David Cutaia

From: C. Dave G <cdg55@earthlink.net>
Sent: Tuesday, September 07, 2021 4:35 PM
To: City Clerk Group
Cc: Melissa Angeles; bgaughenmu@aol.com; cdg55@earthlink.net
Subject: Amendment to Appeal EP-19-095; Please distribute to the Mayor, Councilmembers regarding Item B-2 21-379 for tonight September 07, 2021
Attachments: Amendment to Request to Appeal Permit EP-19-095 - 7 30 21.pdf

Dear City Clerk - I respectfully request that you please distribute the attached Amendment to our Appeal to the Mayor and Councilmembers regarding item B.2 under section B Public Hearing scheduled for tonight September 07 at approximately 5:30 pm. My name is C. Dave Gaughen, the Appellant in item B.2 with email addresses of cdg55@earthlink.net and bgaughenmu@aol.com and phone number of (805) 275-645. I believe I am currently scheduled to present verbal arguments at the hearing and had, according to Melissa, slightly before the hearing to submit the attached document.

Thank you, C. Dave Gaughen and Barbara Gaughen-Muller

BARBARA GAUGHEN-MULLER
C. DAVE GAUGHEN
7456 Evergreen Drive
Goleta, CA 93117
Telephone: (805) 275 – 6457
Email: cdg55@earthlink.net

September 07, 2021

To: The Mayor and Councilmembers
130 Cremona Drive, Suite B
Goleta, CA 93117

Subj: Amendment to "Request to Appeal the Decision to Approve Crown Castle's Encroachment Permit (EP-19-095) for a Small Cell Wireless Facility in the Public Rights-of-Way at 293 Forest Drive, Goleta, CA 93117 by the Director of Public Works (dated July 30, 2021)" (the "Appeal")

Ref. (1) Goleta Municipal Code (GMC) Chapter 12.20 Wireless Facilities in Public Road Rights-of-Way
(2) City of Goleta Agenda Item B.2, PUBLIC HEARING, Meeting Date: September 07, 2021, SUBJECT: Appeal of Public Works Director Approval of an Encroachment Permit for the Installation of a Small Cell Wireless Facility in Public Right-of-Way near 293 Forest Drive (169 pages)
(3) Crown Castle's Project Plans for Project #ATTSBW01m2 dated 12/04/2020 (the "Project Plans"
(4) Dtech Communication's Report entitled "Radio Frequency Electromagnetic Exposure Report" prepared for Crown Castle dated 2/04/2021 (the "Exposure Report")
(5) City of Goleta Public Hearing for "Proposed Ordinance regarding Wireless Facilities in the Public Rights-of-Way, Fee Resolution and Master License Agreement" dated May 07, 2019 (the "Proposed Ordinance")

Dear Madam Mayor and Esteemed Councilmembers (the "Appeal Board"):

RECOMMENDATIONS:

We respectfully request that the Appeal Board: 1) Dismiss the Decision to Approve Crown Castle's Encroachment Permit (EP-19-095) for a Small Cell Wireless Facility in the Public Right-of-Way near 293 Forest Drive, Goleta, CA 93117 by the Director of Public Works, 2) Dismiss draft Resolution No. 21-___ entitled "A Resolution of the City Council of the City of Goleta, California, Denying C. Dave Gaughen & Barbara Gaughen-Muller's Appeal of the Public Works Director Approval of an Encroachment Permit for the Installation of a Small Cell Wireless Facility in the public right-of-way near 293 Forest Drive (EP-19-095) and Approving EP-19-095 Under Goleta Municipal Code Chapter 12.20," 3) Relocate the proposed Installation of a Small Cell Wireless Facility in the public right-of-way near 293 Forest Drive (EP-19-095), 4) Draft and Approve a Resolution such as Resolution No. 21-___ entitled "A Resolution of the City Council of the City of Goleta, California, Approving C. Dave Gaughen & Barbara Gaughen-Muller's Appeal of the Public Works Director Approval of an Encroachment Permit for the Installation of a Small Cell Wireless Facility in the public right-of-way near 293 Forest Drive (EP-19-095) Under Goleta Municipal Code Chapter 12.20," or, in the event that Recommendations 1 – 4 are rejected by the Appeal Board, then 5) Add multiple conditions to the permit in an attempt to resolve the concerns that may or will adversely affect the Appellants.

BACKGROUND

At every step during the appeal process, our requests for extensions were denied: 1) Our initial extension request (i.e., we requested a two-week extension to properly prepare and submit our appeal) was denied on July 30, 2021 at 9:38 am whereby we were required to file a completed appeal request by the evening on the same day (i.e., less that 24 hours to prepare and submit an appeal), 2) Following the cancellation of the initial hearing date scheduled for August 17, 2021, we requested a postponed of the hearing date until December 07, 2021; only after contacting the Assistant Engineer on August 31, 2021 did we learn that Crown Castle denied this hearing postponement request, 3) We received via US Mail the Notice of Public Hearing on September 02, 2021 for the rescheduled hearing date of September 07, 2021; we received this Notice one day after the City Clerk's deadline for the Appellants to submit a power point style presentation, and 4) The Assistant Engineer notified us by email that we could submit our latest concerns to the Mayor and Councilmembers via the cityclerkgroup@cityofgoleta.org email address prior to the hearing taking place on September 07, 2021. Exhibit A contains the relevant emails and the Notice of Public Hearing.

Additionally, our email request dated August 17, 2021 for the postponed of the hearing until December 07, 2021 was based upon the concerns presented below and reads as follows:

> "Hi Melissa – yesterday, we received your "Notice of City Council Public Hearing Cancellation" – thank you!
>
> Next, the primary reason as to why I requested information pertaining to Crown Castle's anticipated start to finish construction time frame is that the existing underlying emotional and mental stress due to Covid-19 will most certainly result in a compounded effect on the residents at 7456 Evergreen Dr and 297 Forest Dr which may in fact result in personal injury claim(s) if we were to lose our appeal and Construction were to begin during the mandated (i.e., Federal, State, Local, Employer Mandates) and voluntary stay-at-home Covid-19 restrictions. In short, claims that may result are in relation to: 1) My 80 year old senior citizen mother under voluntary stay-at-home Covid-19 restrictions who resides part-time at 7456 Evergreen Dr., 2) My senior citizen neighbor under voluntary stay-at-home Covid-19 restrictions who resides full-time at 297 Forest Dr., and 3) My neighbor's wife under employer mandated work-at-home Covid-19 restrictions, who additionally suffers from Multiple Sclerosis, residing full-time at 297 Forest Dr.
>
> Examples of Construction elements that may compound the aforementioned residents' underlying stress from Covid-19 related circumstances may consist of weekday and/or daily extremely loud construction noises (e.g., demolition of sidewalks/pavements via jack-hammering; drilling and/or pile driving streetlight poles into placement; loading heavy debris into roll-on/roll-off containers and/or metal truck beds resulting in sudden and extremely loud impact noises; others), stress from temporary traffic obstructions (i.e., new traffic patterns for daytime and potentially night driving including increased difficulty with residential parking specially affecting senior citizens), increased air borne particulates generated during construction (i.e., enhanced likelihood of physical respiratory injury unless 100 % full containment encloses construction site), etc.
>
> Therefore, in an attempt to resolve the issues identified above, the appellants respectfully request that the hearing date be postponed until December 07, 2021 or to some other date following the lifting of current Covid-19 restrictions.
>
> Respectfully, Barbara Gaughen-Muller & C. Dave Gaughen"

Director of Public Works Decision to Approve Crown Castle's Encroachment Permit (EP-19-095)

Per Reference 2 (see Page 12), The Public Works Director reviewed the permit application, pertinent documentation and public comments and issued a decision based on the following findings:

1. The proposed facility complies with all applicable provisions of the Goleta Municipal Code (GMC) Chapter 12.20.
2. The proposed facility will not incommode the public use of the public right-of-way.
3. The proposed construction plan and schedule will not unduly interfere with the public's use of the public right-of-way.
4. The proposed facility complies with any standards adopted by the Director under GMC Section 12.20.040(A).
5. The proposed facility complies with all Federal and State standards and laws.

60-Day Shot Clock

If the Appeal Board requires additional time past September 08, 2021 to confirm and support their decision, it appears that they can request a deadline extension of the Shot Clock to be negotiated by the Director of Public Works (the "Director") and between Crown Castle per Reference 1, The Goleta Municipal Code (GMC) Section 12.20.040 "Administration." part A. paragraph 6. states in relevant part:

"A. Public Works Director. The Director is responsible for administering this chapter. As part of the administration of this chapter, the Director may:

6. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with State and Federal laws and regulations;"

Additionally, GMC 12.20.060 "Application." paragraph E reads as follows:

"E. Shot Clock. The City acknowledges there are Federal and State shot clocks which may be applicable to an application for a proposed wireless facility. As such, the applicant is required to provide the City written notice when it believes any applicable shot clock is about to expire, which the applicant shall ensure is received by the City (e.g., overnight mail) no later than 20 days prior to the alleged expiration. (Ord. 19-09 § 3)."

AMENDEMENTS TO THE APPEAL

Aesthetics & Visual Criteria

Reference 2 (see page 28) reads in relevant part,

"The City has the authority under state and federal law to regulate the installation of physical facilities of telephone companies, including wireless facilities, in the public right-of-way … and impose standards regarding the facilities' aesthetics (T-Mobile West LLC v. City & Cty. Of San Francisco, 6 Cal. 5th 1107, 438 P.3d. 239 (2019); FCC Order 18-133). The City's regulations are limited to the regulation of when and how the facilities are installed, whether the installation meets applicable safety standards, and how the facilities will look."

Additionally, GMC 12.20.050 “General Standards for Wireless Facilities in the Public Rights-of-Way.” paragraph C. “Minimum Standards” reads in relevant part, “… and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located.”

Furthermore, Reference 5 (see page 99), City of Goleta Design and Development Standards for Wireless Facilities in the Public Right-of-Way, Section 2, Part A “Visual Criteria”, Section 1. “General” reads as follows, “Wireless facilities shall be designed in the least visible means possible and be aesthetically compatible with the surrounding area and structures.”

Additionally, Reference 2 (see page 104) depicts the resulting proposed facility employing the Galtronics Extent P6840i Antenna with Mounting Skirt, and the Charles SHRD60 Enclosure covering not one but two Ericsson 4402 Remote Radios.

In short, this Small Cell Wireless Facility most certainly does Not maintains the integrity and character of the neighborhoods, is Not aesthetically compatible with the surrounding area and structures, and will most certainly decrease property values (see ehtrust.org regarding reports documenting cell towers lowering property values). As such, the proposed facility does Not comply with all applicable provisions of the Goleta Municipal Code (GMC) Chapter 12.20.

In support of the above, Exhibit B contains Case # S238001 T-Mobile West LLC v. City & Cty. Of San Francisco and the Herrera statement (i.e., the City Attorney of SF) on California Supreme Court upholding this San Francisco’s wireless regulations

The Director States the Proposed Construction Plan and Schedule will not Unduly Interfere with the Public’s use of the Public Right-of-Way

Reference 2 (see page 103) presents an areal view of Cathedral Oak (speed limit 45 mph) cross sectioning into Evergreen Drive and Forest Drive (each with residential speed limits of 25 mph). The proposed site location is heavily traveled with residents traveling to/from work, to/from Brandon School to/from Dos Pueblos High School, etc., and are continuously merging on/off of Cathedral at all hours of the day and night. Plus, some select drivers actually use this area to test their driving skills and exceed the speed limits (i.e., dangerous area and hopefully someday the City will place a speed bump at the entrance to Forest Drive). Therefore, during construction these new traffic patterns for daytime and potentially night driving will most certainly incommode the public’s use of these driving areas.

On August 11, 2021, the Appellants emailed the Assistant Engineer the following questions, “

Hi Melissa - could you please tell us (or find out if PWs doesn't know) Crown Castle's anticipated start to finish construction time frame for the small cell facility at 293 Forest Dr. … Plus, do you know where they are going to store their construction equipment, portable toilet, new streetlight pole, and all other devices/components for this installation?

The Assistant Engineering responded on August 12, 2021 with the following, “Hi Dave, We do not have a construction time frame yet since the appeal process has put the project on hold. Information on the staging of the construction equipment will not be available until the Council makes their final decision. Let me know if you have any other questions.”

Exhibit A contains the above email exchange. As such, the Director appears to have falsely stated that the proposed Construction Plan and Schedule will not Unduly Interfere with the Public’s use of the Public

Right-of-Way since both are unknown at this time in particular the construction schedule and staging of construction equipment as well as installation components.

The City of Los Altos Denying an Appeal of AT&T at 12 Locations

As background information and in support of this Appeal, Exhibit C contains the City of Los Altos Resolution 2019-52 Resolution Denying an Appeal of New Cingular Wireless PCS, LLC dba AT&T Mobility and Denying the Applications for Proposed Wireless Installations at 12 Locations, and Pages 1 – 3 of AT&T's Appeal.

100 % Full Containment of Construction Site to Protect Fruit Trees, Organic Garden, Organic Soil from Air Borne Construction Particulates of Unknown Origin

GMC 12.20.150 "Conditions of Approval." part A, paragraphs 12 and 25, read as follows,

"12. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility.

25. Other Permits. The applicant is responsible for obtaining permits from permitting agencies, including, but not limited to, California Coastal Commission, California Fish and Wildlife, US Fish and Wildlife, Santa Barbara County Flood Control District, and Regional Water Quality Control Board. Failure to comply with other permitting agency requirements/permits may be grounds for revocation of this encroachment permit."

It is unclear as to whether Crown Castle applied, will need to apply, or is exempt for a permit under The California Environmental Quality Act (CEQA) regarding this project. Nevertheless, as is clearly evident in our prior responses, we the Appellants are passionate gardeners and hope to someday engage in professional Urban Agriculture. My late Great Grandfather John Mesku actually planted his last two irreplaceable propriety peach trees adjacent to the proposed cell site whereby in an attempt to protect these trees, our organic garden and all other fruit trees, and our pristine organic soil, we require 100 % full containment of the proposed construction site to prevent air borne construction particular matter from drifting and contaminating the items identified above. It appears CAL-OSHA requires limiting dust, nuisance dust, and particulates to no more than 10 ppm. Additionally, 100 % containment of the construction site would also protect the homeowner's vehicles at 297 Forest Drive (two vehicles always parked in their driveway valued at approximately $125K).

The Exposure Report

Per References 3 & 4, the Project Plans and the Exposure Report, respectively, the calculations are based on one Ericsson 4402 Remote Radio and Not the two identified for use in the Project Plan. The contractor performed these calculation employing the software developed by RoofView but failed to document the specific calculations taken from FCC's OET Bulletin 65 (Published August 1997) and presented only results without documenting which values were additive, subtractive, the various logarithmic coefficients, etc. As such, it appears that the Director may have accepted this work on blind faith without performing any additional quality control to verify the accuracy of this report: nor do we, at the present time, have the expertise to validate the Exposure Report's findings. Additionally, it appears that no base line RF/Microwave testing was conducted at the proposed site to document existing values which could, if detectable, have an additive effect on the Exposure Report's findings. Furthermore, if the permit proceeds forward, the condition of limiting the operating frequency to a maximum of no more that

2100 MHz is recommended as well as independent RF/Microwave test for compliance prior to the site becoming fully operation. In short, without additional testing and/or subsequent verification of results, we take it on blind faith that the proposed facility complies with all Federal and State standards and laws. Exhibit D presents a summary of OSHA's standards for Radiofrequency and Microwave Radiation and the California Code of Regulations Section 5085 "Radiofrequency and Microwave Radiation" for additional compliance related to this project.

CONCLUSIONS

Multiple findings are presented above in relation to the Goleta Municipal Code (GMC) Chapter 12.20 Wireless Facilities in Public Road Right-of-Way, and in relation to the Director's decision based upon the findings presented by the Director listed above. This and the information presented above should be more than sufficient to proceed forward with our Recommendations 1 – 4, listed above.

Respectfully,

Barbara Gaughen-Muller & C. Dave Gaughen

EXHIBIT A

EXHIBIT A

Notice of Application Approval - Crown Castle Wireless Encroachment Permit EP-19-095 (293 Forest Drive)

From: Melissa Angeles <mangeles@cityofgoleta.org>
To: Melissa Angeles <mangeles@cityofgoleta.org>
Cc: Charlie Ebeling <cebeling@cityofgoleta.org>, Winnie Cai <wcai@cityofgoleta.org>
Subject: Notice of Application Approval - Crown Castle Wireless Encroachment Permit EP-19-095 (293 Forest Drive)
Date: Jul 28, 2021 5:08 PM
Attachments: image001.png EP-19-095 Application Approval Letter.pdf

To whom it may concern:

In compliance with Goleta Municipal Code Section 12.20.080(D) you are hereby notified of the approval of a wireless encroachment permit (EP-19-095) for a Crown Castle Small Cell Facility in the public right-of-way at 293 Forest Drive issued on July 28, 2021.

Project description: Installation of a new small cell site facility on an existing streetlight in the public right-of-way with an Omni directional antenna, (2) remote radio units with shroud, (2) quad-diplexers and vault.

The Public Works Director reviewed the permit application, pertinent documentation and public comments and issued a decision based on the following findings:

1. The proposed facility complies with all applicable provisions of the Goleta Municipal Code (GMC) Chapter 12.20.
2. The proposed facility will not incommode the public use of the public right-of-way.
3. The proposed construction plan and schedule will not unduly interfere with the public's use of the public right-of-way.
4. The proposed facility complies with any standards adopted by the Director under GMC Section 12.20.040(A).
5. The proposed facility complies with all Federal and State standards and laws.

Section 12.20.040(B) of the Goleta Municipal Code, states the following:

1. Any person adversely affected by the decision of the Public Works Director on a wireless encroachment permit pursuant to this chapter may appeal the decision to the City Council (Appeal Body), which may decide the issues de novo, and whose written decision will be the final decision of the City and not be subject to further administrative appeal. An appeal must be filed within two business days after the published determination letter and shall state the specific reason for the appeal. The Director may extend the time for an aggrieved party to file an appeal but an extension may not be granted where extension would result in approval of the application by operation of law.

2. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law unless an extension of the time requirements of rendering a decision is mutually agreed upon.

3. As section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of the Director's decision premised on the environmental effects of radio frequency emissions will not be considered. (Ord. 19-09 § 3)

If you have any questions, please contact me at mangeles@cityofgoleta.org or (805) 690-5122.

Sincerely,

Melissa Angeles
Assistant Engineer
Department of Public Works

RE: Notice of Application Approval - Crown Castle Wireless Encroachment Permit EP-19-095 (293 Forest Drive)

From: Melissa Angeles <mangeles@cityofgoleta.org>
To: C. Dave G <cdg55@earthlink.net>
Cc: bgaughenmu@aol.com <bgaughenmu@aol.com>
Subject: RE: Notice of Application Approval - Crown Castle Wireless Encroachment Permit EP-19-095 (293 Forest Drive)
Date: Jul 29, 2021 12:21 PM
Attachments: image001.png

Good afternoon Mr. Gaughen,

The email serves as the City's notice to the public of issuance of a determination letter to Crown Castle. The pdf attachment is the published determination letter that was mailed to Crown Castle informing them of the City's decision. The appeal period begins the day after the determination letter is published. The letter was published on Wednesday, July 28, 2021, which gives you until Friday, July 30, 2021 to submit an appeal.

Thank you,

Melissa Angeles
Assistant Engineer
Department of Public Works
City of Goleta | 130 Cremona Drive, Suite B | Goleta, CA 93117
P: 805.690.5122 | F: 805.685.2635
mangeles@cityofgoleta.org

From: C. Dave G <cdg55@earthlink.net>
Sent: Thursday, July 29, 2021 11:12 AM
To: Melissa Angeles <mangeles@cityofgoleta.org>
Cc: cdg55@earthlink.net; bgaughenmu@aol.com
Subject: Re: Notice of Application Approval - Crown Castle Wireless Encroachment Permit EP-19-095 (293 Forest Drive)

Hi Melissa - is the Notice of Application Approval letter below and the attached pdf with a similar title the same as the "Published Determination Letter"? Briefly, I need to know exactly when the clock starts ticking for the two day time period to present our appeal.

Additionally, in our response dated June 29, 2021 "Subj: Amendment to email Response from C. Dave Gaughen & Barbara Gaughen-Muller entitled "Please Deny Crown Castle's Encroachment Permit Application" dated June 14, 2021," we proved that Crown Castle's antenna and radio are only certified by the FCC for use with 4G radio frequencies, and their exposure report is also exclusively based upon 4G radio

Re: RE: Request of Director for Two Week Extension to File Appeal - Notice of Application Approval - Crown Castle Wireless Encroachment Permit EP-19-095 (293 Forest Drive)

From: C. Dave G <cdg55@earthlink.net>
To: Melissa Angeles <mangeles@cityofgoleta.org>
Cc: <cdg55@earthlink.net>, <bgaughenmu@aol.com>
Subject: Re: RE: Request of Director for Two Week Extension to File Appeal - Notice of Application Approval - Crown Castle Wireless Encroachment Permit EP-19-095 (293 Forest Drive)
Date: Jul 29, 2021 1:53 PM

Thank you Melissa for getting back to us super quickly! Should we submit our appeal directly to you or does it go somewhere else?

Next, my mother and I respectfully request that you please ask the Director of Public Works to grant us a two week extension to submit our written appeal which means that our appeal will need to be filed on or before close of business on August 12, 2021. If for some reason our extension request interferes with the timeliness of the approval process per GMC 12.20.040(B), then my mother and I believe that we may be able to rush through our most recent research and submit our appeal by the end of the day on Tuesday August 03, 2021.

Thanks again Melissa, kindly dave

-----Original Message-----
From: Melissa Angeles <mangeles@cityofgoleta.org>
Sent: Jul 29, 2021 12:21 PM
To: C. Dave G <cdg55@earthlink.net>
Cc: bgaughenmu@aol.com <bgaughenmu@aol.com>
Subject: RE: Notice of Application Approval - Crown Castle Wireless Encroachment Permit EP-19-095 (293 Forest Drive)

Good afternoon Mr. Gaughen,

The email serves as the City's notice to the public of issuance of a determination letter to Crown Castle. The pdf attachment is the published determination letter that was mailed to Crown Castle informing them of the City's decision. The appeal period begins the day after the determination letter is published. The letter was published on Wednesday, July 28, 2021, which gives you until Friday, July 30, 2021 to submit an appeal.

Thank you,

Melissa Angeles
Assistant Engineer
Department of Public Works
City of Goleta | 130 Cremona Drive, Suite B | Goleta, CA 93117
P: 805.690.5122 | F: 805.685.2635
mangeles@cityofgoleta.org

RE: RE: Request of Director for Two Week Extension to File Appeal - Notice of Application Approval - Crown Castle Wireless Encroachment Permit EP-19-095 (293 Forest Drive)

From: Melissa Angeles <mangeles@cityofgoleta.org>
To: C. Dave G <cdg55@earthlink.net>
Cc: bgaughenmu@aol.com <bgaughenmu@aol.com>
Subject: RE: RE: Request of Director for Two Week Extension to File Appeal - Notice of Application Approval - Crown Castle Wireless Encroachment Permit EP-19-095 (293 Forest Drive)
Date: Jul 30, 2021 9:38 AM
Attachments: image001.png

Good morning Mr. Gaughen,

After speaking to our City Attorney, she advised that we cannot grant your requested extension due to interference with the timeliness of the approval process. Please submit your appeal in writing (email is acceptable) to my email address and copy the City Clerk's office at cityclerkgroup@cityofgoleta.org by today stating your specific reasons for appeal to meet the deadline and to be able to secure a hearing; you can include your previously submitted public comments if you wish to do so. If you would like to provide a more detailed explanation supporting your appeal, you will be given the opportunity to do so during your hearing.

Thank you,

Melissa Angeles
Assistant Engineer
Department of Public Works
City of Goleta | 130 Cremona Drive, Suite B | Goleta, CA 93117
P: 805.690.5122 | F: 805.685.2635
mangeles@cityofgoleta.org

From: C. Dave G <cdg55@earthlink.net>
Sent: Thursday, July 29, 2021 1:53 PM
To: Melissa Angeles <mangeles@cityofgoleta.org>
Cc: cdg55@earthlink.net; bgaughenmu@aol.com
Subject: Re: RE: Request of Director for Two Week Extension to File Appeal - Notice of Application Approval - Crown Castle Wireless Encroachment Permit EP-19-095 (293 Forest Drive)

Thank you Melissa for getting back to us super quickly! Should we submit our appeal directly to you or does it go somewhere else?

Next, my mother and I respectfully request that you please ask the Director of Public Works to grant us a two week extension to submit our written appeal which means that our appeal will need to be filed on or before close of business on August 12, 2021. If for some reason our extension request interferes with the timeliness of the approval process per GMC 12.20.040(B), then my mother and I believe that we may be able to rush through our most recent research and submit our

RE: 293 Forest Dr Cell Site - Start to Finish proposed construction time frame?

From: "Melissa Angeles" <mangeles@cityofgoleta.org>
To: "C. Dave G" <cdg55@earthlink.net>
Cc: "bgaughenmu@aol.com" <bgaughenmu@aol.com>
Subject: RE: 293 Forest Dr Cell Site - Start to Finish proposed construction time frame?
Date: Aug 12, 2021 12:13 PM

Hi Dave,

We do not have a construction time frame yet since the appeal process has put the project on hold. Information on the staging of the construction equipment will not be available until the Council makes their final decision. Let me know if you have any other questions.

Thank you,

Melissa Angeles
Assistant Engineer
Department of Public Works
City of Goleta | 130 Cremona Drive, Suite B | Goleta, CA 93117
P: 805.690.5122 | F: 805.685.2635
mangeles@cityofgoleta.org

-----Original Message-----
From: C. Dave G <cdg55@earthlink.net>
Sent: Wednesday, August 11, 2021 12:25 PM
To: Melissa Angeles <mangeles@cityofgoleta.org>
Cc: bgaughenmu@aol.com; cdg55@earthlink.net
Subject: 293 Forest Dr Cell Site - Start to Finish proposed construction time frame?

Hi Melissa - could you please tell us (or find out if PWs doesn't know) Crown Castle's anticipated start to finish construction time frame for the small cell facility at 293 Forest Dr. - one of my neighbors thinks it could be installed in about a week but my guess is that it will take considerably longer to install. Plus, do you know where they are going to store their construction equipment, portable toilet, new streetlight pole, and all other devices/components for this installation?

Thanks Melissa, dave

Request for Postponement of Hearing Date until December 07, 2021 [Re: Appeal the Decision to Approve Crown Castle's Encroachment Permit (EP-19-095)]

From: C. Dave G <cdg55@earthlink.net>
To: Melissa Angeles <mangeles@cityofgoleta.org>
Cc: <cdg55@earthlink.net>, <bgaughenmu@aol.com>
Subject: Request for Postponement of Hearing Date until December 07, 2021 [Re: Appeal the Decision to Approve Crown Castle's Encroachment Permit (EP-19-095)]
Date: Aug 17, 2021 12:17 PM

Hi Melissa – yesterday, we received your "Notice of City Council Public Hearing Cancellation" – thank you!

Next, the primary reason as to why I requested information pertaining to Crown Castle's anticipated start to finish construction time frame is that the existing underlying emotional and mental stress due to Covid-19 will most certainly result in a compounded effect on the residents at 7456 Evergreen Dr and 297 Forest Dr which may in fact result in personal injury claim(s) if we were to lose our appeal and Construction were to begin during the mandated (i.e., Federal, State, Local, Employer Mandates) and voluntary stay-at-home Covid-19 restrictions. In short, claims that may result are in relation to: 1) My 80 year old senior citizen mother under voluntary stay-at-home Covid-19 restrictions who resides part-time at 7456 Evergreen Dr., 2) My senior citizen neighbor under voluntary stay-at-home Covid-19 restrictions who resides full-time at 297 Forest Dr., and 3) My neighbor's wife under employer mandated work-at-home Covid-19 restrictions, who additionally suffers from Multiple Sclerosis, residing full-time at 297 Forest Dr.

Examples of Construction elements that may compound the aforementioned residents' underlying stress from Covid-19 related circumstances may consist of weekday and/or daily extremely loud construction noises (e.g., demolition of sidewalks/pavements via jack-hammering; drilling and/or pile driving streetlight poles into placement; loading heavy debris into roll-on/roll-off containers and/or metal truck beds resulting in sudden and extremely loud impact noises; others), stress from temporary traffic obstructions (i.e., new traffic patterns for daytime and potentially night driving including increased difficulty with residential parking specially affecting senior citizens), increased air borne particulates generated during construction (i.e., enhanced likelihood of physical respiratory injury unless 100 % full containment encloses construction site), etc.

Therefore, in an attempt to resolve the issues identified above, the appellants respectfully request that the hearing date be postponed until December 07, 2021 or to some other date following the lifting of current Covid-19 restrictions.

Respectfully,

Barbara Gaughen-Muller & C. Dave Gaughen

Re: Request for Additional Information Regarding Two (2) Installed Small Cell Wireless Facilities on Cathedral Oaks, and a "Speaker Request Form"

From: Melissa Angeles <mangeles@cityofgoleta.org>
To: C. Dave G <cdg55@earthlink.net>
Cc: bgaughenmu@aol.com <bgaughenmu@aol.com>
Subject: Re: Request for Additional Information Regarding Two (2) Installed Small Cell Wireless Facilities on Cathedral Oaks, and a "Speaker Request Form"
Date: Aug 31, 2021 5:37 PM
Attachments: image001.png

Hi Dave,

It was great speaking to you earlier. I heard back from the City Clerk's office and was told that the deadline to submit a Power Point presentation or photos, graphs, etc. is tomorrow morning, however, verbal presentations do not need to be routed internally, which means that you have until the September 7th public hearing to put your verbal presentation together. You will have a total of 10 minutes to speak and if there will be more than one speaker from your party speaking, you will need to share the 10 minute allotment. Additionally, if there is to be rebuttal, you will need to take this into consideration and save time from the 10 minutes for this as well. I also asked about providing a copy of your verbal presentation to the City Council after the meeting and was told that it would be too late to submit it after the meeting.

Thank you,

Melissa Angeles
Assistant Engineer
Department of Public Works
City of Goleta | 130 Cremona Drive, Suite B | Goleta, CA 93117
P: (805) 690-5122 F: (805) 685-2635
mangeles@cityofgoleta.org

From: Melissa Angeles
Sent: Tuesday, August 31, 2021 12:03 PM
To: C. Dave G <cdg55@earthlink.net>
Cc: bgaughenmu@aol.com <bgaughenmu@aol.com>
Subject: RE: Request for Additional Information Regarding Two (2) Installed Small Cell Wireless Facilities on Cathedral Oaks, and a "Speaker Request Form"

Good afternoon Mr. Gaughen,

Attached are the plans and exposure reports for the wireless facilities as requested.

I do not have a speaker request form available due to the City Council meeting being held virtually, therefore, if you wish to speak during the public comment period, you may submit an email 24 hours prior to the City Council meeting to cityclerkgroup@cityofgoleta.org which states the item you want to speak to and provide your name, email and phone number. You will then need to register for the meeting via the Go To Webinar app. When the agenda is released on Wednesday, you can find instructions and registration links embedded in the agenda.

If you intend on giving a full presentation, the City Clerk's office has asked that it be submitted by tomorrow morning at the latest since it has to be approved prior to the release of the agenda. Please let me know if you have any

CITY OF GOLETA

NOTICE OF CITY COUNCIL PUBLIC HEARING
(Electronically and Telephonically)
September 7, 2021 at 5:30 P.M.

Appeal of Public Works Director's Approval of a Wireless Facility Encroachment Permit in the Public Right-of-Way at 293 Forest Drive

ATTENTION: The City Council Meeting will be presented virtually via GoToWebinar. The Governor's Executive Orders N-29-20 and N-08-21 suspend certain requirements of the Brown Act and authorizes local legislative bodies to hold public meetings via teleconferencing.

NOTICE IS HEREBY GIVEN that the Goleta City Council will conduct a public hearing to consider an appeal to the approval of a small cell wireless facility encroachment permit application. The date, time, and location of the City Council public hearing are set forth below. The agenda for the hearing will also be posted on the City website (www.cityofgoleta.org).

HEARING DATE/TIME:	**Tuesday, September 7, 2021 at 5:30 P.M.**
PLACE:	**Teleconference Meeting** - Given the local, state, and national state of emergency, this meeting will be a teleconferenced meeting (with detailed instructions for participation included on the posted agenda)

An application for a small cell wireless facility encroachment permit to install an antenna and associated facilities on a City-owned streetlight located in the public right-of-way in front of 293 Forest Drive, Goleta, California 93117 was approved by the Public Works Director on July 28, 2021 (Goleta Municipal Code, §§ 12.20.080). An appeal to the Public Works Director's approval of the permit was filed on July 30, 2021. The City Council will conduct a public hearing on the appeal of the Public Works Director's decision. The City Council's decision is de novo and will be final.

If a person wishes to challenge, in court, any action the City Council may take regarding the subject matter of the public hearing, then that person may be limited to raising only those issues raised at the subject public hearing or in written correspondence timely delivered to the City Clerk at, or prior to, the public hearing.

IN LIGHT OF THE CITY'S NEED TO HOLD PUBLIC MEETINGS ELECTRONICALLY AND TELEPHONICALLY DURING THE COVID-19 PANDEMIC, written comments may be submitted via email to Deborah Lopez, City Clerk e-mail: cityclerkgroup@cityofgoleta.org or by electronic means during the Public Hearing (date and time noted above), provided they are received prior to the conclusion of the public comment portion of the Public Hearing. Instructions on how to submit written comments during the hearing will be available on the City's website: https://www.cityofgoleta.org/i-want-to/news-and-updates/government-meeting-agendas-and-videos.

FOR ADDITIONAL INFORMATION: For further information on the permit application being appealed and for inquiries in Spanish, please contact Melissa Angeles, Assistant Engineer, at 805-690-5122 or mangeles@cityofgoleta.org. Staff reports and documents will be posted approximately 72 hours before the hearing on the City's website at www.cityofgoleta.org.

SIMULTANEOUS INTERPRETATION. If you require interpretation services for the hearing, please contact the City Clerk's office at (805) 961-7505 or via email to: cityclerkgroup@cityofgoleta.org at least 72 hours prior to the hearing. Please specify the language for which you require interpretation. Notification at least 72 hours prior to the meeting helps to ensure that reasonable arrangements can be made to provide accessibility to the hearing.

Note: In compliance with the Americans with Disabilities Act, if you need assistance to participate in the hearing, please contact the City Clerk's Office at (805) 961-7505. Notification at least 72 hours prior to the hearing will enable City staff to make reasonable arrangements.

Mailing Date: August 30, 2021

RE: Sept 7 Hearing Dave G - Thank You, and some easy questions

From: Melissa Angeles <mangeles@cityofgoleta.org>
To: C. Dave G <cdg55@earthlink.net>
Cc: bgaughenmu@aol.com <bgaughenmu@aol.com>
Subject: RE: Sept 7 Hearing Dave G - Thank You, and some easy questions
Date: Sep 2, 2021 2:57 PM
Attachments: image001.png

Hi Dave,

The decision will be by simple majority. You can submit your concerns to the Council via the cityclerkgroup@cityofgoleta.org email address so that they can be distributed to the Council as public comment prior to the hearing taking place.

Thank you,

Melissa Angeles
Assistant Engineer
Department of Public Works
City of Goleta | 130 Cremona Drive, Suite B | Goleta, CA 93117
P: 805.690.5122 | F: 805.685.2635
mangeles@cityofgoleta.org

From: C. Dave G <cdg55@earthlink.net>
Sent: Wednesday, September 01, 2021 11:37 AM
To: Melissa Angeles <mangeles@cityofgoleta.org>
Cc: cdg55@earthlink.net; bgaughenmu@aol.com
Subject: Re: Sept 7 Hearing Dave G - Thank You, and some easy questions

Thank you Melissa and I would not have gotten this far without all of your excellent help!

At the hearing, how is the decision by the Council Members and the Mayor tallied to grant or deny my appeal? Is it by unanimous consent or by a simple majority, and will this vote occur immediately after the hearing or at some later date?

Thanks also for the additional clarity that you provided below. Since I'm prohibited from submitting my documented verbal presentation after the hearing, I sure hope that I'll be able to email my latest concerns to the Mayor and Council Members prior to the hearing. Is this the correct procedure, and would I need to individually email each person in advance of the hearing or if I sent you my final version would you then be able to forward this to each person? If I need to email each member and the mayor personally, could you please provide each of their email addresses.

Thanks again, dave

EXHIBIT B

EXHIBIT B

IN THE SUPREME COURT OF CALIFORNIA

T-MOBILE WEST LLC et al.,
Plaintiffs and Appellants,
v.
CITY AND COUNTY OF SAN FRANCISCO et al.,
Defendants and Respondents.

S238001

First Appellate District, Division Five
A144252

San Francisco City and County Superior Court
CGC-11-510703

April 4, 2019

Justice Corrigan authored the opinion of the court, in which Chief Justice Cantil-Sakauye and Justices Chin, Liu, Cuéllar, Kruger, and Groban concurred.

T-MOBILE WEST LLC v. CITY AND COUNTY OF SAN FRANCISCO

S238001

Opinion of the Court by Corrigan, J.

By ordinance the City and County of San Francisco (the City) requires wireless telephone service companies to obtain permits to install and maintain lines and equipment in public rights-of-way. Some permits will not issue unless the application conforms to the City's established aesthetic guidelines. Plaintiffs assert a facial challenge urging that (1) the ordinance is preempted by state law and (2) even if not preempted, the ordinance violates a state statute. The trial court and the Court of Appeal rejected both arguments. We do likewise.

I. BACKGROUND

Plaintiffs are telecommunications companies. They install and operate wireless equipment throughout the City, including on utility poles located along public roads and highways.[1] In January 2011, the City adopted ordinance No.

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[1] The plaintiffs named in the operative complaint were T-Mobile West Corporation, NextG Networks of California, Inc., and ExteNet Systems (California) LLC. T-Mobile West Corporation has also appeared in this litigation as T-Mobile West LLC. NextG Networks of California, Inc. has also appeared as Crown Castle NG West LLC and Crown Castle NG West Inc. (*T-Mobile West LLC v. City and County of San Francisco* (2016) 3 Cal.App.5th 334, 340, fn. 3 (*T-Mobile West*).)

12-11 (the Ordinance),[2] which requires "any Person seeking to construct, install, or maintain a Personal Wireless Service Facility in the Public Rights-of-Way to obtain" a permit. (S.F. Pub. Works Code, art. 25, § 1500, subd. (a).) In adopting the Ordinance, the board of supervisors noted that the City "is widely recognized to be one of the world's most beautiful cities," which is vital to its tourist industry and an important reason that residents and businesses locate there. Due to growing demand, requests from the wireless industry to place equipment on utility poles had increased. The board opined that the City needed to regulate the placement of this equipment to prevent installation in ways or locations "that will diminish the City's beauty." The board acknowledged that telephone corporations have a right, under state law, "to use the public rights-of-way to install and maintain 'telephone lines' and related facilities required to provide telephone service." But it asserted that local governments may "enact laws that limit the intrusive effect of these lines and facilities."

The Ordinance specifies areas designated for heightened aesthetic review. (See S.F. Pub. Works Code, art. 25, § 1502.) These include historic districts and areas that have " 'good' " or " 'excellent' " views or are adjacent to parks or open spaces.

Not all plaintiffs install and operate the same equipment, but there is no dispute that they are all " 'telephone corporation[s],' " as that term is defined by Public Utilities Code section 234, nor that all of the equipment in question fits within the definition of " 'telephone line' " in Public Utilities Code section 233. All unspecified statutory references are to the Public Utilities Code.

[2] The Ordinance was codified as article 25 of the San Francisco Public Works Code.

(*Ibid.*) The Ordinance establishes various standards of aesthetic compatibility for wireless equipment. In historic districts, for example, installation may only be approved if the City's planning department determines that it would not "significantly degrade the aesthetic attributes that were the basis for the special designation" of the building or district. (S.F. Pub. Works Code, art. 25, § 1502; see also *id.*, §§ 1508, 1509, 1510.) In "view" districts, proposed installation may not "significantly impair" the protected views.[3] (S.F. Pub. Works Code, art. 25, § 1502.)

Plaintiffs sought declaratory and injunctive relief. The operative complaint alleged five causes of action, only one of which is at issue.[4] It alleges the Ordinance and implementing regulations are preempted by section 7901 and violate section 7901.1. Under section 7901, "telephone corporations may construct . . . telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt

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[3] The Court of Appeal discussed other provisions of a previous enactment of the Ordinance that are not in issue here. (*T-Mobile West*, *supra*, 3 Cal.App.5th at pp. 340-341.) We review the current version of the Ordinance. (*Kash Enterprises, Inc. v. City of Los Angeles* (1977) 19 Cal.3d 294, 306, fn. 6.)

[4] Plaintiffs' first, second, fourth, and fifth causes of action are not before us. The first cause of action was resolved in plaintiffs' favor by summary adjudication. The second was dismissed by plaintiffs before trial. The fourth was resolved in City's favor by summary adjudication. And the fifth was resolved in plaintiffs' favor after trial.

the navigation of the waters."[5] According to plaintiffs, section 7901 preempted the Ordinance to the extent it allowed the City to condition permit approval on aesthetic considerations.

Section 7901.1 sets out the Legislature's intent, "consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed." (§ 7901.1, subd. (a).) But section 7901.1 also provides that, to be considered reasonable, the control exercised "shall, at a minimum, be applied to all entities in an equivalent manner." (§ 7901.1, subd. (b).) Plaintiffs alleged the Ordinance violated subdivision (b) of section 7901.1 by treating wireless providers differently from other telephone corporations.

The trial court ruled that section 7901 did not preempt the challenged portions of the Ordinance and rejected plaintiffs' claim that it violated section 7901.1. The Court of Appeal affirmed. (*T-Mobile West*, *supra*, 3 Cal.App.5th at pp. 339, 359.)

II. DISCUSSION

A. Section 7901 Does Not Preempt the Ordinance

1. Preemption Principles

Under the California Constitution, cities and counties "may make and enforce within [their] limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) General laws are those that apply statewide and deal with matters of statewide

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[5] This case does not involve the construction or installation of lines or equipment across state waters. Thus, we limit our discussion to lines installed along public roads and highways, which we refer to collectively as public roads.

concern. (*Eastlick v. City of Los Angeles* (1947) 29 Cal.2d 661, 665.) The "inherent local police power includes broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders." (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 738 (*City of Riverside*); see also *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1151 (*Big Creek Lumber*).) The local police power generally includes the authority to establish aesthetic conditions for land use. (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 886; *Disney v. City of Concord* (2011) 194 Cal.App.4th 1410, 1416.)

"[L]ocal legislation that conflicts with state law is void." (*City of Riverside*, *supra*, 56 Cal.4th at p. 743, citing *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.) A conflict exists when the local legislation " ' " 'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.' " ' " (*Sherwin-Williams*, at p. 897.) Local legislation duplicates general law if both enactments are coextensive. (*Ibid.*, citing *In re Portnoy* (1942) 21 Cal.2d 237, 240.) Local legislation is contradictory when it is inimical to general law. (*Sherwin-Williams*, at p. 898, citing *Ex parte Daniels* (1920) 183 Cal. 636, 641-648.) State law fully occupies a field "when the Legislature 'expressly manifest[s]' its intent to occupy the legal area or when the Legislature 'impliedly' occupies the field." (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068 (*O'Connell*), citing *Sherwin-Williams*, at p. 898.)

The party claiming preemption has the burden of proof. (*Big Creek Lumber*, *supra*, 38 Cal.4th at p. 1149.) "[W]hen local government regulates in an area over which it traditionally has

exercised control, such as the location of particular land uses, California courts will presume" the regulation is not preempted unless there is a clear indication of preemptive intent. (*Ibid*., citing *IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 93.) Ruling on a facial challenge to a local ordinance, the court considers the text of the measure itself, not its application to any particular circumstances or individual. (*San Francisco Apartment Assn. v. City and County of San Francisco* (2016) 3 Cal.App.5th 463, 487, citing *Pieri v. City and County of San Francisco* (2006) 137 Cal.App.4th 886, 894, which in turn cites *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.)[6]

2. Analysis

Section 7901 provides that telephone corporations may construct lines and erect equipment along public roads in ways and locations that do not "incommode the public use of the road." We review the statute's language to determine the scope of the rights it grants to telephone corporations and whether, by

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[6] There is some uncertainty regarding the standard for facial constitutional challenges to statutes and local ordinances. (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 218.) Some cases have held that legislation is invalid if it conflicts in the generality or great majority of cases. (*Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1126.) Others have articulated a stricter standard, holding that legislation is invalid only if it presents a total and fatal conflict with applicable constitutional prohibitions. (*Ibid*.; see also *Tobe v. City of Santa Ana*, *supra*, 9 Cal.4th at p. 1084.) We need not settle on a precise formulation of the applicable standard because, as explained below, we find no inherent conflict between the Ordinance and section 7901. Thus, plaintiffs' claim fails under any articulated standard.

granting those rights, the Legislature intended to preempt local regulation based on aesthetic considerations. These questions of law are subject to de novo review. (*Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 724; *Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1089, fn. 10.)

The parties agree that section 7901 grants telephone corporations a statewide franchise to engage in the telecommunications business.[7] (See *Western Union Tel. Co. v. Visalia* (1906) 149 Cal. 744, 750 (*Visalia*).) Thus, a local government cannot insist that a telephone corporation obtain a *local* franchise to operate within its jurisdiction. (See *Visalia*, at p. 751; see also *Pac. Tel. & Tel. Co. v. City & County of S. F.* (1959) 51 Cal.2d 766, 771 (*Pacific Telephone I*).) The parties also agree that the franchise rights conferred are limited by the prohibition against incommoding the public use of roads, and that local governments have authority to prevent those impacts.

Plaintiffs argue section 7901 grants them more than the mere right to operate. In their view, section 7901 grants them the right to construct lines and erect equipment along public roads so long as they do not obstruct the path of travel. The necessary corollary to this right is that local governments cannot prevent the construction of lines and equipment unless the installation of the facilities will obstruct the path of travel. Plaintiffs urge that the Legislature enacted section 7901 to promote technological advancement and ensure a functioning, statewide telecommunications system. In light of those

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[7] In this context, a franchise is a "government-conferred right or privilege to engage in specific business or to exercise corporate powers." (Black's Law Dict. (10th ed. 2014) p. 772, col. 2.)

objectives, they contend that their right to construct telephone lines must be construed broadly, and local authority limited to preventing roadway obstructions.

Preliminarily, plaintiffs' argument appears to rest on the premise that the City only has the power to regulate telephone line construction based on aesthetic considerations if section 7901's incommode clause can be read to accommodate that power. That premise is flawed. As mentioned, 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. Under our preemption cases, the question is not whether the incommode clause can be read to permit the City's exercise of power under the Ordinance. Rather, it is whether section 7901 divests the City of that power.

We also disagree with plaintiffs' contention that section 7901's incommode clause limits their right to construct 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

[8] All Internet citations in this opinion are archived by year, docket number, and case name at <http://www.courts.ca.gov/38324.htm>.

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.websterdictionary1828.com/Dictionary/incommode> [as of April 3, 2019].) For our purposes, it is sufficient to state that the meaning of incommode has not changed meaningfully since section 7901's enactment.[9] 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 incommoded 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.

Plaintiffs assert the case law supports their statutory construction. For example, *City of Petaluma v. Pac. Tel. & Tel. Co.* (1955) 44 Cal.2d 284 (*Petaluma*) stated that the "franchise tendered by [section 7901] . . . [is] superior to and free from any grant made by a subordinate legislative body." (*Id.* at p. 287; see also *Pacific Telephone I*, *supra*, 51 Cal.2d at p. 770; *County of Inyo v. Hess* (1921) 53 Cal.App. 415, 425 (*County of Inyo*).)

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[9] The predecessor of section 7901, Civil Code section 536, was first enacted in 1872 as part of the original Civil Code. (*Anderson v. Time Warner Telecom of California* (2005) 129 Cal.App.4th 411, 419, citing *Sunset Tel. and Tel. Co. v. Pasadena* (1911) 161 Cal. 265, 273.) Civil Code section 536 contained the "incommode" language, as did its predecessor, which was adopted as part of the Statutes of California in 1850. (Stats. 1850, ch. 128, § 150, p. 369.)

Similarly, *Pac. Tel. & Tel. Co. v. City of Los Angeles* (1955) 44 Cal.2d 272 (*City of Los Angeles*), held that the "authority to grant a franchise to engage in the telephone business resides in the state, and the city is without power to require a telephone company to obtain such a franchise unless the right to do so has been delegated to it by the state." (*Id.* at pp. 279-280.)

But these cases do not go as far as plaintiffs suggest. Each addressed the question whether a telephone corporation can be required to obtain a local franchise to operate. (See *Pacific Telephone I*, *supra*, 51 Cal.2d at p. 767; *Petaluma*, *supra*, 44 Cal.2d at p. 285; *City of Los Angeles*, *supra*, 44 Cal. 2d at p. 276; *County of Inyo*, *supra*, 53 Cal.App. at p. 425.) None considered the distinct question whether a local government can condition permit approval on aesthetic or other considerations that arise under the local police power. A permit is, of course, different from a franchise. The distinction may be best understood by considering the effect of the denial of either. The denial of a franchise would completely bar a telephone corporation from operating within a city. The denial of a permit, on the other hand, would simply prevent construction of lines in the proposed manner at the proposed location.

A few published decisions have tangentially addressed the scope of the inherent local police power to regulate the manner and location of telephone line installations. Those cases cut against plaintiffs' proposed construction.

In *Pacific Tel. & Tel. Co. v. City & County of San Francisco* (1961) 197 Cal.App.2d 133 (*Pacific Telephone II*), the City argued it could require a telephone corporation to obtain a local franchise to operate within its jurisdiction because the power to grant franchises fell within its police power. (*Id.* at p. 152.) The

court rejected the City's argument, reasoning that the phrase " 'police power' has two meanings, 'a comprehensive one embracing in substance the whole field of state authority and the other a narrower one including only state power to deal with the health, safety and morals of the people.' " (*Ibid.*) "Where a corporation has a state franchise to use a city's streets, the city derives its rights to regulate the particular location and manner of installation of the franchise holder's facilities from the narrower sense of the police power. Thus, because of the state concern in communications, the state has retained to itself the broader police *power of granting franchises*, leaving to the municipalities the narrower police *power of controlling location and manner of installation*." (*Ibid.*, italics added.)

This court, too, has distinguished the power to grant franchises from the power to regulate the location and manner of installation by permit. In *Visalia*, *supra*, 149 Cal. 744, the city adopted an ordinance that (i) authorized a telephone company to erect telegraph poles and wires on city streets, (ii) approved the location of poles and wires then in use, (iii) prohibited poles and wires from interfering with travel on city streets, and (iv) required all poles to be of a uniform height. (*Id.* at pp. 747-748.) The city asserted its ordinance operated to grant the company a " 'franchise,' " and then attempted to assess a tax on the franchise. (*Id.* at p. 745.) The company challenged the assessment. It argued that, because the ordinance did not create a franchise, the tax assessment was invalid. (*Id.* at pp. 745-746.) We concluded the ordinance did not create a local franchise. (*Id.* at p. 750.) By virtue of its state franchise, "the appellant had the right, of which the city could not deprive it, to construct and operate its lines along the streets of the city." (*Ibid.*) "[N]evertheless it could not maintain its poles and wires

in such a manner as to unreasonably obstruct and interfere with ordinary travel; and the city had the authority, under its police power, to so regulate the manner of plaintiff's placing and maintaining its poles and wires *as to prevent unreasonable obstruction of travel*." (*Id.* at pp. 750-751, italics added.) "[T]he ordinance in question was not intended to be anything more . . . than the exercise of this authority to regulate." (*Id.* at p. 751)[10]

Plaintiffs argue the italicized language above shows that local regulatory authority is limited to preventing travel obstructions. But the quoted language is merely descriptive, not prescriptive. *Visalia* involved an ordinance that specifically prohibited interference with travel on city streets, and the court was simply describing the ordinance before it, not establishing the bounds of local government regulatory authority. Moreover, the *Visalia* court did not question the propriety of the ordinance's requirement that all poles be a uniform height, nor suggest that requirement was related to preventing obstructions to travel. Thus, *Visalia* does not support the conclusion that section 7901 was meant to restrict local government power in the manner plaintiffs suggest. The "right of telephone corporations to construct telephone lines in public rights-of-way is not absolute." (*City of Huntington Beach v. Public Utilities Com.* (2013) 214 Cal.App.4th 566, 590 (*City of Huntington Beach*).) Instead, it is a " 'limited right to use the highways . . . only to the extent necessary for the furnishing of services to the

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[10] *Visalia* interpreted a predecessor statute, Civil Code section 536, which was repealed in 1951 and reenacted as section 7901. (Stats. 1951, ch. 764, pp. 2025, 2194, 2258 [reenacting Civ. Code, former § 536 as Pub. Util. Code, § 7901].)

public.' " (*Ibid*., quoting *County of L. A. v. Southern Cal. Tel. Co.* (1948) 32 Cal.2d 378, 387; see also *Pacific Tel. & Tel. Co. v. Redevelopment Agency* (1977) 75 Cal.App.3d 957, 963.)[11]

Having delineated the right granted by section 7901, we now turn to its preemptive sweep. Because the location and manner of line installation are areas over which local governments traditionally exercise control (*Visalia*, *supra*, 149 Cal. at pp. 750-751), we presume the ordinance is not preempted absent a clear indication of preemptive intent. (*Big Creek Lumber*, *supra*, 38 Cal.4th at p. 1149.) Plaintiffs put forth a number of preemption theories. They argue the Ordinance is contradictory to section 7901. At oral argument, they asserted the Legislature occupied the field with section 7901, the terms of which indicate that a paramount state concern will not tolerate additional local action. And in their briefs, many of plaintiffs' arguments were focused on what has been labeled, in the federal context, as obstacle preemption.

"The 'contradictory and inimical' form of preemption does not apply unless the ordinance directly requires what the state

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[11] The Ninth Circuit has addressed this issue twice, coming to a different conclusion each time. In *Sprint PCS Assets v. City of Palos Verdes Estates* (9th Cir. 2009) 583 F.3d 716, the Ninth Circuit found no conflict between section 7901 and a local ordinance conditioning permit approval on aesthetic considerations. (*Palos Verdes Estates*, at pp. 721-723.) In an unpublished decision issued three years earlier, the Ninth Circuit had reached the opposite conclusion. (*Sprint PCS v. La Cañada Flintridge* (9th Cir. 2006) 182 Fed.Appx. 688, 689.) Due to its unpublished status, the *La Cañada Flintridge* decision carries no precedential value. (*T-Mobile West*, *supra*, 3 Cal.App.5th at p. 355, citing *Bowen v. Ziasun Technologies, Inc.* (2004) 116 Cal.App.4th 777, 787, fn. 6.)

statute forbids or prohibits what the state enactment demands." (*City of Riverside*, *supra*, 56 Cal.4th at p. 743, citing *Big Creek Lumber*, *supra*, 38 Cal.4th at p. 1161.) "[N]o inimical conflict will be found where it is reasonably possible to comply with both the state and local laws." (*City of Riverside*, at p. 743.) As noted, section 7901 grants telephone corporations the right to install lines on public roads without obtaining a local franchise. The Ordinance does not require plaintiffs to obtain a local franchise to operate within the City. Nor does it allow certain companies to use public roads while excluding others. Any wireless provider may construct telephone lines on the City's public roads so long as it obtains a permit, which may sometimes be conditioned on aesthetic approval. Because section 7901 says nothing about the aesthetics or appearance of telephone lines, the Ordinance is not inimical to the statute.

The argument that the Legislature occupied the field by implication likewise fails. Field preemption generally exists where the Legislature has comprehensively regulated in an area, leaving no room for additional local action. (See, e.g., *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1252-1257; *O'Connell*, *supra*, 41 Cal.4th 1061, 1068-1074.) Unlike the statutory schemes addressed in *American Financial* and *O'Connell*, section 7901 does not comprehensively regulate telephone line installation or provide a general regulatory scheme. On the contrary, section 7901 consists of a single sentence. Moreover, although the granting of telephone franchises has been deemed a matter of statewide concern (*Pacific Telephone I*, *supra*, 51 Cal.2d at p. 774; *Pacific Telephone II*, *supra*, 197 Cal.App.2d at p. 152), the power to regulate the location and manner of line installation is generally a matter left to local regulation. The City is not attempting to

regulate in an area over which the state has traditionally exercised control. Instead, this is an area of regulation in which there are " 'significant local interest[s] to be served that may differ from one locality to another.' " (*Big Creek Lumber*, *supra*, 38 Cal.4th at p. 1149.)

City of Riverside, *supra*, 56 Cal.4th 729, is instructive. There, the question was whether state statutes designed to enhance patient and caregiver access to medical marijuana preempted a local zoning law banning dispensaries within a city's limits. (*Id.* at pp. 737, 739-740.) An early enactment had declared that physicians could not be punished for recommending medical marijuana and that state statutes prohibiting possession and cultivation of marijuana would not apply to patients or caregivers. (*Id.* at p. 744.) A subsequent enactment established a program for issuing medical marijuana identification cards and provided that a cardholder could not be arrested for possession or cultivation in permitted amounts. (*Id.* at p. 745.) We concluded that the "narrow reach of these statutes" (*ibid.*) showed they did not "expressly or impliedly preempt [the city's] zoning provisions" (*id.* at p. 752).

Preemption was not implied because the Legislature had not tried "to fully occupy the field of medical marijuana regulation as a matter of statewide concern, or to partially occupy this field under circumstances indicating that further local regulation will not be tolerated." (*City of Riverside*, *supra*, 56 Cal.4th at p. 755.) While state statutes took "limited steps toward recognizing marijuana as a medicine," they described "no comprehensive scheme or system for authorizing, controlling, or regulating the processing and distribution of marijuana for medical purposes, such that no room remains for local action." (*Ibid.*) Moreover, there were significant local

interests that could vary by jurisdiction, giving rise to a presumption against preemption. (*Ibid.*)

Similarly, here, the Legislature has not adopted a comprehensive regulatory scheme. Instead, it has taken the limited step of guaranteeing that telephone corporations need not secure a local franchise to operate in the state or to construct local lines and equipment. Moreover, the statute leaves room for additional local action and there are significant local interests relating to road use that may vary by jurisdiction.

Finally, plaintiffs' briefing raises arguments that sound in the theory of obstacle preemption. Under that theory, a local law would be displaced if it hinders the accomplishment of the purposes behind a state law. This court has never said explicitly whether state preemption principles are coextensive with the developed federal conception of obstacle preemption. (See, e.g., *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 867-868; cf. *City of Riverside*, *supra*, 56 Cal.4th at pp. 763-765 (conc. opn. of Liu, J.).) But assuming for the sake of argument that the theory applies, we conclude there is no obstacle preemption here.

The gist of plaintiffs' argument is that section 7901's purpose is to encourage technological advancement in the state's telecommunications networks and that, because enforcement of the Ordinance *could* hinder that purpose, the Ordinance is preempted. But no legislation pursues its objectives at all costs. (*Pension Ben. Guar. Corp. v. LTV Corp.* (1990) 496 U.S. 633, 646-647.) Moreover, the Legislature made clear that the goal of technological advancement is not paramount to all others by including the incommode clause in section 7901, thereby leaving room for local regulation of telephone line installation.

Finally, we think it appropriate to consider the Public Utilities Commission's (PUC) understanding of the statutory scheme. In recognition of its expertise, we have consistently accorded deference to the PUC's views concerning utilities regulation. The PUC's "interpretation of the Public Utility Code 'should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language.' " (*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 796, quoting *Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d 406, 410-411.) Here, the PUC has made determinations about the scope of permissible regulation that are on point.

The state Constitution vests principal regulatory authority over utilities with the PUC, but carves out an ongoing area of municipal control. (Cal. Const., art. XII, § 8.) A company seeking to build under section 7901 must approach the PUC and obtain a certificate of public necessity. (§ 1001; see *City of Huntington Beach*, *supra*, 214 Cal.App.4th at p. 585.) The certificate is not alone sufficient; a utility will still be subject to local control in carrying out the construction. Municipalities may surrender to the PUC regulation of a utility's relations with its customers (§ 2901), but they are forbidden from yielding to the PUC their police powers to protect the public from the adverse impacts of utilities operations (§ 2902).

Consistent with these statutes, the PUC's default policy is one of deference to municipalities in matters concerning the design and location of wireless facilities. In a 1996 opinion adopting the general order governing wireless facility construction, the PUC states the general order "recognize[s] that primary authority regarding cell siting issues should continue to be deferred to local authorities. . . . The [PUC's] role continues to be that of the agency of last resort, intervening only

when a utility contends that local actions impede statewide goals . . . ." (*Re Siting and Environmental Review of Cellular Mobile Radiotelephone Utility Facilities* (1996) 66 Cal.P.U.C.2d 257, 260; see also *Re Competition for Local Exchange Service* (1998) 82 Cal.P.U.C.2d 510, 544.)[12] The order itself "acknowledges that local citizens and local government are often in a better position than the [PUC] to measure local impact and to identify alternative sites. Accordingly, the [PUC] will generally defer to local governments to regulate the location and design of cell sites . . . ." (PUC, General order No. 159-A (1996) p. 3 (General Order 159A), available at <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/611.PDF> [as of April 3, 2019].)

The exception to this default policy is telling: the PUC reserves the right to preempt local decisions about specific sites "when there is a clear conflict with the [PUC's] goals and/or statewide interests." (General Order 159A, *supra*, at p. 3.) In other words, generally the PUC will not object to municipalities dictating alternate locations based on local impacts,[13] but it will step in if statewide goals such as "high quality, reliable and widespread cellular services to state residents" are threatened.

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12 In its 1996 opinion adopting general order No. 159-A, the PUC left implicit the portions of the statutory scheme it was applying. In its 1998 opinion, the PUC clarified the respective regulatory spheres in response to arguments based on sections 2902, 7901, 7901.1 and the constitutional provisions allocating authority to cities and the PUC. (See *Re Competition for Local Exchange Service*, *supra*, 82 Cal.P.U.C.2d at pp. 543–544.)

13 Among the PUC's express priorities regarding wireless facility construction is that "the public health, safety, welfare, and zoning concerns of local government are addressed." (General Order 159A, *supra*, at p. 3.)

(General Order 159A, at p. 3.) Contrary to plaintiffs' view of the respective spheres of state and local authority, the PUC's approach does not restrict municipalities to judging only whether a requested permit would impede traffic. Instead, the PUC accords local governments the full scope of their ordinary police powers unless the exercise of those powers would undermine state policies.

Plaintiffs argue our construction of section 7901, and a decision upholding the City's authority to enforce the Ordinance, will "hinder the roll-out of advanced services needed to upgrade networks [and] promote universal broadband" and will "stymie the deployment of 5G networks, leaving California unable to meet the growing need for wireless capacity created by the proliferation of . . . connected devices." This argument is premised on a hypothetical future harm that is not cognizable in a facial challenge. (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180; see also *Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 267.)

In sum, neither the plain language of section 7901 nor the manner in which it has been interpreted by courts and the PUC supports plaintiffs' argument that the Legislature intended to preempt local regulation based on aesthetic considerations. The statute and the ordinance can operate in harmony. Section 7901 ensures that telephone companies are not required to obtain a local franchise, while the Ordinance ensures that lines and equipment will not unreasonably incommode public road use.[14]

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[14] We dispose here only of plaintiffs' facial challenge and express no opinion as to the Ordinance's application. We note, however, that plaintiffs seeking to challenge specific

B. The Ordinance Does Not Violate Section 7901.1

Plaintiffs next contend that, even if not preempted, the Ordinance violates section 7901.1 by singling out wireless telephone corporations for regulation. Section 7901.1 provides in relevant part that, consistent with section 7901, municipalities may "exercise reasonable control as to the time, place, and manner" in which roads are "*accessed*," and that the control must "*be applied to all entities in an equivalent manner*." (§ 7901, subds. (a), (b), italics added.)

Before trial, the parties stipulated to the following facts. First, that the City requires all utility and telephone corporations, both wireless and non-wireless, to obtain temporary occupancy permits to "access" public rights-of-way during the *initial* construction and installation of equipment facilities. These permits are not subject to aesthetic review. Second, that the City requires only wireless telephone corporations to obtain site-specific permits, conditioned on aesthetic approval, for the *ongoing* occupation and maintenance

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applications have both state and federal remedies. Under state law, a utility could seek an order from the PUC preempting a city's decision. (General Order 159A, *supra*, at p. 6.) Thus, cities are prohibited from using their powers to frustrate the larger intent of section 7901. (*Pacific Telephone II*, *supra*, 197 Cal.App.2d at p. 146.) Under federal law, Congress generally has left in place local authority over "the placement, construction, and modification of personal wireless service facilities" (47 U.S.C. § 332(c)(7)(A)), but it has carved out several exceptions. Among these, a city may not unduly delay decisions (47 U.S.C. § 332(c)(7)(B)(ii)) and may not adopt regulations so onerous as to "prohibit or have the effect of prohibiting the provision of wireless services" (47 U.S.C. § 332(c)(7)(B)(i)(II)). If a city does so, a wireless company may sue. (*Sprint PCS Assets v. City of Palos Verdes Estates*, *supra*, 583 F.3d at p. 725.)

of equipment facilities in public rights-of-way. The trial court and the Court of Appeal held that section 7901.1 only applies to *temporary* access to public rights-of-way, during initial construction and installation. Because the parties had stipulated that the City treats all companies equally in that respect, the lower courts found no violation of section 7901.1.

Plaintiffs argue the plain language of section 7901.1 does not limit its application to temporary access to public rights-of-way. Rather, the introductory phrase, "consistent with section 7901," demonstrates that section 7901.1 applies to both short- and long-term access. Plaintiffs also suggest that the legislative history of section 7901.1 supports their position, and that the lower courts' interpretation of section 7901.1 "results in an incoherent approach to municipal authority."

Plaintiffs' arguments are unpersuasive. Section 7901.1 allows cities to control the time, place, and manner in which roads are "accessed." (§ 7901.1, subd. (a).) As the competing arguments demonstrate, the "plain meaning of the word 'accessed' is ambiguous." (*T-Mobile West*, *supra*, 3 Cal.App.5th at p. 358.) It could refer only to short-term access, during the initial installation and construction of a telephone equipment facility. But it could also refer to the longer term occupation of public rights-of-way with telephone equipment. (*Ibid*.) Though it would be odd for a statute authorizing local control over *permanent* occupations to specifically allow for control over the "time" of such occupations, the statute's plain language does not render plaintiffs' construction totally implausible.

However, the legislative history shows that section 7901.1 only deals with temporary access to public rights-of-way. "This bill is intended to bolster the cities['] abilities with regard to

construction management . . . ." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 621 (1995–1996 Reg. Sess.) as amended May 3, 1995, p. 3, italics added.) Before section 7901.1's enactment, telephone companies had been taking the "extreme" position, based on their statewide franchises, that "cities [had] absolutely no ability to control construction." (Assem. Com. on Utilities and Commerce, Rep. on Sen. Bill No. 621 (1995–1996 Reg. Sess.) as amended July 7, 1995, p. 2.) Section 7901.1 was enacted to "send a message to telephone corporations that cities have authority to manage their construction, without jeopardizing the telephone [corporations'] statewide franchise." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 621 (1995–1996 Reg. Sess.) as amended May 3, 1995, p. 3.) Under section 7901.1, cities would be able to "plan maintenance programs, protect public safety, minimize public inconvenience, and ensure adherence to sound construction practices." (Assem. Com. on Utilities and Commerce, Rep. on Sen. Bill No. 621 (1995–1996 Reg. Sess.) as amended July 7, 1995, p. 2.)

To accept plaintiffs' construction of section 7901.1, we would have to ignore this legislative history. (*T-Mobile West*, *supra*, 3 Cal.App.5th at p. 358.) Contrary to plaintiffs' argument, construing section 7901.1 in this manner does not render the scheme incoherent. It is eminently reasonable that a local government may: (1) control the time, place, and manner of temporary access to public roads during construction of equipment facilities; and (2) regulate other, longer term impacts that might incommode public road use under section 7901. Thus, we hold that section 7901.1 only applies to temporary access during construction and installation of telephone lines

and equipment. Because the City treats all entities similarly in that regard, there is no section 7901.1 violation.

III. DISPOSITION

The judgment of the Court of Appeal is affirmed.

CORRIGAN, J.

We Concur:

CANTIL-SAKAUYE, C. J.
CHIN, J.
LIU, J.
CUÉLLAR, J.
KRUGER, J.
GROBAN, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion T-Mobile West LLC v. City and County of San Francisco

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Unpublished Opinion
Original Appeal
Original Proceeding
Review Granted XXX 3 Cal.App.5th 334
Rehearing Granted

Opinion No. S238001
Date Filed: April 4, 2019

Court: Superior
County: San Francisco
Judge: James J. McBride

Counsel:

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Wilkinson Barker Knauer, Christine M. Crowe and Craig E. Gilmore for CTIA-The Wireless Association and the Wireless Infrastructure Association as Amici Curiae on behalf of Plaintiffs and Appellants.

Dennis J. Herrera, City Attorney, Yvonne R. Meré, Chief of Complex and Affirmative Litigation, Christine Van Aken, Chief of Appellate Litigation, William K. Sanders, Erin B. Bernstein and Jeremy M. Goldman, Deputy City Attorneys, for Defendants and Respondents.

Rutan & Tucker, Jeffrey T. Melching and Ajit Singh Thind for League of California Cities, California State Association of Counties, International Municipal Lawyers Association and the States of California and Nevada Chapter of the National Association of Telecommunications Officers and Advisors as Amici Curiae on behalf of Defendants and Respondents.

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Herrera statement on California Supreme Court upholding San Francisco's wireless regulations

April 4, 2019

San Francisco's approach strikes the right balance

SAN FRANCISCO (April 4, 2019) — City Attorney Dennis Herrera issued the following statement regarding today's decision by the California Supreme Court affirming lower court decisions and rejecting an appeal by T-Mobile West LLC about San Francisco's permitting process for installing wireless equipment:

> *"I'm pleased the California Supreme Court has agreed that San*

> *Francisco's common-sense regulations don't conflict with state law. Every court that has looked at this case has come to the same conclusion.*
>
> *Private companies don't have free rein when it comes to using a public resource. San Francisco's approach strikes the right balance. It allows for innovation and improved technology while ensuring that unsightly poles and equipment don't mar public views of the Painted Ladies or the Golden Gate Bridge. San Francisco doesn't prohibit this equipment from being installed. We're simply requiring companies to take reasonable steps to minimize the obtrusiveness of their installations. That's common sense.*
>
> *The industry's argument that these regulations would somehow curtail the rollout of 5G technology was a complete red herring. There was no evidence of that whatsoever. Residents do not have to choose between better wireless service or managing the appearance of their streets. They can have both."*

The case is: *T-Mobile West LLC et al. v. City and County of San Francisco et al.*, California Supreme Court No. S238001. Additional information on the San Francisco City Attorney's Office is available at: www.sfcityattorney.org

# # #

DEFENDING S.F. LAWS, LAND USE, NEIGHBORHOOD PROTECTION, NEWS

‹ Herrera, Walton introduce package of legislation to protect youth from e-cigarettes

› Herrera releases guidebook to help local governments promote safe and just communities

EXHIBIT C

EXHIBIT C

COVID-19 Resource Page

City of
LOS ALTOS

Resolution Denying an Appeal of New Cingular Wireless PCS, LLC dba AT&T Mobility and Denying the Applications for Proposed Wireless Installations at 12 Locations Listed Herein

Summary

A resolution to deny an appeal of New Cingular Wireless PCS, LLC dba AT&T Mobility and to deny the applications for proposed wireless installations at 12 locations listed herein

Ordinance/Resolution ID:

2019-52

Ordinance/Resolution Status:

Adopted

Adopted Date:

12/17/2019

File Attachments:

Resolution 2019-52

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RESOLUTION NO. 2019-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS TO DENY AN APPEAL OF NEW CINGULAR WIRELESS PCS, LLC DBA AT&T MOBILITY AND TO DENY THE APPLICATIONS FOR PROPOSED WIRELESS INSTALLATIONS AT 12 LOCATIONS LISTED HEREIN

WHEREAS, New Cingular Wireless PCS, LLC dba AT&T Mobility ("Applicant" or "AT&T") filed multiple wireless telecommunications facilities permit applications (the "Applications") to install wireless telecommunications facilities at various locations in Los Altos, CA:

Cell Nodes	Application No.	Location	Date Application Received
AT&T #1	SE19-00009	141 Almond Avenue	3/22/2019
AT&T #2	SE19-00003	687 Linden Avenue	3/22/2019
AT&T #3	SE19-00017	421 Valencia Drive	5/28/2019
AT&T #4	SE19-00004	33 Pine Lane	3/22/2019
AT&T #5	SE19-00010	49 San Juan Court	3/22/2019
AT&T #6	SE19-00011	791 Los Altos Avenue	3/22/2019
AT&T #7	SE19-00005	98 Eleanor Avenue	3/22/2019
AT&T #8	SE19-00006	182 Garland Way	3/22/2019
AT&T #9	SE19-00012	491 Patrick Way	3/22/2019
AT&T #10	SE19-00013	300 Los Altos Avenue	3/22/2019
AT&T #11	SE19-00007	130 Los Altos Avenue	3/22/2019
AT&T #12	SE19-00008	356 Blue Oak Lane	3/22/2019

; and

WHEREAS, on September 17, 2019, the City Manager issued decisions denying the Applications in the form of denial letters; and

WHEREAS, the Applicant submitted appeals of the City Manager's Decisions by letters dated September 20, 2019 (the "Appeal Letters"); and

WHEREAS, the Applicant submitted additional materials on October 28, 2019 in support of its appeal; and

WHEREAS, on October 29, 2019 a public hearing was opened by the City of Los Altos (the "City") City Council to consider the Applicant's appeal of the City Manager's Decision regarding the Application and was continued to a later date, with the verbal agreement of the Applicant to extend the applicable FCC shot clock, and later confirmed in writing to extend the time for final action to December 31, 2019; and

WHEREAS, on November 25, 2019, the City sent a Request for Additional Information letter to AT&T detailing the required application content that AT&T had not yet provided related to radiofrequency emissions documents and an acoustic analysis report; and

WHEREAS, on December 4, 2019, the City received the radiofrequency emissions documents and the acoustic analysis from AT&T; and

WHEREAS, on December 17, 2019, a public hearing was held by the City of Los Altos City Council to consider the Applicant's appeals of the City Manager's Decisions regarding the Applications.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Los Altos, based on the evidence contained in the written record, which includes the Applications, the record related to the City Manager's Decisions, the appeal letters and supporting documentation and written submissions provided to Council, and the record of the oral testimony given by, among others, the Applicant, City officials and the public at public hearings held on October 29, 2019 and December 17, 2019, hereby makes the following findings:

APPLICABLE STANDARDS

1. ***Ordinance 2019-460 (new Ch. 11.12) and Resolution 2019-35 (Design and Siting Standards) apply to this Application.***

On August 5, 2019, the City of Los Altos adopted Ordinance 2019-460 to repeal and replace Ch. 11.12 of the Municipal Code, and Resolutions 2019-35 and 2019-36, which collectively address placement of wireless facilities within the City limits ("Wireless Regulations"). Section 11.12.030(A)(1) of the new Ordinance requires that these new provisions be applied to all pending permit applications. The Applications were pending as of August 5, 2019 and therefore the Wireless Regulations apply to it.

REQUIRED FINDINGS FOR APPROVAL

Under Municipal Code Section 11.12.210, the City Council must limit its review on appeal to whether the project should be approved or denied in accordance with the provisions of Municipal Code Chapter 11.12 and any applicable design and siting guidelines. In order to approve an application to install a wireless telecommunications facility in the public right-of-way, six positive findings set forth in Municipal Code Section 11.12.080 must be made. The Council makes the following findings:

1. ***The proposed facilities do not comply with all applicable provisions of Chapter 11.12 of the Municipal Code, and with design and siting guidelines adopted by the City Council, and will be in compliance with all applicable building, electrical, and fire safety codes.***

Section 4.E. of Resolution 2019-35 states: "No facilities shall be permitted within 500 feet of any school in a PCF District." The location for Cell Node Location No. 1 is within 500 feet from a school in a PCF District and does not meet the siting requirements in this section.

Section 4.D. of Resolution 2019-35 states: "Wireless facilities shall only be permitted in the City in accordance with the following table:" The table indicates wireless facilities of the type described in the Applications are permitted in public rights-of-way in non-residential districts with a use permit. The proposed locations of the facilities for Cell Node Location Nos. 2 to No. 12 do not meet this siting requirement.

Thus, the residential zone locations selected for siting Cell Node Location Nos. 2 to No. 12 do not conform with the location requirements of Resolution 2019-35.

2. ***The proposed facilities have not been designed and located to achieve compatibility with the community to the maximum extent reasonably feasible.***

Finding 2 was made for the same reasons described under Finding 1 above.

3. ***The applicant has submitted a statement of its willingness to allow other carriers to collocate on the proposed wireless telecommunications facility wherever technically and economically feasible and where collocation would not harm community compatibility.***

In the letter to the City Council dated October 28, 2019, AT&T stated that it is willing to allow other carriers to "collocate on the poles utilized by the Small Cell Nodes wherever technically and economically feasible and where collocation would not harm community capability."

4. ***Noise generated by equipment will not be excessive, annoying or be detrimental to the public health, safety, and welfare and will not exceed the standards set forth in Chapter 6.16 of the Municipal Code and Resolution 2019-35.***

In the letter submitted to the City Council dated October 28, 2019, AT&T stated that the noise generated by its equipment will not be "excessive, annoying, or detrimental to the public health, safety, and welfare, and it will not exceed the standards set forth in Chapter 6.16 of the Municipal Code and Resolution 2019-35."

Further, in the letter and additional information submitted in response to the request for additional information dated December 4, 2019, AT&T submitted the acoustic analysis prepared by a Third-Party Consultant and it is reiterated that the proposed telecommunications facilities will comply with the City's noise standards.

5. ***The applicant has provided substantial written evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law.***

In the Appeal Letter, AT&T asserted its statewide franchise under California Public Utilities Code Section 7901 to access and construct wireless telecommunications facilities in the public right-of-way.

6. ***The applicant has demonstrated that the facility will not interfere with the use of the public right-of-way, existing subterranean infrastructure, or the city's plans for modification or use of such location and infrastructure.***

The submitted designs of the proposed wireless telecommunications facilities do not indicate any physical interferences with the use of the public right-of-way.

Based on the above analysis, the City Council cannot make all the positive findings for approval of the Applications, and finds that the appeal and the Applications should be denied. Because the City Council would deny the appeal and the Applications, it must consider AT&T's claim that an exception must be granted.

REQUIRED FINDINGS FOR GRANT OF AN EXCEPTION

Municipal Code Section 11.12.090(A) allows for exceptions pertaining to Chapter 11.12 if the City makes certain findings. Pursuant to Section 11.12.090(A) of the Municipal Code, an exception pertaining to Chapter 11.12 may be granted if the City makes one or more of the following findings:

1. Denial of the facility as proposed would violate federal law, state law, or both; **or**
2. A provision of Chapter 11.12, as applied to the applicant, would deprive applicant of its rights under federal law, state law, or both.

Pursuant to Section 11.12.090(D), the burden of proof is on the Applicant.

1. ***The applicant has not demonstrated that an exception from Chapter 11.12 is warranted.***

a. *The Applicant has not demonstrated that a denial of the facility as proposed would violate federal law.*

AT&T claimed that the ban on wireless facilities in residential rights-of-way is preempted by federal law. It argued that the ban is a prohibition on personal wireless services and denial would materially inhibits the company's ability to provide and improve service in the area.

i. *The FCC standard should not be applied, and the Ninth Circuit test is appropriate.*

In the Ninth Circuit, case law interpreting 47 U.S.C. Sections 332 and 253 determined that a denial can be found to improperly "prohibit" personal wireless services if it prevents a wireless services provider from closing a "significant gap" in its own service coverage using the least intrusive means. In the Small Cell Order, the FCC rejected that Ninth Circuit standard for small wireless facilities and found that a local regulation will "have the effect of prohibiting wireless telecommunications services if it materially inhibits the provision of such services." The FCC's "materially inhibits" standard should not be applied here because according to the U.S. Supreme Court, a plain language ruling by a court of appeals, such as the Ninth Circuit, trumps the determination of a regulatory agency. *See National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 982-983 (2005). Therefore, unless the Ninth Circuit determines otherwise, an applicant must show an actual prohibition to obtain relief under

Section 332 or Section 253. The current FCC "materially inhibits" standard does not require an actual prohibition.

ii. *The Applicant has not demonstrated that there is a significant gap.*

Federal law does not guarantee wireless service providers coverage free of small "dead spots." Under existing case law, "significant gap" determinations are fact-specific inquiries that defy any bright-line legal rule. For example, context specific factors that have been considered in assessing the significance of alleged gaps include: whether the gap affected significant commuter highway or railway; assessing the nature and character of that area or the number of potential users in that area who may be affected by the alleged lack of service; whether the gap covers well-traveled roads on which customers lack roaming capabilities; and whether the gap poses public safety risk.

Applying the Ninth Circuit test, in the Radio Frequency Statements submitted as additional submittal by AT&T dated October 28, 2019, AT&T indicates that the existing sites do not provide sufficient high-band, in building LTE service in the gap areas.

No case law was identified by the applicant at the hearing to support the applicant's claim that lack of in-building coverage is the applicable standard.

As noted above, there is no bright line test for a significant gap and the evidence in the record was not persuasive. There was inadequate capacity and coverage information to support a finding of a significant gap. The evidence showed that there was existing service in the areas of the proposed sites, although not the best. Overall, the evidence in the record did not show any significant gap.

iii. *The Applicant has not demonstrated that the proposed installation is the least intrusive means to fill a significant gap.*

In the Alternative Site Analysis submitted as additional information by AT&T dated October 28, 2019, AT&T presents the alternative site analysis and concludes that the proposed locations are the least intrusive means to fill the significant gaps in service.

However, the evidence in the record was not persuasive. The evidence showed that the only alternatives that were considered were locations in the public right of way. Alternatives such as improvements to other towers, equipment changes, or other network changes were briefly discussed and the applicant did not adequately explore whether these could cause some improvements to service.

b. *The Applicant has not demonstrated that a denial of the facility as proposed would violate state law.*

AT&T claims that the proposed installations are consistent with state law, and AT&T suggested that its Section 7901 franchise right is subject only to the City's reasonable and equivalent time, place, and manner regulations under Section 7901.1 and the ban on residential deployments is not "an equivalent regulation."

Under California Public Utilities Code Section 7901, telephone companies may not "incommode the public use of the road or highway," which means that their franchise to use the public right-of-way is not unfettered. Local governments may regulate wireless installations in the public right-of-way to ensure that they do not incommode the public use. This local government authority includes aesthetic regulations for wireless installations. Therefore, a local government must perform a location-specific analysis of a proposed wireless facility to determine if it will incommode with the use of the public right-of-way.

Further, AT&T's statement regarding the interplay of Sections 7901 and 7901.1 is simply incorrect and was rejected by the California Supreme Court in the *T-Mobile W. LLC v. City & Cty. Of San Francisco* case. Section 7901.1's "equivalent regulation" requirement only applies to local regulation of the *temporary access* for construction; it does not limit local authority under Section 7901 to regulate *longer term impacts* that might incommode the public use.

In the original Applications and resubmittals, AT&T presents the photo-simulations to support the argument that the proposed designs do not impact the public use of roads and highways.

Further, in the Alternatives Analysis submitted as additional submittal by AT&T dated October 28, 2019, AT&T provides information on the aesthetics of the proposed facilities and installation locations, and it addresses the reasons that it feels the alternative installation sites are less intrusive or viable.

Based on the evidence in the record, as discussed above, these proposed facilities would be intrusive from an aesthetic perspective due to their size and placement, including the addition of 7 to 10 feet in height to all the poles, and in some sites the addition of cross arms, the lowering of existing cross arms, and the lowering of existing transformers to accommodate the proposed facilities.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 17th day of December 2019 by the following vote:

AYES:	Pepper, Fligor, Bruins, Enander, Lee Eng
NOES:	None
ABSENT:	None
ABSTAIN:	None

Janis C. Pepper, MAYOR

Attest:

Dennis Hawkins, CMC, CITY CLERK

ERICSSON

September 20, 2019

Via Email and Hand-Delivery

Office of the City Clerk
administration@losaltosca.gov
jmaginot@losaltosca.gov
City of Los Altos
Los Altos City Hall
1 North San Antonio Road
Los Altos, CA 94022

Re. Appeal of Denial Decision
Application No. SE19-00009
AT&T Site ID LOSA0_01
Public Right-of-Way near 141 Almond Avenue

To the Clerk:

New Cingular Wireless PCS, LLC dba AT&T Mobility(AT&T), hereby appeals the Denial Decision of the City Manager issued on September 17, 2019, denying AT&T's Application No. SE19-00009, which seeks to place a small wireless facility on an existing wood utility pole located in the public right-of-way near 141 Almond Avenue, which is a collector street. AT&T has an urgent need to deploy this and other small wireless facilities in the City of Los Altos, and particularly to provide and improve wireless services in residential areas of the City. The proposed small wireless facility is consistent with the City's wireless regulations in place at the time this application was submitted. And approval of this proposed facility is necessary pursuant to applicable federal law. AT&T respectfully requests the City Council reverse the denial and approve AT&T's application.

This proposed small wireless facility will help improve AT&T's wireless services by offloading network traffic carried by existing macro facilities in the area. In addition, faster data rates allow customers to get on and off the network quickly, which produces more efficient use of AT&T's limited spectrum. By placing the small cell facility in areas where AT&T's existing wireless telecommunications facilities are constrained and where AT&T experiences especially high network traffic, AT&T can address the existing and forecasted demand.

The proposed small wireless facility complies with the City's wireless regulations in effect at the time the application was filed. Specifically, AT&T's application complies with the City's *Distributed Antenna Systems for Wireless Communications Encroachment Permit Requirements* ("Permit Requirements"). Item A under the Permit Requirements states, "Antenna systems are encouraged along the city's arterial and collector streets. These facilities are allowed on local streets upon verification by a qualified electrical engineer licensed by the state of California representing the FCC licensee that using local streets is necessary to obtain capacity and coverage."

The proposed small wireless facility is small and typical of infrastructure deployments in residential rights-of-way in the City, including the right-of-way along Almond Avenue and nearby streets. AT&T conducted a good faith search and comparison of alternative locations and identified the proposed facility as the best available and least intrusive means to address AT&T's service needs in this portion of the City.

Applicable Siting Regulations

Again, the pending application was duly filed before the City enacted new regulations governing small wireless facilities. It must be evaluated in the context of the City's regulations in effect at the time the applications were filed (i.e., the Permit Requirements). Last year, the Federal Communications Commission issued its *Infrastructure Order*, which established rules and standards for siting authorities to follow with respect to applications for approvals to construct small wireless facilities.[1] Under the *Infrastructure Order*, the FCC established a standard for local aesthetic regulations that they must be (1) reasonable, (2) no more burdensome than those applied to other infrastructure deployments, and (3) objective and published in advance.[2] Regulations that do not meet these criteria are preempted as they are presumed to effectively prohibit wireless service in violation of the Telecommunications Act of 1996 (Act).[3]

Here, the new City's siting regulations were not "published in advance" at the time AT&T submitted this application. Thus, design criteria and other aesthetic regulations under the new regulations cannot be applied to this application. For example, the City's new regulations ban small wireless facilities on residential streets. That rule does not apply. In addition, applying post-application regulations violates AT&T's due process rights.

Further, the city cannot lawfully deny this application even if the new regulations applied. The general ban on small wireless facilities in residential districts is unlawful and preempted by federal law. Specifically, this amounts to a prohibition on personal wireless services in large portions of the City, which violates the Act. As applied to this application, denial on the basis that this location is in a residential area materially inhibits AT&T's ability to provide and improve wireless services in this area, in violation of the Act.

Further, the City's residential-area ban is a more burdensome restriction than imposed on other infrastructure deployments. The streets in this residential area have existing wooden utility poles with utility equipment. For example, there are utility poles along Almond Avenue, including existing utility poles with existing utility deployments at the proposed location and the next closest utility poles. Thus, this restriction is more burdensome than those imposed on other infrastructure deployments, which is an unlawful prohibition and denial on that basis is preempted by federal law.

Further, AT&T's application materials contain sufficient information for City Council to make all necessary approval findings. This is true even if the City (unlawfully) applies its new wireless siting regulations. To wit: the proposed facility is designed to be compatible with the community, AT&T is willing to allow collocations (although they will likely be infeasible), AT&T's facility will comply with the

[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*").
[2] *See id*. at ¶ 86.
[3] *See id*.; 47 U.S.C. § 332(c)(7)(B)(i)(II).

City's noise standards, AT&T has a state law franchise right to access the public rights-of-way, and the proposed facility will not interfere with the public right-of-way.

Again, 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. AT&T's proposed small wireless facility does not incommode the right-of-way and the ban on residential deployments is not an equivalent regulation.

Finally, it is unreasonable and unlawful to require AT&T to provide evidence of a potential effective prohibition or other violation of law at the time an application is filed. For example, here it could not have been known until September 17th the various ways in which the City would violate state and federal laws.

AT&T reserves the right to supplement this appeal statement.

Conclusion

AT&T is working diligently to improve its wireless services in the City of Los Altos, and it is doing so pursuant to applicable law and within the City's applicable process and standards. This application and this small wireless facility are urgently needed to provide and improve personal wireless service in this portion of the City. AT&T has worked carefully to develop responsible proposed facilities, including this small wireless facility. The proposed facility is the best available and least intrusive means by which AT&T can address its service needs in this location. AT&T urges City Council to reverse the denial decision and approve its application.

Sincerely,

Ivan Toews, Ericsson on behalf of AT&T
Site Acquisition Manager, CRAN Small Cell

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EXHIBIT D

EXHIBIT D

Radiofrequency and Microwave Radiation

Radiofrequency and Microwave Radiation Menu

Workers' Rights

Standards

There are no specific OSHA standards for radiofrequency and microwave radiation issues. This section highlights OSHA standards and documents related to radiofrequency and microwave radiation.

OSHA Standards

General Industry (29 CFR 1910)		**Related Information**
1910 Subpart G - Occupational Health and Environmental Control	1910.97, Nonionizing radiation. The exposure limit in this standard (10 mW/sq. cm.) is expressed in voluntary language and has been ruled unenforceable for Federal OSHA enforcement. The standard does specify the design of an RF warning sign. Newer designs are also acceptable.	Related Information
1910 Subpart J - General Environmental Controls	1910.147, The control of hazardous energy (lockout/tagout).	Related Information
1910 Subpart R - Special Industries	1910.268, Telecommunications.	Related Information

Construction Industry (29 CFR 1926)		**Related Information**
1926 Subpart D	1926.54, Nonionizing radiation. See paragraph (l) for which limits worker exposure to 10 mW/sq.cm. for construction work (including the painting of towers).	Related Information

State Standards

There are 28 OSHA-approved State Plans, operating state-wide occupational safety and health programs. State Plans are required to have standards and enforcement programs that are at least as effective as

OSHA's and may have different or more stringent requirements.

Additional Letters of Interpretation

Note: The letters in this list provide additional information that is not necessarily connected to a specific OSHA standard highlighted on this Safety and Health Topics page.

- Applicable OSHA standards and safety considerations for microwave device use in a laboratory. (August 08, 2002).
- Video Display Terminals (VDTs) and Radiation. (January 19, 2000).
- Evaluation and use of radiofrequency protective clothing. (April 14, 1993).
- Display of a nonionizing radiation warning sign meets standard. (June 18, 1992).

Other Federal

Note: These are NOT OSHA regulations. However, they do provide guidance from their originating organizations related to worker protection.

Federal Communications Commission (FCC)

- Radio Frequency Safety. Office of Engineering and Technology (OET). Evaluates the effect of emissions from FCC-regulated transmitters on the quality of the human environment. At the present time there is no federally-mandated radio frequency (RF) exposure standard.
  - The FCC's requirements dealing with RF exposure can be found in Part 1 of its rules at 47 CFR 1.1307(b). The exposure limits themselves are specified in 47 CFR 1.1310 in terms of frequency, field strength, power density and averaging time. Facilities and transmitters licensed and authorized by the FCC must either comply with these guidelines or else an applicant must file an Environmental Assessment (EA) with the FCC as specified in 47 CFR 1.1301 *et seq.*
- Notice of Apparent Liability for Forfeiture (PDF). (January 6, 2005). Describes a violation of FCC rules resulting in a $10K fine. The case involves a worker climbing an FM broadcast tower.

National Consensus

Note: These are NOT OSHA regulations. However, they do provide guidance from their originating organizations related to worker protection.

American National Standards Institute (ANSI)/Institute of Electrical and Electronics Engineers (IEEE)

- ANSI publishes consensus standards on RF exposures and measurements. The Institute of Electrical and Electronics Engineers (IEEE), International Committee on Electromagnetic Safety (ICES) sets safety standards across frequencies 0 to 300 GHz. Also the IEEE Committee on Man and Radiation (COMAR) publishes position papers on human exposure to electromagnetic fields.
  - *C95.1*, Standard for Safety Levels with Respect to Human Exposure to Radio-Frequency Electromagnetic Fields, 3 kHz to 300 GHz. (Revised 2005).
  - *C95.2*, Standard for Radio-Frequency Energy and Current Flow Symbols. (1999).
  - *C95.3*, Recommended Practice for Measurements and Computations of Radio Frequency Electromagnetic Fields With Respect to Human Exposure to Such Fields, 100 kHz-300 GHz.

(2002).
- *C95.4*, Recommended Practice for Determining Safe Distances from Radio Frequency Transmitting Antennas When Using Electric Blasting Caps During Explosive Operations. (2002).
- *C95.6*, Standard for Safety Levels with Respect to Human Exposure to Electromagnetic Fields, 0-3 kHz. (2002). Defines exposure levels to protect against adverse effects in humans from exposure to electric and magnetic fields at frequencies from 0 to 3 kHz. (2002).
- *C95.7-2005,* Recommended Practice for Radio Frequency Safety Programs. (2006).

American Conference of Governmental Industrial Hygienists (ACGIH)

- *Documentation of the Threshold Limit Values for Physical Agents, 7th Edition*. Provides consensus exposure limits from organization of governmental industrial hygienists for radiofrequency and microwave radiation.

Foreign National

Note: These are NOT OSHA regulations. However, they do provide guidance from their originating organizations related to worker protection.

Australian Radiation Protection and Nuclear Safety Agency Standard (ARPANSA)

- Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields - 3kHz to 300GHz (2002). (March 20, 2002). Describes the ARPANSA Standard that is relevant to emissions from all devices that produce and radiate RF electromagnetic energy (EME) fields either deliberately of incidentally during their operation - this includes mobile phone handsets and base stations as well as radio and television transmitters and industrial sources.

Public Health England

- Radiation: products and services. Provides standards of protection for exposure to radiation, which includes electric and magnetic fields.

UNITED STATES
DEPARTMENT OF LABOR

Occupational Safety & Health Administration
200 Constitution Ave NW
Washington, DC 20210
800-321-6742 (OSHA)
TTY
www.OSHA.gov

FEDERAL GOVERNMENT

White House
Severe Storm and Flood Recovery

Assistance

Disaster Recovery Assistance

DisasterAssistance.gov

USA.gov

No Fear Act Data

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New query

§5085. Radiofrequency and Microwave Radiation.

(a) Definitions.

Radiofrequency (RF) Energy. Electromagnetic energy restricted to that portion of the spectrum commonly defined as the radiofrequency or RF region with frequencies between 3 megahertz (MHz) and 300 Gigahertz (GHz) and which for the purposes of this specification shall include the microwave region with frequencies between 100 MHz and 300 GHz. (Hertz = 1 cycle/second, MHz = 1 million hertz, GHz = 1 billion hertz.)

Exposure. Irradiation of any part of the body by incident RF energy.

(b) Exposure Limits. Employees shall not be exposed to RF energy from continuous wave or repetitively pulsed sources exceeding any of the following limits as averaged over any possible six minute (0.1 hour) period.

(1) Continuous exposure to an average maximum power density of 10 mW/cm^2 (milliwatts per square centimeter) or the equivalent free space average electric and magnetic field strengths of 200 V/M (volts per meter) rms and 0.5 A/M (amperes per meter) rms respectively.

(2) Exposure to interrupted or modulated RF energy shall not exceed:

(A) An average maximum energy density of 1 mW hr/cm^2 (milliwatt-hour per square centimeter);

(B) A mean squared electric field strength of $4x10^4$ $(V/M)^2$ (volts squared per meter squared);

(C) A mean squared magnetic field strength of 0.25 $(A/M)^2$ (amperes squared per meter squared).

These energy densities and field strengths are approximately equivalent to a far field power density of 10 mW/cm^2.

(c) Information and Warning Signs. In areas where employee exposure may exceed the limits specified in part (b) of this section, employers shall provide warning signs containing the following information in the following

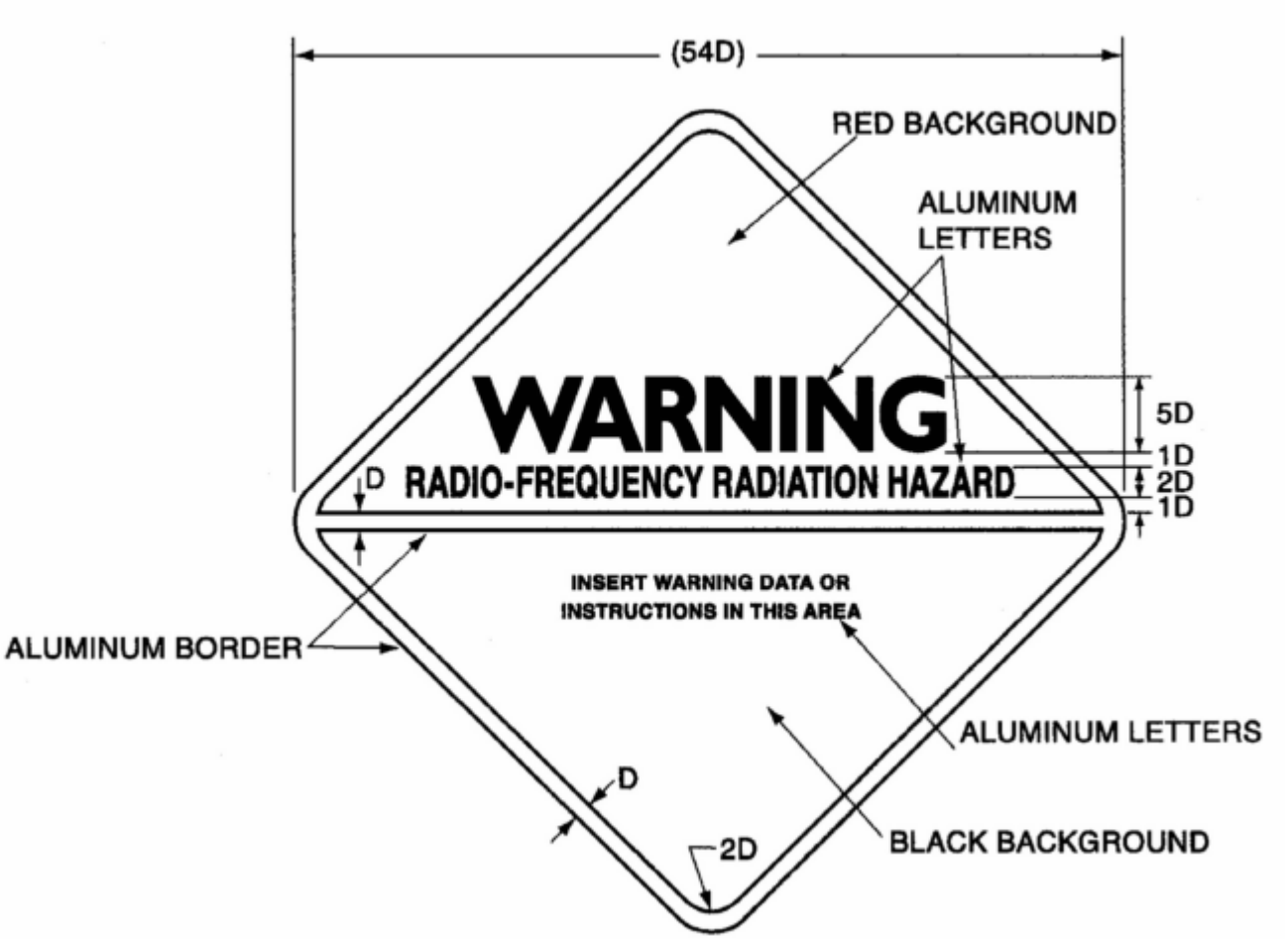
manner:

(1) Warning signs of RF radiation hazards, as described in ANSI C95.2-1966 “Radiofrequency Radiation Hazard Warning Symbol,” containing the necessary information and description of required protective actions. (See Figure RF-1.)

(2) Signs shall be posted at all entrances to accessible areas containing RF radiation levels in excess of the exposure limits described in part (b).

(3) Warning signs shall be legible at a distance of ten (10) meters.

Figure RF-1 (From ANSI C95.2-1966)



1. Place handling and mounting instructions on reverse side.

2. D=Scaling unit.

3. Lettering: Ratio of letter height to thickness of letter lines.

Upper triangle:	5 to 1 Large
	6 to 1 Medium
Lower triangle:	4 to 1 Small
	6 to 1 Medium

4. Symbol is square, triangles are right-angle isosceles Radio-Frequency Radiation Hazard Warning Symbol

Note: Authority and reference cited: Section 142.3, Labor Code.

HISTORY

1. New Article 104 (Section 5085) filed 4-16-81; effective thirtieth day thereafter (Register 81, No. 16).

2. Change without regulatory effect providing more legible illustration for Figure RF-1 filed 3-2-2009 pursuant to section 100, title 1, California Code of Regulations (Register 2009, No. 10).

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