 13.04.080(c) authorizes the city to retain a consultant to review applications. Consultants should not be used to second guess AT&T's business decisions. Any provision that allows the use of consultants should limit review to appropriate and objective criteria, such as a structural safety assessment or compliance with FCC regulations for human exposure to radio frequency emissions. And the city should be mindful that for small cells the cost of a consultant may not pass through to an applicant because only objectively reasonable costs can be imposed.

7. Maintenance Concerns. Section 13.04.090(a)(7) allows the city to take any action – even revoking a permit – if it spots a maintenance concern that the permittee does not correct within 30 days. General maintenance concerns that do not pose a danger to the public should not be subject to permit revocation. Depending on the scope of maintenance issues, more time may reasonably be required to address the city's maintenance concerns. To avoid a draconian rule, the city should limit harsh penalties to egregious issues.

8. Insurance. Section 13.04.090(a)(9) requires insurance. AT&T should be permitted to self-insure.

9. Indemnification. The city should not seek indemnity from an underlying property owner, as it does under Section 13.04.090(a)(10). Not only does this risk interfering with existing leases, it also has the effect of interfering with prospective economic relations between AT&T and property owners within the city. In addition, the indemnification provisions need to carve out exceptions to indemnity in instances of the city's own negligence. And AT&T must retain the right to select its own counsel.

[15] *See id.* at ¶¶ 132-137, 144.

10. Performance Bond. Section 13.04.090(a)(11) requires a performance bond to cover facility removal. Both federal and state law provide that this requirement can only be imposed on wireless providers to the extent it is applied to other right-of-way users. In addition, the city should not charge additional fees to a permittee for the "time associated with the processing and tracking of the bond," as this section requires. Such fees would violate the FCC's standard on fees to the extent such amounts exceed the FCC's safe harbor for fees.

11. Signal Interference. The city should eliminate Section 13.04.090(a)(13)(b)(i), which establishes a process to regulate interference with radio frequency signals. The FCC regulates interference issues to the exclusion of local governments. As a FCC license holder, AT&T has a duty to comply with applicable provisions of 47 C.F.R. §§ 22.970-973 and 47 C.F.R. §§ 90.672-675, which define unacceptable interference, state the obligations of licensees to abate unacceptable interference, provide interference resolution procedures, and set forth a discretionary information exchange between public safety licensees and other licensees.

12. Attorney Fees. The provision for attorney fees under Section 13.04.090(a)(25) is unreasonable and likely discriminatory. This should be eliminated.

13. Costs of Negotiating Agreements. The last sentence of Section 13.04.110 seeks to pass on to applicants the costs associated with negotiating agreement to attach to city-owned structures. This is unreasonable and likely discriminatory. Moreover, such fees far exceed the FCC safe harbor for fees under the Infrastructure Order. The last sentence of this section must be deleted.

Specific Comments on the Proposed Resolution

1. Concealment. Section 3(A)(3) of the Proposed Resolution requires wireless facilities in the public rights-of-way to be concealed. But under the FCC's aesthetic standard for small cell facilities, concealment cannot be required to a greater extent than imposed on other infrastructure deployments in the right-of-way. Further, some wireless components cannot be concealed. For example, certain antennas being used for the latest generation of wireless technology cannot propagate an effective signal through concealment. And to avoid effectively prohibiting wireless services any concealment requirements must be limited "to the extent technically feasible."

2. Undergrounding. Section 3(A)(3) also prefers undergrounding of equipment. This preference is not limited by location, so the city risks discrimination by enforcing undergrounding where other infrastructure deployments are above ground. Moreover, wireless facilities cannot operate with all equipment underground. For instance, radio units must be placed above ground in order to be near enough to the antennas to function properly.

3. Street Trees. Section 3(A)(6) authorizes the city to require street trees, but does not specify under what conditions this requirement will be imposed. This provision needs to be eliminated. The requirement to plant new street trees is likely more burdensome than requirements imposed on other infrastructure deployments. In addition, requiring placement of street trees is unreasonable and may rise to the level of an unconstitutional condition, particularly

in the aggregate. And because it is unclear when or where street trees might be required, this provision violates the FCC's standard that local aesthetic regulations be published in advance.

4. Showing of Service Area and Feasibility. As a precondition for installing a new pole, Section 3(B)(2)(d) requires proof that all existing infrastructure in "the applicant's target service area" are not feasible for collocation. While the city may prefer collocation on existing structures, AT&T has a state law franchise right to place poles and facilities in the public rights-of-way. Moreover, the city cannot require such a justification of AT&T's needs, such its target service area, as the FCC rejected all coverage gap tests.[16]

5. Unreasonable Location Restriction. Section 3(B) prohibits wireless facility installations in some locations and significantly discourages other locations. The city should reconsider these restrictions and preferences as several are unreasonable, which violates the FCC's standard for local aesthetic regulations. As a practical matter, small cell facilities need to be placed near customers to provide and improve service. This means responsible deployments of these low-power, low-profile facilities in residential areas must be allowed to avoid effectively prohibiting wireless services. And the specific setback from schools is also unreasonable. Not only does access to robust wireless services enhance safety, small wireless facilities are typically used to offload network traffic that is often congested near high-usage areas such as schools.

6. Functions of New Poles. Section 3(B)(6) mandates that new poles "must include an operable streetlight or traffic signal pole." The city must eliminate this provision. The city cannot force AT&T to install street lights and traffic signals. AT&T has a state law right to set a new pole in the right-of-way under Section 7901. In addition, these requirements steer wireless installations onto city-owned structures in violation of California Government Code Section 65964(c), which prohibits the city from requiring "that all wireless telecommunications facilities be limited to sites owned by particular parties." And these restrictions are unlawful to the extent they are more burdensome than rules applied to other infrastructure deployments.

7. Manufacturer Decals. Section 3(H)(3) requires permittee's to "[r]emove or paint over unnecessary equipment manufacturer decals and fill-in any visibly depressed manufacturer logos on equipment." This requirement must be limited to the extent practical and must not force a wireless provider to take actions that might void equipment warranties. AT&T recommends the city eliminate this provision.

8. Decorative Poles. Section 4(A)(1) prohibits wireless facility installations on historic resources or decorative or unique street lights. The city should reconsider its prohibition on use of decorative street lights. The FCC made clear that its interpretations apply to all government owned or controlled structures within the right-of-way.[17] Many jurisdictions favor decorative pole designs for small cells, subject to a requirement that new or replacement decorative poles housing small cells are designed to look similar to nearby decorative poles.

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[16] *See Infrastructure Order* at ¶ 40, n. 94 (The FCC rejected all "coverage gap tests, including expressly repudiating the significant gap/least intrusive means test for an effective prohibition that many courts, including the Ninth Circuit, have applied).

[17] *Infrastructure Order* at ¶ 69.

9. Prohibition on Side-Mounted or Base-Mounted Shrouds. The city should reconsider its requirement that all pole-mounted equipment be mounted at the top of poles. There may, however, be a number reasons that inhibit installations on the top of the pole. For instance, top-mounted antennas may not be technically feasible or network parameters may prevent pole-top installation. Also, AT&T may only have rights to certain space on the pole, or the pole owner may impose restrictions on AT&T that prevent extending the height of the pole. This requirement should, therefore, be limited to the extent practical and feasible.

10. Replacement Poles and Street Lights. Section 4(D) requires replacement poles or street lights to be in the same location as the street light or pole being replaced. As a practical matter, the city should consider revising this requirement to allow replacement street lights within a certain distance of the original pole, which would help ensure that city streetlights continuously operate during construction.

Conclusion

AT&T appreciates the city's efforts to adapt its wireless facility siting regulations to accommodate new and emerging technologies and changes in law. By addressing the items we raise here, the city will go a long way toward encouraging deployments consistent with state and federal policies and to the great benefit of the city's residents and businesses.

Sincerely,

/s/ Michael van Eckhardt

Michael van Eckhardt

cc: Bruce Moe, City Manager (cm@citymb.info)
Quinn Barrow, City Attorney (qbarrow@citymb.info)

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April 16, 2019

VIA EMAIL

Mayor Steve Napolitano
Mayor Pro Tem Nancy Hersman
Councilmembers Richard Montgomery, Suzanne Hadley,
and Hildy Stern
City Council
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266

Re: Verizon Wireless Comments to Wireless Urgency Ordinance and Design Standards for Wireless Communications Facilities, Agenda Item No. 14 for April 16, 2019

Dear Mayor Napolitano, Mayor Pro Tem Hersman, and Councilmembers:

Thank you for the opportunity to comment on the City's proposed wireless ordinance (the "Draft Ordinance") and Design, Location and Development Standards For Wireless Facilities in the Public Right-of-Way (the "Draft Guidelines") on behalf of Verizon Wireless. We request that the City Council defer action on this item until the staff has had an opportunity to respond to our comments below.

While Verizon Wireless appreciates the guidance the City has provided, the Draft Guidelines pose several conflicts with the recent Federal Communications Commission ("FCC") order addressing small cell approval criteria. *See Accelerating Wireless Broadband Deployment by Removing Barrier to Infrastructure Investment,* Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) (the "Small Cells Order"). To expedite deployment of small cells and new wireless technology, the Small Cells Order addresses aesthetic criteria for approval of qualifying small cells, concluding that they must be: "(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance." *Id.*, ¶ 86. "Reasonable" standards are "technically feasible" and meant to avoid "out-of-character deployments." *Id.*, ¶ 87. "Objective" standards must "incorporate clearly-defined and ascertainable standards, applied in a principled manner." *Id.*, ¶ 88.

As we explain, several requirements of the Draft Ordinance and Draft Guidelines conflict with the FCC's directives or state law, and those must be removed or revised.

I. Draft Wireless Ordinance

1. Appeals Cannot Be Subjective

As appeals involve notice and hearings, they also invite subjectivity and are inappropriate for small cells. Draft Ordinance § 13.04.050(b)(2) [requiring a hearing officer to decide issues on appeal *de novo*]. The scope of any appeal should be limited to determining whether decision was based on reasonable, objective standards.

2. Proposed Exception Does Not Use the Correct Standard

The exception established by the Draft Ordinance does not provide any meaningful relief. Draft Ordinance § 13.04.060(a). It states that an exception can be granted where denial of the application would "prohibit or effectively prohibit" wireless service, but this is no longer the standard. The FCC ruled that local regulations prohibit or have the effect of prohibiting service under the Telecommunications Act if they "materially inhibit" "densifying a wireless network, introducing new services, or otherwise improving service capabilities." Small Cells Order, ¶¶ 37-40.

The City should amend the Draft Ordinance to reflect the "materially inhibit" legal standard.

3. The City Must Articulate Objective Standards and Criteria

The City should provide reasonable, non-discriminatory, and objective standards. Many of the Draft Ordinance's directives are unnecessarily vague and subjective, and therefore, in conflict with the Small Cells Order. For instance, the Draft Ordinance states that "installations are subject to periodic review to minimize the intrusion on the ROW." Draft Ordinance § 13.04.060(b)(ii).

The City should clarify what it means.

4. Notice Requirements Frustrate the Purpose of Administrative Approval

While administrative approval of small cells is appropriate, soliciting public comment through notice procedures introduces subjectivity to the permitting process. *See, e.g.*, Draft Ordinance § 13.04.070(b)(9). Moreover, it creates a false impression that personal concerns would override objective standards, frustrating both the public and applicant. Under the Small Cells Order, the FCC determined that small cells must be reviewed under objective criteria, and for this reason, requirements for public notice should be stricken. The public's subjective concerns inherently cannot factor into objective standards, which must be published in advance.

At most, notice should be provided to only to neighboring property owners prior to construction and clearly state that they are for informational purposes.

II. Draft Design and Development Standards

1. Stealthing Requirements Cannot Be Subjective

The Draft Guidelines require small cells to be "designed in the least visible means possible" and "be compatible with support structure/surroundings." Draft Guidelines, Section 3(A)(1).

We recommend removing any such subjective criteria for small cells from the Draft Guidelines to comply with the Small Cell Order.

2. Undergrounding Requirements

The FCC determined that undergrounding requirements, similar to aesthetic requirements, must be reasonable, non-discriminatory, and objective. Small Cells Order, ¶¶ 86, 90. The Draft Guidelines require that accessory equipment be placed underground in rights-of-way where utilities are primarily underground "to the maximum extent feasible." Draft Guidelines Section 3(A)(3). Undergrounding is generally infeasible due to sidewalk space constraints and undue environmental and operational impacts for required active cooling and dewatering equipment. Feasibility aside, this requirement is also unreasonable because small equipment boxes on the side of a pole are not "out-of-character" among typical infrastructure in the right-of-way, including on street light poles. Utility poles offer ideal sites for small cells by consolidating new equipment on existing utility infrastructure.

We recommend eliminating the undergrounding requirement in Section 3(A)(3). At a minimum, the City should allow for at least 5 cubic feet of equipment on light standards and 9 cubic feet of equipment on utility poles before undergrounding is required in undergrounding districts.

3. Location Preference

Section 3(B)(3) of the Draft Guidelines establish a hierarchy of preferred structures and locations. The location and structure preferences cannot favor City-owned parcels or street lights. If strictly applied, these preferences for City-owned assets would run afoul of 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 Southern California Joint Pole Association. Support structure preferences should be relaxed to accommodate use of joint utility poles where they are found along the right-of-way, giving them a preference equal with street light poles.

The City also cannot prohibit wireless facilities within 200 feet of any public or private school or in any median where the proposed facility complies with FCC-established radiofrequency exposure standards. Draft Guidelines Section 3(B)(4).

We suggest that the right-of-way structure preferences in Draft Guidelines Section (3)(B)(3) simply favor the existing structures in the proposed list over new poles.

4. The City Cannot Require Non-Wireless Equipment On New Poles

For new poles in the right-of-way, the City cannot require Verizon Wireless to install a street light fixture, traffic signal, or other non-wireless apparatus. This requirement clearly contradicts Verizon Wireless's right under Public Utilities Code Section 7901 to erect new poles in the right-of-way solely to elevate telephone equipment. The City's limited aesthetic review extends to wireless facility equipment, but lighting is not a functional requirement for wireless service.

The City should consult with wireless carriers regarding new designs for stand-alone small cell poles to serve as the basis for objective standards.

5. The City Cannot Prohibit Placement of Ground Cabinets

Section 4(A)(2) requires clearance of obstructions for a minimum five-foot horizontal radius from the base of the pole. This restriction would effectively prohibit ground cabinets in violation of California Public Utilities Code Section 7901. A prohibition on ground-mounted cabinets contradicts the Small Cells Order and state law. The FCC definition of small cell contemplates up to 28 cubic feet of "wireless equipment associated with the structure" without confining it to a pole or underground vault. 47 C.F.R. § 1.6002(l)(3). Also, if other wireless carriers in the City have placed ground-mounted equipment cabinets, the City would discriminate against wireless carriers if they are not granted the same right. As noted, the FCC determined that aesthetic criteria must be non-discriminatory, meaning no more burdensome than criteria applied to "similar" infrastructure. Small Cells Order, ¶¶ 86-87.

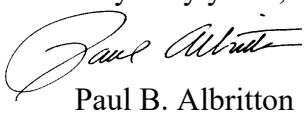
As to state law, Public Utilities Code Section 7901 grants telephone corporations a statewide right to place their "telephone lines along and upon any public road or highway." Public Utilities Code Section 233 defines "telephone line" to include "…all conduits, ducts, poles, wires…and all other real estate, fixtures…owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires." State law clearly grants Verizon Wireless the right to place ground-mounted telephone equipment. Ground cabinets are occasionally deployed to enclose batteries that provide continued service during emergencies.

The City should provide reasonable, non-discriminatory and objective standards for ground cabinets. Draft Guidelines Section 4(A)(2).

* * *

The Draft Ordinance and Draft Guidelines require revisions to comply with new FCC regulations addressing small cell approval criteria and state law granting telephone corporations the right to use the right-of-way. We request deferring action to allow staff enough time to make the necessary changes to the Draft Ordinance and Draft Guidelines. Please feel free to contact us with any questions regarding these comments.

Very truly yours,



Paul B. Albritton

cc: Quinn M. Barrow

Martha Alvarez

From: Bruce Moe
Sent: Tuesday, April 16, 2019 9:50 AM
To: Martha Alvarez
Subject: FW: Cell Towers in Residential Areas of Manhattan Beach

Bruce Moe
City Manager
P: (310) 802-5053
E: bmoe@citymb.info

Office Hours: M - Th 7:30 AM - 5:30 PM | Fridays 7:30 AM - 4:30 PM | Not Applicable to Public Safety

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From: Hildy Stern <hstern@citymb.info>
Sent: Tuesday, April 16, 2019 9:26 AM
To: Bruce Moe <bmoe@citymb.info>
Subject: Fw: Cell Towers in Residential Areas of Manhattan Beach

Good morning,

Don't think this came to you...

Hildy Stern
Councilmember
P: 310-802-5053
E: hstern@citymb.info

Office Hours: M - Th 7:30 AM - 5:30 PM | Fridays 7:30 AM - 4:30 PM | Not Applicable to Public Safety

Reach Manhattan Beach Here for you 24/7, use our click and fix it app
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From: vjcohen@aol.com <vjcohen@aol.com>
Sent: Tuesday, April 16, 2019 8:02 AM
To: Steve Napolitano; Nancy Hersman; Richard Montgomery; Suzanne Hadley; Hildy Stern
Subject: Cell Towers in Residential Areas of Manhattan Beach

Dear City Council Members,

I am a long-time resident of, and the owner of a business in, Manhattan Beach. I know you will be considering an "urgency ordinance" pertaining to the installation of 5G technology at your meeting tomorrow evening. I write to express my support for the urgency ordinance, based on concerns about the health implications of installing a 5G network in Manhattan Beach.

Here is a letter I wrote to assistant city planner Jason Masters regarding the proposed installation of a cell tower right in a residential location at 14th street and Deegan Place:

Victor Cohen, PhD
California Licensed Psychologist 14016
655 15th Street
Manhattan Beach, CA 90266
310 619-4286

March 10, 2019

Attention: Jason Masters, Assistant Planner
City of Manhattan Beach
Community Development Department
1400 Highland Avenue
Manhattan Beach, CA 90266

Dear Mr. Masters:

I am writing in opposition to the Telecom Permit for a new cellular phone facility at the Northeast corner of Deegan Place and 14th Street in Manhattan Beach. I am shocked to discover that this application is being considered again, after the outpouring of negative sentiment last year at the city council meeting, where the council voted on several permits throughout the city. The council rejected the application for a cellular phone facility at Deegan Place and 14th Street at that time. The letter I received gives only a little more than a week for written comments and there is no mention of an open city council meeting discussion on this proposal.

Last year, when the issue was raised, at least 356 Manhattan Beach residents signed a petition on the web-site "change.org" in opposition to the placement of cell phone facilities in residential areas in Manhattan Beach. Comments cited neighborhood blight, the unsightly nature of such towers, noise pollution (news articles

describe constant whirring sounds from the towers) and unknown health risks. I am sure you are aware that as a result of California law SB649, fire stations will be exempt from cell phone towers because of a variety of concerns.

I am aware from the prior discussions that the city cannot reject cell phone towers altogether or on the basis of unknown health repercussions of cell towers. However, we discussed the importance of placing them in commercial zones at last years city council meeting and there was substantial agreement for this by city council members.

As a California licensed psychologist and professor in two Los Angeles psychology graduate programs that train psychologists and psychotherapists, it is my expert opinion that this cell phone facility, right in a residential area, is not only aesthetically unpleasing (a criteria on which the application for this location may be rejected), but is actually horrifying and anxiety arousing to local residents. This is obvious in view of the outpouring of negative sentiment at the city council meeting where over a hundred people opposed to the towers being placed in residential areas attended and the 356 signatures on the petition opposed to the towers on "change.org" (https://www.change.org/p/amy-howorth-stop-proposed-manhattan-beach-cell-towers-in-residential-areas). Certainly this meets the criteria of being sufficiently aesthetically unpleasing to have the city reject the application for this particular location (Northeast corner of Deegan Place & 14th Street).

The change.org web-site posting has dozens of comments by Manhattan Beach residents expressing anxiety and terror, disgust, fear and anger about the proposed residential location for this new cellular phone facility. Again, clearly this suggests that the criteria of being extremely aesthetically unpleasing has been met. I suggest that the placement of this cellular phone facility at Deegan Place and 14th Street will be highly aesthetically unpleasing, an unsightly eyesore and indeed harmful to residents and families due to the continuous feelings of anxiety, helplessness, powerlessness and anger and frustration that will result from seeing it and being aware of its presence.

On this basis I strongly oppose the placement of this new cellular phone facility at the Northeast corner of Deegan Place & 14th Street. Please feel free to reach out to me via email or by calling me at 310 619-4286 if this would be helpful. My wife Linda and I know the City of Manhattan Beach has worked tirelessly to ensure that our City remain of wonderful, family friendly place and I suggest that this cellular phone facility would be seriously disruptive of the tranquil, beautiful city that we share. We have lived here for 25 years and raised three sons here and it has indeed been a pleasure.

Sincerely,

Victor Cohen, PhD

Professor, California School of Professional Psychology-Los Angeles (I have been on the faculty of CSPP, the oldest and largest professional school of psychology in the United States, for 25 years)

California Licensed Psychologist

Martha Alvarez

From: Bruce Moe
Sent: Tuesday, April 16, 2019 9:10 AM
To: Martha Alvarez
Subject: FW: City Council

From: James Stuart <james.stuart.cinefab@gmail.com>
Sent: Tuesday, April 16, 2019 9:04 AM
To: List - City Council <CityCouncil@citymb.info>; City Manager <cm@citymb.info>
Subject: City Council

Dear Council Members,

I am writing to voice my support for the Short Term Rental ban in Manhattan Beach.

I am a sand section resident and Manhattan Beach should always be an open and welcoming place to all visitors who are a vital part of the community. However, Short Term Rentals have become a major problem and issue.

I understand that AirBnB recently threatened the city with litigation to try and usurp local control of our community. This is completely unacceptable. AirBnB is not a resident or business owner here. Their only concern is about their bottom line regardless of the negative impact it has on our community.

Many property owners and management companies abuse local STR regulations due to lax enforcement while enjoying large profits at the expense of their neighbors. AirBnB and other STR companies help facilitate this and do little or nothing to support efforts by communities trying to resolve the problem.

All residents of Manhattan Beach have the right to peaceful enjoyment of their homes and neighborhood without a constant stream of short term renters who often disrupt it with loud parties, over occupancy of the property, parking issues and general disrespect for the neighborhood that they are guests in. Unfortunately, past solutions to alleviate STR problems have not worked requiring different measures be taken.

I support the Short Term Rental ban in Manhattan Beach and the City Council's efforts regarding enforcement of it in the community.

Sincerely,

James Stuart

Bruce Moe
City Manager
P: (310) 802-5053
E: bmoe@citymb.info

Martha Alvarez

From: Bruce Moe
Sent: Tuesday, April 16, 2019 7:58 AM
To: Martha Alvarez
Subject: FW: Proposed Amendments to proposed Ordinance 19-0007

Bruce Moe
City Manager
P: (310) 802-5053
E: bmoe@citymb.info

City of Manhattan Beach
1400 Highland Avenue, Manhattan Beach, CA 90266
www.citymb.info

From: Dana Seagars <d_seagars@yahoo.com>
Sent: Tuesday, April 16, 2019 12:03 AM
To: Steve Napolitano <snapolitano@citymb.info>; Nancy Hersman <nhersman@citymb.info>; Richard Montgomery <rmontgomery@citymb.info>; Suzanne Hadley <shadley@citymb.info>; Hildy Stern <hstern@citymb.info>; Bruce Moe <bmoe@citymb.info>
Subject: Proposed Amendments to proposed Ordinance 19-0007

Honorable Mayor and City Council Members:

As a 3rd generation Manhattan Beach native I am urging the City of Manhattan Beach pause for a moment and to consider making room for all kinds of visitor accommodations ***through some minor amendments*** to the proposed ordinance. In 1925 my grandparents built a small triplex on Ocean Drive. The family history of these apartments has always included making room for both long term residents and as a "summer house" for our friends, guests, and from the 1980s until a couple of years ago, vacation renters.

Most of American workers get a two week vacation. Some are fortunate enough to get 3-4 weeks over the year, chosen to be divided between summer and the holidays. Being able to afford a week in a modest short term rental is about the best most can do. We should be honest and recognize that many love to spend time at the beach but that most Americans cannot afford spending a month or longer. And staying at a pricey hotel on the beach is unrealistic and unaffordable for most of middle

class America (besides there are *none* of these in MB within walking distance of the beach). We should also recognize the economic benefit that out of town visitors bring to the small businesses that comprise our bustling downtown area.

As a former resident of the Tree Section and a lifelong property owner in the Sand Section I fully understand the sometime disruptive issues associated with Party Houses and the short term vacation industry (STRs). However, these issues are truly ones of owner responsibility and a long term void of City enforcement. So I *applaud* the City of MB for taking steps to create a set of rules to guide and to reduce the hazards associated with STRs. The proposed ordinance for the first time sets out a clear set of rules with an enforcement policy that has teeth. And *that is to be commended*.

HOWEVER, the proposed ordinance is overly draconian in its complete elimination of short term rentals throughout the City to the detriment of our visitors and to homeowners alike. I am urging you to consider ***delaying*** a final decision so that a few minor amendments might be considered for inclusion.

First, I propose the creation of some defined "management zones" (zoning?). Within such a zone it should be possible to allow for a very LIMITED & PERMITTED number of short term rentals (e.g., one week or longer) in key areas of the city with a history of high visitor use. For example, I suggest you look at creating a zone along the immediate walkable coastal area bounded by The Stand on the west and on the east by Hilland Avenue where a ***very limited*** number of STRs might be permitted (e.g., 50?) – as this is THE most desirable area for visitors looking for a beach vacation in our City. Such a permit would out of necessity come with a significant cost for owner hosts and with very strict rules and penalties. These would ensure neighbors would not be disturbed, that properties would be maintained, and parking provided, ETC. If there is a violation, then there would be fines and/or a loss of the permit. Taxes and permit fees would be designed to cover the necessary regulatory and enforcement structure implemented by the City.

Second, by creating some room for some minor exceptions to the excessive rules that require "hosted" rentals. For example, I own a legal three unit property with approved parking. Two of these units are leased year round. One has been maintained for nearly 20 years as a STR under various city management rules. And I will add here that I have NEVER had any complaints from my neighbors. By career necessity I live out of state, but having that unit as a STR has allowed me, as absentee landlord, to come stay in MY unit several times a year. By doing so I am able to assess the property needs, reconnect with my neighbors and my heritage in my birth city. However, as proposed the "owner on-site" requirement eliminates my ability to rent my property for even periods of longer than one month. And it will nearly make it impossible for me to come stay in my own property! No one should be prohibited from renting their own property because they are REQUIRED to be on site. *That seems illegal and it is highly likely such a regulation will be subject to litigation.*

My recommended solution to the restriction is twofold: (1) do as they do in Hawaii – require absentee landlords to designate a "local contact" for property management and resolution of issues within a specified time period (e.g., 30 min response time). Any contracts for guests must be required to clearly state the name and contact information of the local contact. In addition, any permit issued by the City to allow the STR to operate must also specify that contact by name and information. (2) Second, provide such exemptions only for those cases where the property owner resides either outside of the City or some specified distance from the property (e.g 5 miles away). Alternatively, provide a limited number of "grandfathered" exemptions where absentee property owners can show a history of successful (e.g. no complaints) STR over a specified period of time prior to the enactment of the ordinance.

My family history over nearly 90 years in Manhattan Beach has been that our “beach apartment building” property on Ocean Drive was seldom a permanent residence for us but a place we have shared with hundreds of friends and visitors who love coming to Manhattan for a few short weeks at a time. My retirement plan, crafted in advance two decades ago was based in part on perpetuating that gift of sharing, as well as, the income sourced from this property. These overly restrictive, unwelcoming to visitors, and shortsighted from an economic perspective, regulations are killing the spirit of what was once a Welcoming golden small town. It is also going to result in about a $50-60,000 a year economic hit, a TAKING, to my otherwise fixed income. That is patently unfair and overly burdensome. I urge you in the strongest terms possible to consider broadening your proposed ordinance to better represent the desires and needs of ALL of your property owners and your visitor clientele.

Respectfully submitted for consideration,

Dana Seagars
1820/1812 Ocean Drive, Manhattan Beach 90266
10650 Lone Tree Drive, Anchorage AK 99507
907-242-6388

Martha Alvarez

From: Bruce Moe
Sent: Tuesday, April 16, 2019 7:58 AM
To: Martha Alvarez
Subject: FW: Please read and advise your thoughts - this factor needs to be addressed regarding owner occupied Airbnb

Bruce Moe
City Manager
P: (310) 802-5053
E: bmoe@citymb.info

Office Hours: M - Th 7:30 AM - 5:30 PM | Fridays 7:30 AM - 4:30 PM | Not Applicable to Public Safety

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From: Tom Nordberg <nordberg90266@gmail.com>
Sent: Tuesday, April 16, 2019 12:12 AM
To: City Manager <cm@citymb.info>; List - City Council <CityCouncil@citymb.info>
Subject: Please read and advise your thoughts - this factor needs to be addressed regarding owner occupied Airbnb

Honorable Mayor and Council,

I feel the problem with all of this Airbnb, is that the **tenants have been subleasing their units and acting as the owner.**

That is the main problem In MB, is that passive landlords who are not living here and not watching their tenants/property have made this a living hell for many individuals and neighbors.

The ban should come out and say what I said above. With regards to on-site owners who own duplex's etc, they should be able to rent out their property without any backlash just as long as there are proper rules and protocol which are followed by guests.

In New York City for example and West Hollywood, which Airbnb lists as its top destination for guests, has some of the tightest restrictions on short-term rentals in the country. But both Cities have approved Short-Term Rentals only if the homeowner is also staying there throughout the rental period and there.

https://www.wehoville.com/2017/12/19/weho-city-council-approves-owner-occupied-short-term-rentals/

I think council and staff needs to dig into this more and have a more well rounded approach to this measure.

I feel Owners who want to participate in Airbnb who are responsible and follow the rules and pay astronomical property taxes to the State of California each year, should not be dictated to with regards to renting out their owner occupied home or duplex.

This is a very complicated subject so please advise your thoughts on this additional information.

Kind regards to you all!

Tom Nordberg - Commercial Real Estate Investments: License: 01470895

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E: tnordberg@citymb.info

City of Manhattan Beach: *Member - Board of Building Appeals*

Begin forwarded message:

From: Tom Nordberg <nordberg90266@gmail.com>
Date: April 15, 2019 at 11:46:55 PM PDT
To: "nordberg90266@gmail.com" <nordberg90266@gmail.com>
Subject: WeHo City Council Approves Owner-Occupied Short Term Rentals - WEHOville

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City of Manhattan Beach: *Member - Board of Building Appeals*