



Cell Towers: Public Opposition and Revenue Source

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Issues

Do cities and the County of San Mateo (the County) have effective governing policies and/or ordinances for cell tower installations that provide the public with a clear understanding of how applications are adjudicated?¹ Are cell tower installations a source of revenue for cities and the County?

Summary

There are more than 450 cell tower installations in San Mateo County. Although people want reliable cell phone reception, community opposition to cell towers is common. The County and 18 of 20 cities reported public opposition to a cell tower application within the past 5 years.²

The County and 12 of 20 cities generate varying amounts of revenue from cell tower installations, primarily from the leasing of public lands.³ Although it may not pose a large source of revenue, cities that are not already taking advantage of lease agreements as a steady revenue source should negotiate such agreements with service providers in the future. In addition, any new leases should require service providers to maintain existing structures, remove unused or obsolete equipment, and replace structures with newer low profile structures as they become available.

Improving information available to the public and providing clearer communications can improve public response to future cell tower installation applications.

Background

While there is universal public demand for improved and more reliable cell phone transmissions, there exists a “not in my backyard” approach to having cell tower installations in close proximity to residences or commercial establishments. This statement is based on survey data and the number of incidences of public opposition recorded in local news articles or communications collected by members of the grand jury over a seven-month period in Fiscal Year 2010-2011. At least 8 of the 20 cities in San Mateo County had newspaper articles or communications of overt public opposition to cell tower applications during this timeframe.⁴

¹ For purposes of this report, “cell towers” refers to any wireless communications facility or structure erected for purposes of transmission on either public or private property.

² Only two cities, Colma and East Palo Alto, did not report incidences of public opposition.

³ Belmont, Brisbane, Burlingame, Foster City, Hillsborough, Menlo Park, Millbrae, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco.

⁴ Daly City, Half Moon Bay, Menlo Park, Pacifica, Portola Valley, San Bruno, San Carlos, South San Francisco.

Public opposition occurs most often from individuals living in close proximity to a proposed cell tower site. Individuals or homeowner associations may make their own case to the city or form new groups for the purpose of galvanizing opposition. These new groups typically exist only until a final decision is rendered, making it impractical for the grand jury to interview representatives.

Data shows opposition is typically based on perceived health risks such as electromagnetic radiation. To date such concern is regarded as scientifically unproven and has not been a legal basis for permit denial in accordance with provisions in the (federal) Telecommunications Act of 1996.⁵

An appellate court ruling in 2009 supported the decision by the City of Palos Verdes Estates in Southern California to deny the installation of cell towers on the basis of aesthetics alone. Service providers had argued that there must be a compelling “substantive” reason to deny an application or it must be approved in favor of communication expansion. The appellate court ruled that aesthetics were a valid reason to deny a cell tower application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.⁶

Federal law governs some cell tower decision-making authority. For example, each application by a service provider to install a cell tower must be considered on an individual basis, and a government entity cannot favor one telecommunications provider over another under protections provided by the Telecommunications Act of 1996.⁷ Thus opposition is targeted to a specific application for cell tower installations.

Cell phone vendors compete for improved range, clarity of reception, and a reduction of dropped calls. Some cities report that cell tower installations have been increasing over the past five years to meet these demands.⁸

Investigation

The 2011 San Mateo County Civil Grand Jury collected information about cell towers via a survey sent to city managers and planning directors, or their counterparts, in the County and each of the 20 cities (see Attachment).

Online research was conducted, including a review of excerpts of the Telecommunications Act of 1996 and the United States Court of Appeals, Ninth Circuit decision in the *Sprint PCS Assets PCS LP v. City of Palos Verdes Estates*.

Newspaper articles and communications from neighborhood groups regarding cell tower placement were collected and reviewed.

⁵ Peter M. Degnan et al, *The Telecommunications Act of 1996: §704 of the Act and Protections Afforded the Telecommunications Provider in the Facilities Siting Context*, May 18, 1999, pps. 7-8.

⁶ No. 05-56106 – *Sprint PCS Assets PCS LP v. City of Palos Verdes Estates*, argued and submitted July 6, 2009 – October 14, 2009.

⁷ Degnan et al., op. cit., p. 5.

⁸ Belmont, Brisbane, Daly City, East Palo Alto, Foster City, Menlo Park, Portola Valley, Redwood City, San Carlos, South San Francisco.

Discussion

The County and 15 of 20 cities in San Mateo County have ordinances in place related to cell tower installation.⁹ These ordinances vary considerably in scope and comprehensiveness. Whether or not the County or a particular city has an ordinance governing cell tower installations does not seem to insulate it from public opposition. Service providers must make application to the County or cities whether or not there is an ordinance in place.

The County and 6 of 20 cities reported public opposition to cell tower applications occurred more frequently than once a year.¹⁰ The primary opposition came from individuals living in close proximity to the proposed installation site. The most frequent reason cited for such opposition was public safety such as perceived health risks from electromagnetic radiation, although it is not a valid basis on which the County or city can deny a permit. Visual or aesthetic impacts, which are a valid issue upon which to base a decision regarding denial or modification of a cell tower application, were less frequently mentioned.¹¹

In the County and 7 of 20 cities, service providers have withdrawn applications for cell tower installation due to public opposition.¹² In 2008 (referred to as the “2007 decision”), a service provider filed a lawsuit against the County because of a denied cell tower renewal application subsequent to an appeal filed by residents which overturned the initial approval.¹³ There have been no incidences of litigation reported by cities because an application for cell tower installation was denied.

The County and 12 of 20 cities generate revenue from cell tower installations, primarily from the leasing of public lands.¹⁴ In most cases, revenue is deposited to the general fund with no specific use indicated. The revenue is paid by service providers in addition to application or permit fees. Costs to file an application vary widely, with many cities requiring a deposit toward staff time.

Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires. These provisions are important because wireless technology continues to innovate and may in the future be replaced by devices significantly smaller with improved range.¹⁵

⁹ Belmont, Brisbane, Daly City, East Palo Alto, Hillsborough, Menlo Park, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco, Woodside.

¹⁰ Belmont, Daly City, Millbrae, Pacifica, Redwood City, San Carlos.

¹¹ *Sprint PCS Assets PCS LP v. City of Palos Verdes Estates*, op. cit.

¹² Belmont, Burlingame, Daly City, Hillsborough, Pacifica, San Bruno, San Carlos.

¹³ Litigation pending ; case no. CV11 0056 *Sprint v. County of San Mateo et al*, amended complaint filed Jan. 6, 2011, U.S. District Court of Appeal, Northern District of CA.

¹⁴ Belmont, Brisbane, Burlingame, Foster City, Hillsborough, Menlo Park, Millbrae, Redwood City, San Bruno, San Carlos, San Mateo, San Francisco.

¹⁵ Svensson, Peter AP Technology Writer, *Wireless Advances Could Mean No More Cell Towers*, February 12, 2011, and Bloomberg Businessweek, *Alcatel-Lucent's Tiny Cell Tower*, February 28-March 6, 2011.

Findings

The 2011 San Mateo County Civil Grand Jury finds that:

1. There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.
2. Locating applicable cell tower ordinances and policies on County and city websites is cumbersome.
3. Federal law precludes the use of perceived health risk as a basis for denying an application¹⁶; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.¹⁷
4. Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires (see Attachment).
5. The County and all cities have varying filing and processing fees for processing cell tower applications (see Attachment).
6. The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements (see Attachment).¹⁸
7. Five cities which have cell towers on public property are not charging service providers for land use¹⁹; three cities do not currently have cell towers located on public property.²⁰

Conclusions

The 2011 San Mateo County Civil Grand Jury concludes that:

The County and most cities have governing policies and/or ordinances that prescribe cell tower installations. Having an ordinance in place does not reduce the likelihood of public opposition to a cell tower application.

The County and cities need to balance public desire for improved wireless reception with local concerns regarding health, aesthetics, and property values while recognizing the rights of service providers under federal law.

¹⁶ Telecommunications Act of 1996.

¹⁷ No. 05-56106 – *Sprint PCS Assets PCS LP v. City of Palos Verdes Estates*, op. cit.

¹⁸ Belmont, Brisbane, Burlingame, Foster City, Hillsborough, Menlo Park, Millbrae, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco.

¹⁹ Daly City, East Palo Alto, Half Moon Bay, Portola Valley, and Woodside have cell towers on public property and do not receive revenue for land use.

²⁰ Atherton, Colma, and Pacifica do not currently have cell towers located on public property.

The County and cities which have cell towers located on public property should establish lease agreements with service providers to generate revenue to the general fund.

The County and cities have varying cell tower application fees for recouping staff costs in processing these often complex applications and use permits.

There is no standard way of ensuring that cell towers are maintained or removed when they are no longer used or the permit expires. Cities which do not already have maintenance and removal provisions required of service providers may be responsible for cell tower maintenance and/or removal on public property.

Educating the public about applicable governmental regulations may help to alleviate some of the angst generated by cell tower installations.

Recommendations

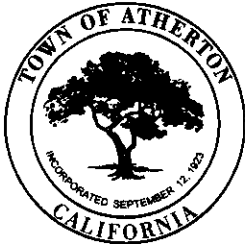
The 2011 San Mateo County Civil Grand Jury recommends to the County Board of Supervisors and the City Councils of all cities in San Mateo County the following:

1. Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications;
2. Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community;
3. Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements;
4. Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers; and
5. Develop a webpage within County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.

The Grand Jury further recommends the City Councils of Daly City, East Palo Alto, Half Moon Bay, Portola Valley, and Woodside pursue new or amended leases for existing cell towers on public property that are not currently generating revenue or other community benefits.

Cell Tower Cities and County Survey Responses

	Number of cell towers on private property	Number of cell towers on public property	Does the city have codes or ordinances governing cell towers?	Does the city's code/ordinance cover both public and private property?	Is there a provision requiring service providers to maintain cell towers?	Is there a provision requiring service providers to remove cell towers if obsolete or a use permit ends?	Have you had applications withdrawn by service providers due to public resistance?	What is the current cost to file an application or permit for a cell tower structure?	Does the city generate revenue paid by service providers in addition to application or permit fees from cell towers installations?	If yes, what is the average annual revenue paid by service providers to the city that is generated from cell towers?	If yes, how is revenue generated by cell towers used by the city?
Atherton	3	0	NO	N/A	N/A	NO	NO	Conditional use permit - Fee \$1,919 plus \$2,000 deposit - \$3,919 total	NO	N/A	N/A
Belmont	18	7	YES	YES	NO	YES	NO	Fees: -complex project fee \$13,272 (deposit) -new construction engineering fee \$2,691 or \$1,704 (equipment change only) -fire fee for plan check \$268 -Environmental review fee \$547 -county recording fee \$50 -3rd party review of RF exposure study (deposit during review). \$851 -administrative permit. \$2,698- planning commission use permit	YES. There are leases for cell towers placed on public properties (parks, city hall, etc.	Unknown	Deposited to general fund for a variety of uses
Brisbane	15	3	YES	YES	NO	YES	NO	\$851 -administrative permit. \$2,698- planning commission use permit	YES, land lease	\$1,500/month	Deposited to general fund for a variety of uses
Burlingame	Unknown	Unknown	NO	N/A	NO	NO	YES, once (2010)	Depends upon level of review and cost of installation	YES. Only in instances where city owned property is leased for the installation	\$25,000 (based on one installation on public property)	Deposited to general fund for a variety of uses
Colma	4	0	NO	N/A	NO	YES	NO	Minor use permit \$905	NO	N/A	N/A
Daly City	45	15	YES	YES	YES	YES	YES, once (2010)	\$3,700	NO	N/A	N/A
EPA	Unknown	Unknown	YES	YES	YES	YES standard condition of approval	NO	Staff level-minor cell tower cost-\$667. Conditional use permit-major cell tower cost-\$3,862	NO	N/A	N/A
Foster City	26	6	NO	N/A	YES	NO	NO	Architectural review \$200. Use permit \$200 deposit. Applicant pays for cost to process	YES	The City receives approximately \$96,000 per year in revenue from the leasing of 4 sites for cell towers	Deposited to general fund for a variety of uses
HMB	2	1	NO	N/A	YES as a condition of CDP approval	YES as a condition of CDP approval	NO	\$1,300 deposit (actual cost determined by time required to complete processing)	NO	N/A	N/A
Hillsborough	0	11	YES	YES	YES	YES	YES, once (2006/07)	\$2,500	YES, if lease of public property is needed	The town collects \$162,120 annually for 7 sites. (\$1,930 monthly per site.)	Deposited to general fund for a variety of uses
Menlo Park	39	9	YES	NO, private property only	NO	NO	NO	Use permit deposit is \$1,500 subject to hourly billing rates for actual staff time expended toward the project	YES. Currently only one site in the Public ROW is subject to a lease agreement with the City.	\$2,500/month for the one cell site subject to a lease agreement	Deposited to general fund for a variety of uses
Millbrae	14	5	YES	YES	YES	YES	NO	\$7,000 on private property; \$2,000 on property	YES. Leases for facilities on city property	\$15,000/year per facility on city property	Deposited to general fund for a variety of uses
Pacifica	40	0	YES	No, private property only	YES	YES	YES, on more than one occasion	\$3,750	NO	N/A	N/A
Portola Valley	5	5	YES	YES	YES	YES	NO	\$420/fee; \$7,500/ Deposit	NO	N/A	N/A
Redwood City	Unknown	Unknown	YES	YES	YES	NO	NO	If property > 1/4 acre \$5k deposit; < 1/4 acre \$1k for Arch. Permit, \$2,830 for use permit	YES. One cell installation is on city land, a monthly or yearly lease is paid to the city	\$1k - \$1,666 per month	Deposited to general fund for a variety of uses
San Bruno	Unknown	Unknown	YES	YES	YES	YES	YES, on more than one occasion	Use permit: \$2,145 Admin Approval: \$1,320	YES. Only if built on city owned parcel (e.g., water tank, park, etc.)	\$24,000 per year on average	Deposited to general fund for a variety of uses
San Carlos	9	3	YES	YES	YES	YES	YES, on more than one occasion	\$5,660.00	YES. Land lease of city property	\$2,000-\$3,000/mo \$24,000-\$36,000/yr.	Deposited to general fund for a variety of uses
San Mateo	Unknown	Unknown	YES not specific	YES	NO	NO	NO	Deposit amount of \$2,079; could ultimately be more based on staff time	YES. If in city parks or ROW on city equipment/poles, a lease is negotiated	The city is still negotiating its first lease	If in parks, used for Park & Rec purposes. If on city poles, used for Public Works purposes
SSF	Approx 30	Approx 8	YES	YES	YES	YES	NO	Use permit application - \$4,070	YES. Revenue ranges from \$1,500-\$3,000 per month per site	Approximately \$168,000/year	Deposited to general fund for a variety of uses
Woodside	6	9	YES	YES	YES	YES	NO	\$1,790 for CUP and Building permit fees	NO	N/A	N/A
County	71	42	YES	YES	YES	YES	YES, on more than one occasion	Varies - generally about \$7,813	YES. Administrative review by the Planning and Building Dept is occasionally required. The County (Real Property) also receives revenue from carriers located on County Property	\$600 to the Planning and Building Dept. Unknown amount to the County.	Revenue for Administrative reviews allocated to the Planning and Building Dept. Revenue to the County unknown as to how it is allocated



Town of Atherton

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August 17, 2011

Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Re: Response to 2010-2011 Grand Jury Report – Cell Towers: Public Opposition and Revenue Source

Dear Honorable Bergeron,

The City Council of the Town of Atherton has reviewed the recommendations in the 2010-2011 Grand Jury Report that affect the Town and approved the following responses at the public meeting on August 17, 2011;

The Grand Jury's report includes five recommendations to which the Town must respond.

Recommendation 1: Review and revise if needed the current fee structure to recoup staff costs for the processing cell tower applications.

Response: This recommendation has been implemented. The City Council updated the Town's Master Fee Schedule in 2010, including the fees for processing Conditional Use Permits. The adopted fee schedule establishes a fee plus deposit to ensure all staff time and any outside consultant expenses are fully cost recovered.

Recommendation 2: Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.

Response: This recommendation has been implemented. The Town has a Police Communications Tower at Town Hall that is currently leased to cell providers that provide income to the Town.

Recommendation 3: Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements.

Response: The Town agrees with this recommendation and will add this provision to future Town lease agreements and all future Conditional Use Permits as a condition of approval for cell towers on private land.

Recommendation 4: Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.

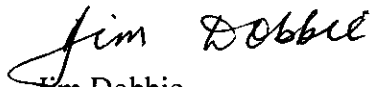
Response: The Town agrees with this recommendation and will include this provision in future Town lease agreements.

Recommendation 5: Develop a webpage within County and city websites which clearly posts local ordinance, policies and procedures as well as federal regulations related to cell tower installation.

Response: The Town's website currently lists all Town ordinances. The Town is currently considering significant revisions to its website. As the website is revised, the Town will include links to applicable federal regulations governing cell towers.

The Town appreciates the efforts of the Grand Jury. Please contact City Manager John Danielson should your require any additional information. He can be reached at 650-752-0504 or jdanielson@ci.atherton.ca.us

Sincerely,



Jim Dobbie
Mayor

TOWN OF ATHERTON

August 12, 2011



Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

RE: City of Belmont Response to 2011 San Mateo Grand Jury Report:
Cell Towers: Public Opposition and Revenue Sources

Dear Honorable Judge Bergeron,

The City of Belmont welcomes the opportunity to comment on the May 19, 2011 San Mateo Grand Jury Report titled, *Cell Towers: Public Opposition and Revenue Sources*. The City Council reviewed this matter at a regularly scheduled public meeting on July 12, 2011. This letter serves as a summary of their comments and provides the City's responses to the findings and recommendations presented by the Grand Jury.

FINDINGS

The 2011 San Mateo Grand Jury finds that:

1. *There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.*

The City of Belmont agrees with this finding.

2. *Locating applicable cell tower ordinances and policies on County and City websites is cumbersome.*

The City of Belmont partially disagrees with this finding. In the past year, the City of Belmont has worked to create a Wireless Telecommunications Facility Information Web page in response to the growing number and complexity of wireless facility project inquiries. In addition to providing links to applicable City Ordinances governing the location and design of wireless facilities, City staff created an interactive map and complete database of all existing facilities so that residents, neighbors, and service providers can easily see where these types of facilities are currently located and who operates each one. This task required a significant commitment of staff hours, and has resulted in a web page that facilitates the public's understanding of Belmont's wireless facilities.

3. *Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot be feasibly addressed by alternatives.*

The City of Belmont disagrees partially with this finding. Belmont acknowledges that existing federal law precludes the use of perceived health risks as a basis for denying an application; however, the guidelines and standards for evaluating radio frequency emissions have not been updated since 1996, and public opposition to health risks, whether perceived or in actuality, continues to grow. Potential health risks should be acknowledged and, when appropriate, mitigated as part of the public review process. Additionally, there are no clearly defined guidelines for determining what constitutes a “significant gap in service coverage”, or for determining that a service provider has explored all other “feasible alternatives”. Both of these statements are subjective in nature and allow for spirited debate between a project applicant and concerned neighbors of a proposed Wireless Facility project site.

4. *Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.*

The City of Belmont agrees with this finding. Belmont requires standard Conditions of Approval for all wireless telecommunications facilities that require operators to correct future interference problems experienced by neighbors, to correct any interference problems with Belmont emergency transmission or communication facilities, and to remove any facilities and all associated equipment that cease to be used by the current or future operators.

5. *The County and all cities have varying filing and processing fees for processing cell tower applications.*

The City of Belmont agrees with this finding.

6. *The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements.*

The City of Belmont agrees with this Finding.

7. *Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.*

The City of Belmont agrees with this finding.

RECOMMENDATIONS

The 2011 San Mateo County Civic Grand Jury recommends to the County Board of Supervisors and the City Councils of all the cities in San Mateo County the following:

1. *Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications;*

The recommendation has been implemented. The City of Belmont currently requires applicants for wireless telecommunications facilities to apply using a “Complex Project Fee” which requires a deposit of funds against which all City staff time and materials can be billed. Any remaining funds after project discretionary review is complete are returned to the applicant. This requirement allows Belmont to be reimbursed for all necessary staff time associated with these Complex Project applications, which tend to require significantly greater staff time/resources than review of a traditional Conditional Use Permit or Design Review project. Additionally, applicants are required to pay for third party consultant evaluation services in advance of any work to ensure those costs are adequately covered.

2. *Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community;*

The recommendation has been implemented. The City of Belmont has lease agreements in place for wireless facilities that are located on public property. Pursuant to this Grand Jury recommendation, the City will ensure that all facilities on public property or within the Public Right-Of-Way (ROW) have a valid lease agreement in place to generate revenue for the community. It is also the City’s intent to create a new standard condition of project approval requiring that all wireless facilities or associated equipment located on public property be subject to a lease agreement with the City.

3. *Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements;*

The recommendation has been implemented. Belmont requires standard Conditions of Project Approval for all wireless telecommunications facilities that include the following:

- The applicant shall be required to correct any and all future interference problems experienced by neighbors with respect to reception problems caused by this facility.
- The applicant shall agree to adjust, correct or remove the antennas to the satisfaction of the City of Belmont should the transmission from the antennas interfere with Belmont emergency transmission or communication facilities.
- If the wireless communications facility ceases to be used by the current or future operators of the facility, such operators of the former facility shall be required to remove the wireless communication antennae, equipment structure, and all its contents from the site.

4. *Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce footprint of cell towers;*

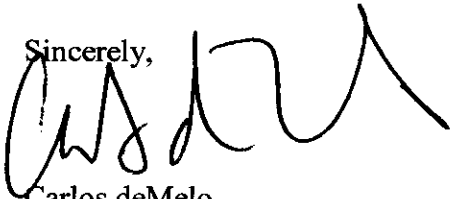
The recommendation has not yet been implemented. The City of Belmont believes that this requirement would help mitigate some issues raised by residents or that requiring this language provides a long term benefit for the communities in which these facilities are located. The City Council will consider adding this language to our Wireless Facility Ordinance as a standard condition of project approval to be applied to all future wireless telecommunications facilities. This change can be made effective immediately as additional conditions of approval can be required by city staff to mitigate potential project impacts.

5. *Develop a webpage within County and City websites which clearly posts local ordinances, policies and procedures, as well as federal regulations related to cell tower installations.*

The City of Belmont has already developed a web page within the City's main website that provides links to applicable local zoning ordinances, project application forms, and processing fee information for all wireless communications facilities. Additionally, this link provides an interactive Belmont map indicating the location of all existing facilities, and includes available project specifics such a building permits, project approval dates, and operator information. Pursuant to the Grand Jury recommendation, the City will update this existing page to include a link to information regarding the 1996 Telecommunications Act.

Thank you for the opportunity to submit this information for your consideration.

Sincerely,



Carlos deMelo
Community Development Director
City of Belmont

Cc: Belmont City Council & Clerk
Greg Scoles, City Manager

69PC09Y



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
County Manager's Office



APPROVED BY
BOARD OF SUPERVISORS

AUG 09 2011

BY R. Romero CLERK OF BOARD DEPUTY

DATE: July 25, 2011

BOARD MEETING DATE: August 9, 2011

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: David S. Boesch, County Manager

SUBJECT: 2010-11 Grand Jury Response

RECOMMENDATION:

Accept this report containing the County's response to the following 2010-11 Grand Jury report: Cell Towers: Public Opposition and Revenue Source.

BACKGROUND/DISCUSSION:

The County is mandated to respond to the Grand Jury within 90 days from the date that reports are filed with the County Clerk and Elected Officials are mandated to respond within 60 days. To that end, included is the County's response to the report titled: Cell Towers: Public Opposition and Revenue Source, issued on May 19, 2011.

FISCAL IMPACT:

There is no Net County Cost associated with accepting this report.

Cell Towers: Public Opposition and Revenue Source

Findings:

Grand Jury Finding Number 1. There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.

Response: This finding is based on a survey of multiple jurisdictions within San Mateo County. County staff does not dispute that this finding may be true based on the results of the Grand Jury's survey of multiple jurisdictions.

Grand Jury Finding Number 2. Locating applicable cell tower ordinances and policies on County and city websites is cumbersome.

Response: This finding is based on a survey of multiple municipal jurisdictions within San Mateo County. Again, County staff does not dispute that this finding may be true for other municipal jurisdictions within the County. However, the County's Wireless Telecommunications Facilities Ordinance for unincorporated areas is posted clearly on the Planning and Building Department's webpage.

Grand Jury Finding Number 3. Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.

Response: Staff agrees with this finding. The County's Wireless Telecommunications Facilities Ordinance includes language addressing this federal regulation.

Grand Jury Finding Number 4. Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.

Response: This finding is based on a survey of multiple jurisdictions within San Mateo County. County staff does not dispute that this finding may be true based on the results of the Grand Jury's survey of multiple jurisdictions. However, the County's Wireless Telecommunications Facilities Ordinance for unincorporated areas does contain cell tower maintenance and removal provisions.

Grand Jury Finding Number 5. The County and all cities have varying filing and processing fees for processing cell tower applications.

Response: This finding is based on a survey of multiple jurisdictions within San Mateo County. County staff agrees that this finding is true based on results of the Grand Jury's survey.

Grand Jury Finding Number 6. The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements.

Response: This finding is based on a survey of multiple jurisdictions within San Mateo County. County staff agrees that this finding is true based on results of the Grand Jury's survey.

Grand Jury Finding Number 7. Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.

Response: This finding is based on a survey of multiple jurisdictions within San Mateo County. County staff does not dispute that this finding may be true based on the results of the Grand Jury's survey of multiple jurisdictions.

Recommendations:

The 2010-11 San Mateo Civil Grand Jury recommends that the Board of Supervisors:

- 1. Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.**

Response: The recommendation is in the process of being implemented. Planning and Building Department staff is currently in the process of reviewing the Department's overall fee structure, including possible cost-of-living adjustments. Staff will be briefing the Board on this matter at an upcoming hearing. Current fees range from approximately \$4,000 and up for the renewal of a cell tower permit to approximately \$5,500 and up for a new cell tower, depending on the level of environmental review and the complexity of the project and application. In general, staff believes that the current fees for cell towers cover the cost of time that County staff spends processing permits for cell towers.

- 2. Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.**

Response: The recommendation has been implemented. Historically, the County has negotiated and entered into leases with service providers for the use of County owned property and charged providers fair market value for that use. Fair market value is determined by the Information Services Department based on standard radio site equipment rates at comparable properties in the area. The County continues to enter into new agreements and renewals of existing agreements and generates considerable revenues through these agreements.

- 3. Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements.**

Response: The recommendation has been implemented. Historically, the County has negotiated and entered into leases with service providers for the use of County owned property and required providers to maintain towers and equipment and remove them at the end of the lease term if not renewed. The County continues to enter into new agreements and renewals of existing agreements and will continue to require carriers to maintain equipment and remove it at the expiration of the lease if not renewed. The County's Wireless Telecommunications Facilities Ordinance, adopted by the County Board of Supervisors in 2008, contains cell tower maintenance and removal provisions for all facilities.

- 4. Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.**

Response: The recommendation has not yet been implemented but will be implemented in the future. The County will draft appropriate language requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers. This language will be inserted into all future agreements and amendments of existing agreements with service providers.

5. **Develop a webpage within County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.**

Response: The recommendation has been implemented. The Planning and Building Department webpage has for several years contained a link showing the local ordinances, policies and procedures for cell towers. Staff recently also added a link to federal regulations related to cell tower installations (the Telecommunications Act of 1996).



CITY OF BRISBANE

50 Park Place
Brisbane, California 94005-1310
(415) 508-2100
Fax (415) 467-4989

July 19, 2011

Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Subject: Response to 2010-2011 Grand Jury 5/19/11 report on Cell Towers: Public Opposition and Revenue Source

Dear Judge Bergeron,

Thank you for the opportunity to review and comment on the findings of the Grand Jury. This letter serves as the City of Brisbane's response to the findings and recommendations found therein. Please note this report was approved by the Brisbane City Council at its July 18, 2011 meeting.

Findings

Grand Jury Finding 1

There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.

CITY RESPONSE TO FINDING 1

Based upon our own experience, we agree with the finding.

Grand Jury Finding 2

Locating applicable cell tower ordinances and policies on County and city websites is cumbersome.

CITY RESPONSE TO FINDING 2

We disagree with this finding as it relates to Brisbane. We think we have placed clearly identified links on the City website to both the City ordinances and to the federal law.

Grand Jury Finding 3

Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.



CITY RESPONSE TO FINDING 3

Based upon our own understanding of federal law and decisions of the California courts, we agree with this finding.

Grand Jury Finding 4

Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.

CITY RESPONSE TO FINDING 4

We cannot speak for the policies and ordinances of other cities but we have no reason to disagree with the information contained in the Attachment to the Grand Jury's report. The requirements of Brisbane are set forth in our response to your recommendations.

Grand Jury Finding 5

The County and all cities have varying filing and processing fees for processing cell tower applications.

CITY RESPONSE TO FINDING 5

Again, we cannot speak for the fees charged by the County and other cities but we have no reason to disagree with the information contained in the Attachment to the Grand Jury's report.

Grand Jury Finding 6

The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower applications.

CITY RESPONSE TO FINDING 6

We have no knowledge of the revenue received by the County and other cities from cell tower leases but we have no reason to disagree with the information contained in the Attachment to the Grand Jury's report.

Grand Jury Finding 7

Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.

CITY RESPONSE TO FINDING 7

We have no information concerning the practices of the cities mentioned in this finding but we have no reason to disagree with the finding.

Recommendations

Grand Jury Recommendation 1

Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.

CITY RESPONSE TO RECOMMENDATION 1

The recommendation has been implemented. The City's planning fees include a Telecommunications Administrative Permit and a Public Utilities Use Permit to process cell tower applications; both of these fees were reviewed for consistency with the city's adopted cost recovery percentages and readopted by the City Council on June 27, 2011.

Grand Jury Recommendation 2

Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.

CITY RESPONSE TO RECOMMENDATION 2

The recommendation has been implemented. All existing lease agreements include a monthly rental amount and an annual CPI adjustment clause. Any future agreements for installations on public land will be similarly structured.

Grand Jury Recommendation 3

Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements.

CITY RESPONSE TO RECOMMENDATION 3

The recommendation has been implemented. The city's template for communications site lease agreements includes the following language:

- Lessee shall maintain Lessee's Facilities and the Premises in neat and safe condition in compliance with all applicable codes and governmental regulations.
- Upon the expiration, cancellation or termination of this Lease Agreement, Lessee shall surrender the Premises in good condition, less ordinary wear and tear; however, Lessee shall

not be required to remove any foundation supports for Lessee's Facilities or conduits which have been installed by Lessee.

Grand Jury Recommendation 4

Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.

CITY RESPONSE TO RECOMMENDATION 4

The recommendation requires further analysis. The City Attorney will review potential clauses to be included within future lease agreements; if legally binding language meeting the intent of the recommendation can be crafted, the new provision will be inserted into the template agreement within six (6) months. For existing agreements, any new language will be inserted at the next opportunity for renegotiation of the lease.

Grand Jury Recommendation 5

Develop a web page within County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.

CITY RESPONSE TO RECOMMENDATION 5

The recommendation has been implemented. The city has a page for "cell towers" on the Building and Planning Department's home page, which includes links to the city's relevant municipal code section, the city's use permit application for telecommunication facilities, and the federal Telecommunications Act of 1996.

Please call me at (415) 508-2131 if there are any questions regarding this matter.

Very truly yours,



Randy L. Breault, P.E.
Director of Public Works/City Engineer

Cc: Brisbane City Clerk
Grand Jury website (sent via email to grandjury@sanmateocourt.org)

CITY OF BURLINGAME

City Hall – 501 Primrose Road
Burlingame, California 94010-3997



COMMUNITY DEVELOPMENT DEPARTMENT

PH: (650) 558-7250
FAX: (650) 696-3790

August 12, 2011

Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center – 2nd Floor
Redwood City, California 94063-1655

**RE: CITY OF BURLINGAME RESPONSE TO GRAND JURY REPORT
Cell Towers: Public Opposition and Revenue Source**

Dear Judge Bergeron:

At its regular meeting of July 18, 2011, the Burlingame City Council adopted the attached resolution (Resolution No. 52-2011) providing the City of Burlingame's response to the 2010-2011 San Mateo County Grand Jury report entitled: "Cell Towers: Public Opposition and Revenue Source". A copy of this cover letter and the attached resolution are also being forwarded electronically to the Clerk of Court for placement on the Grand Jury web-site. Finally, a copy of the City's response is on file with the Burlingame City Clerk's Office.

Sincerely,

William Meeker
Community Development Director

RESOLUTION NO. 52-2011

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURLINGAME
APPROVING THE CITY'S RESPONSE TO
2010-2011 SAN MATEO COUNTY GRAND JURY REPORT ENTITLED
"CELL TOWERS: PUBLIC OPPOSITION AND REVENUE SOURCE"**

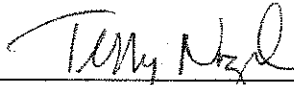
WHEREAS, on May 19, 2011, the 2010-2011 San Mateo County Civil Grand Jury issued a report entitled "Cell Towers: Public Opposition and Revenue Source", which contains findings and recommendations pertaining to the City of Burlingame; and,

WHEREAS, the City of Burlingame is required under Penal Code section 933 to respond to the Grand Jury's findings and recommendations in said report; and

WHEREAS, the City of Burlingame has prepared appropriate responses to the Grand Jury's findings and recommendations and intends to transmit them to the Presiding Judge of the 2010-2011 San Mateo County Civil Grand Jury as required by law;

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF BURLINGAME AS FOLLOWS:

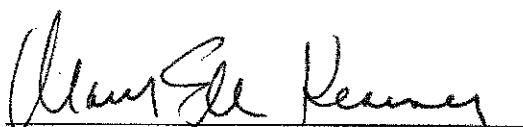
1. The City Council approves the responses to findings and recommendations of the 2010-2011 San Mateo County Civil Grand Jury report entitled "Cell Towers: Public Opposition and Revenue Source" pertaining to the City of Burlingame, a copy of which is attached hereto and made a part hereof.
2. The Mayor is hereby authorized to execute and transmit said responses to the Presiding Judge of the San Mateo County 2010-2011 Grand Jury, in accordance with State law.



Terry Nagel, Mayor

I, Mary Ellen Kearney, Clerk of the City of Burlingame, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the Burlingame City Council held on the 18th day of July, 2011, by the following vote to wit:

AYES: Councilmembers **BAYLOCK, BROWNRIGG, DEAL, KEIGHRAN, NAGEL**
NOES: Councilmembers: **NONE**
ABSENT: Councilmembers: **NONE**



Mary Ellen Kearney, City Clerk

CITY OF BURLINGAME RESPONSES TO GRAND JURY REPORT

Cell Towers: Public Opposition and Revenue Source

(Adopted by the Burlingame City Council on July 18, 2011)

THE FOLLOWING ARE THE CITY OF BURLINGAME'S RESPONSES TO THE GRAND JURY'S FINDINGS REGARDING "CELL TOWERS: PUBLIC OPPOSITION AND REVENUE SOURCE":

Finding: *There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.*

Response: Partially agree. Further refinements to City policies and procedures are warranted, though limited procedures currently exist, as described below. Work is ongoing to develop revisions to current policies and procedures in this area.

Chapter 18.18 ("Radio and Television Antennas") of the Burlingame Municipal Code (BMC) includes provisions regulating the placement of radio and television antennas; absent specific provisions that address the placement of cell towers upon private property, the City has historically applied the standards and procedures outlined within this chapter to cell tower installations. The chapter provides specific development standards that direct the installation of such towers, including setbacks from property lines/roof edges (for rooftop installations), screening from adjacent properties, and height. Additionally, the chapter imposes a finish standard (non-reflective material and/or paint) that is intended to further reduce impacts upon adjacent properties.

In instances where an applicant for a permit to install a cell tower cannot meet the standards of Chapter 18.18 of BMC, approval of an "antenna exception" may be sought. Applications for antenna exceptions are processed as a discretionary permit in a manner that mirrors the public noticing requirements of a conditional use permit application – mailed noticing is provided to owners of all property lying within 300-feet of the site in question. This procedure provides an opportunity for expression of public resistance to a proposed installation in instances where an exception to standards is proposed.

With respect to cell towers installed upon City rights-of-way, the City of Burlingame's Department of Public Works has adopted "Permit, Location, Design and Public Notification Requirements Associated with Telecommunications Provider's Placement of Facilities on Utility Poles Located within City Right-of-Way" policy and procedure document that includes criteria for design and placement of cell towers (and other telecommunications equipment) within the public right-of-way through issuance of a "special encroachment permit". The adopted procedure requires notification to owners of property lying within 300-feet of a proposed installation, providing details of the proposed installation. Property owners are provided 21-days to provide comments/express concerns regarding a proposed installation prior to administrative approval of any application. The procedure provides for a dialog between property owners, the City and

CITY OF BURLINGAME RESPONSES TO GRAND JURY REPORT

Cell Towers: Public Opposition and Revenue Source

(Adopted by the Burlingame City Council on July 18, 2011)

the utility provider to address concerns raised during the public comment period. Approval of a special encroachment permit is appealable to the City's Planning Commission within ten (10) days following the date of approval. On appeal, the Commission will provide opportunity for public input through a formal public hearing process prior to issuing its determination. All actions of the Planning Commission are further appealable to the City Council.

Finding: *Locating applicable cell tower ordinances and policies on County and city websites is cumbersome.*

Response: Agree. The City of Burlingame's website does not include easy-to-find links to applicable regulations applicable to the installation of cell towers within the community.

Finding: *Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.*

Response: Agree. Chapter 18.18 ("Radio and Television Antennas") of the Burlingame Municipal Code (BMC) includes development standards that have historically been applied to the installation of cell towers. The standards are silent relative to perceived "health risks" and speak strictly to design, finishing and placement of such installations. The Department of Public Works' "Permit, Location, Design and Public Notification Requirements Associated with Telecommunications Provider's Placement of Facilities on Utility Poles Located within City Right-of-Way" policy and procedure document is similarly crafted to address only aesthetic matters.

Finding: *Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.*

Response: Partially agree. Further refinements to City policies and procedures are warranted in this area.

Chapter 18.18 ("Radio and Television Antennas") of the Burlingame Municipal Code (BMC) is silent regarding maintenance and/or removal of cell towers. In the event that an "antenna exception" application is submitted for consideration by the City's Planning Commission, appropriate conditioning may be included that would address this finding as part of a discretionary approval.

CITY OF BURLINGAME RESPONSES TO GRAND JURY REPORT

Cell Towers: Public Opposition and Revenue Source

(Adopted by the Burlingame City Council on July 18, 2011)

The Department of Public Works' "Permit, Location, Design and Public Notification Requirements Associated with Telecommunications Provider's Placement of Facilities on Utility Poles Located within City Right-of-Way" policy and procedure document does include direction regarding the maintenance and/or removal of cell towers (and other telecommunications facilities) within the public right-of-way.

In one instance within the City where a cell tower has been installed within a public park; the agreement with the service provider includes provisions for maintenance and/or removal of the facility as part of the lease agreement with the City.

Finding: *The County and all cities have varying filing and processing fees for processing cell tower applications.*

Response: Partially agree. The application fees of the various jurisdictions within the County of San Mateo are based upon the cost of providing permit processing services within each particular jurisdiction. Within the City of Burlingame, fees are based upon the amount of time (calculated based upon past experience) that will be required to process an application. Fees include reimbursement for staff time, noticing, and other costs that may be encountered during permit processing, and cannot exceed the actual cost of processing the particular type of permit.

Finding: *The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements.*

Response: Agree. Lease revenues for cell tower installations on public property are the result of negotiations between the City and the service provider. The City has limited experience with this type of lease arrangement (only one such agreement is in existence in the City) – this past negotiation will inform future negotiations for similar installations on public properties.

Finding: *Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.*

Response: Agree. The City of Burlingame has executed only one agreement with a service provider for a cell tower installed upon public property; however, the agreement requires a fee totaling \$25,000 per year to be collected from the service provider for use of the site within the Washington Park.

CITY OF BURLINGAME RESPONSES TO GRAND JURY REPORT

Cell Towers: Public Opposition and Revenue Source

(Adopted by the Burlingame City Council on July 18, 2011)

THE FOLLOWING ARE THE CITY OF BURLINGAME'S RESPONSES TO THE GRAND JURY'S RECOMMENDATIONS REGARDING "CELL TOWERS: PUBLIC OPPOSITION AND REVENUE SOURCE":

Recommendation: *Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.*

Response: No revision necessary at this time. The City's permit processing fees are based upon actual costs for processing applications, including all costs above staff time. In the event that additional procedural changes are made to improve upon procedures for processing cell tower applications, then appropriate fees for processing will be formulated using this approach.

Recommendation: *Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefits to the community.*

Response: No revision necessary. Though only one lease agreement for a cell tower upon City land currently exists, this agreement does provide for a revenue stream that is of benefit to the community. Future agreements will be negotiated in a similar manner.

Recommendation: *Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements.*

Response: This recommendation will be implemented as future revisions to current policies regarding cell tower (and other telecommunications facilities) are revised. In the meantime, requests for approval of discretionary "antenna exception" permits by the Planning Commission shall include a standard condition that requires maintenance and/or removal of equipment, similar to the condition imposed upon lease agreements for such installations on public property, and for special encroachment permits issued by the Department of Public Works for installations within the public rights-of-way.

Recommendation: *Require that all new lease agreements contain a provision requiring service providers to install newer technology as it become commercially available to reduce the footprint of cell towers.*

Response: **To the extent legally permissible**, this provision will be included as a condition of approval of any future cell tower and will be negotiated into any future cell-antenna lease agreement between the City and a provider.

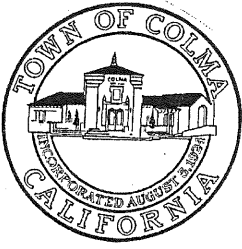
CITY OF BURLINGAME RESPONSES TO GRAND JURY REPORT

Cell Towers: Public Opposition and Revenue Source

(Adopted by the Burlingame City Council on July 18, 2011)

Recommendation: *Develop a webpage within County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.*

Response: Within the next six-months, the City shall update its website to include easily accessible links to information regarding the permitting policies and procedures related to cell towers (and other telecommunications facilities). This information shall include links to applicable federal regulations that affect such installations.



TOWN OF COLMA

1198 El Camino Real • Colma, California • 94014-3212
Tel 650-997-8300 • Fax 650-997-8308

November 18, 2011

City Council

Helen Fiscaro
Mayor

Raquel Gonzalez
Vice Mayor

Joanne F. del Rosario
Council Member

Joseph Silva
Council Member

Diana Colvin
Council Member

City Treasurer
Laura Walsh

City Officials

Laura Allen
City Manager

Robert L. Lotti
Chief of Police

Roger Peters
City Attorney

Cyrus Kianpour
Acting City Engineer

Brad Donohue
Acting Public
Works Director

Michael Laughlin, AICP
Acting City Planner

Brian Dossey
Director of Recreation
Services

Lori Burns
Human Resources Manager

Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

RE: Town of Colma Response to the 2011 San Mateo County Grand Jury
Report:
Cell Towers: Public Opposition and Revenue Sources

Dear Honorable Judge Bergeron,

The Town of Colma welcomes the opportunity to comment on the May 19, 2011 San Mateo County Grand Jury Report titled "Cell Towers: Public Opposition and Revenue Sources." The City Council reviewed the matter at a regularly scheduled public meeting on November 9, 2011. The letter serves as a summary of their comments and provides the City's responses to the findings and recommendations presented by the Grand Jury.

Findings

The 2011 San Mateo Grand Jury finds that:

- 1. There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.**

Response: The Town of Colma agrees with this finding.

- 2. Locating applicable cell tower ordinances and policies on County and City websites is cumbersome.**

Response: The Town of Colma agrees with this finding. The Town of Colma's website posts the entire Municipal Code and development application forms, but no specific instructions or federal regulations for cell sites are provided. This information is provided to applicants upon request. However, most applicants are seasoned representatives from telecommunications companies which are well versed with the federal regulations.

- 3. Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot be feasibly addressed by alternatives.**

Response: The Town of Colma agrees with this finding.

- 4. Some Cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.**

Response: The Town of Colma agrees with this finding based on a review of the survey conducted by the Grand Jury. As part of the Conditional Use Permit process in the Town of Colma, a condition is imposed to remove installations when they are no longer in use or become obsolete. The Town of Colma has a property maintenance ordinance that would be used to require maintenance of cell tower installations if they should fall into disrepair.

- 5. The County and all cities have varying filing and processing fees for processing cell tower applications.**

Response: The Town of Colma agrees with this finding.

- 6. The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements.**

Response: The Town of Colma agrees with this finding based on a review of the survey conducted by the Grand Jury. However, the Town of Colma currently does not have any cell towers which are leased to providers.

- 7. Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.**

Response: The Town of Colma agrees with this finding based on a review of the survey conducted by the Grand Jury.

Recommendations

- 1. Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.**

Response: The Town of Colma requires a minor Conditional Use Permit for new cell tower installations. The current fee for this type of application is \$905.00 which is cost recovery based and meets the above recommendation.

- 2. Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.**

Response: The Town of Colma currently does not have any cell tower installations on public land. If the town decides to lease land for cell tower use, the town will negotiate the lease to generate revenue or provide a tangible benefit to the community consistent with the above recommendation. The Town will be able to use the information collected by the Grand Jury from other jurisdictions to negotiate and set appropriate lease rates.

3. Add cell tower maintenance and removal provisions if they are not already included in existing ordinances or lease agreements.

The Town of Colma Municipal Code specifies in which zones communications structures are conditionally permitted and the Design Review zoning specifies height and placement provisions for installations. All cell tower installations in the Town require a Conditional Use Permit. To date, the Town has issued Conditional Use Permits for only four installations, all on private property. The Town has developed standard conditions that it applies to these installations. These conditions require that the equipment be removed when no longer in use. Since a Conditional Use Permit is required for all installations, and because conditions will be added requiring maintenance and removal, there is no immediate need to amend the zoning ordinance to add these provisions at this time, since the same outcome is obtained through the Conditional Use Permit process. However, the Town will consider adopting a current cell tower ordinance along with other Zoning Ordinance updates, as staff time permits.

4. Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.

The Town of Colma agrees with this recommendation and will include this provision in any leases that it executes with cell phone providers.

5. Develop a webpage within County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.

The Town of Colma currently has the Municipal Code posted on-line which is easily accessible to the public. The zoning specifies which zoning districts require a Conditional Use Permit for an installation of a communications facility. The Conditional Use Permit procedures are also in the Municipal Code. Applications and filing information is also available on the Planning Department website. Due to the small size of the Town of Colma and the limited likelihood of many new cell tower requests, the Town does not have posted the federal regulations related to cell tower installations, but can make this information available to the public upon request.

The members of the City Council and City Staff are committed to provide the public with wireless reception throughout the City while balancing local concerns with the rights of service providers under federal law. We appreciate the Grand Jury's time and effort into compiling the report on "Cell Towers: Public Opposition and Revenue Source." We hope that you find our comments on the report helpful.

Sincerely,

A handwritten signature in cursive script that reads "Helen Fisicaro".

Helen Fisicaro
Mayor

Cc: Laura Allen, City Manager
Michael Laughlin, Acting City Planner



CITY OF DALY CITY

333-90TH STREET

DALY CITY, CA 94015-1895

PHONE: (650) 991-8000

August 11, 2011

Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

RE: 2010-2011 Civil Grand Jury Report Cell Towers: Public Opposition and Revenue Source

Dear Judge Bergeron:

On behalf of the City Council of Daly City, I have been requested to submit the following response to the Grand Jury findings and recommendations pertaining to the above-referenced report. The City Council approved this response at a public meeting held on August 8, 2011.

FINDINGS

Finding #1

There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.

Response

The City **agrees** with the finding. The City has had a comprehensive Wireless Communications Facilities Ordinance since 1997 that complies with the FCC's Telecommunications Act. Public resistance to new wireless facilities has increased over time, but the resistance is generally not based on the standards within the ordinance, but rather the perceived health risks associated with those facilities.

Finding #2

Locating applicable cell tower ordinances and policies on County and city websites is cumbersome.

Response

The City **agrees** with this finding.

Finding #3

Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause significant gap in service coverage that cannot feasibly be addressed by alternatives.

Response

The City **agrees** with this finding.

Finding #4

Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.

Response

The City **disagrees** with this finding as it pertains to the City of Daly City. Municipal Code Section 17.39.040 requires that the applicant submit an irrevocable letter of credit to allow the city to remove any abandoned facilities or if the permit has been revoked or expired. A standard condition of permit approval requires the applicant to provide written notification to the Director of Economic and Community Development Director upon cessation of operations on the site exceeding a 90 day period. Subject to the determination of the Director, the applicant is required to remove all obsolete or unused facilities from the site within 180 days of termination of its lease with the property owner or cessation of operations.

Municipal Code Section 17.39.110 states that *"If technological improvements or developments occur which allow the use of materially smaller or less visually obtrusive equipment, the applicant shall be required to replace or upgrade the approved facility upon renewal of a permit application to minimize adverse effects related to land use compatibility, visual resources, public safety or other environmental factors."* Municipal Code Section 17.39.030(H) further requires the submittal of a maintenance program for all proposed wireless facilities as part of the application process.

Finding #5

The County and all cities have varying filing and processing cell tower applications.

Response

The City **agrees** with this finding based on the survey results presented in the report. The City updated the fees for processing wireless facilities applications in 2008 after an extensive fee study. The cost recovery for processing these applications is 100% based on average processing times.

Finding #6

The County and cities generate widely varying amounts of revenue through cell tower lease agreements.

Response

The City **agrees** with this finding based on the survey results presented in the report. The City has established a methodology for calculating lease rates based on the square footage of the ground lease, number/height of poles and antennas, linear footage of utilities crossing the site, and a variety of other factors.

Finding #7

Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.

Response

The City **disagrees** with this finding as it pertains to the City of Daly City. Although the survey results indicate that the City of Daly City does not generate revenue from leases on public property that is not the case. The City of Daly City currently has 12 revenue generating installations and zero non-revenue generating installations by commercial providers on public property. The City of Daly City currently receives a total of \$314,865 annually from these leases or an average of \$28,624 annually per lease. This revenue is deposited to the City's General Fund.

RECOMMENDATIONS

Recommendation #1

Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.

Response

The City has **implemented** this recommendation. The City updated the fees for processing wireless facilities applications in 2008 after an extensive fee study. The cost recovery for processing these applications is 100% based on average processing times. When future fee analyses are conducted, the City will maintain a 100% cost recovery for wireless facility application review.

Recommendation #2

Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.

Response

The City has **implemented** this recommendation. The City has established a methodology for calculating lease rates based on the square footage of the ground lease, number/height of poles and antennas, linear footage of utilities crossing the site, and a variety of other factors.

Recommendation #3

Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements.

Honorable Joseph E. Bergeron

RE: 2010-2011 Civil Grand Jury Report Cell Towers: Public Opposition and Revenue Source

Page 4 of 4

Response

The City has **implemented** this recommendation. Municipal Code Section 17.39.040 requires that the applicant submit an irrevocable letter of credit to allow the city to remove any abandoned facilities or if the permit has been revoked or expired. A standard condition of permit approval requires the applicant to provide written notification to the Director of Economic and Community Development Director upon cessation of operations on the site exceeding a 90 day period. Subject to the determination of the Director, the applicant is required to remove all obsolete or unused facilities from the site within 180 days of termination of its lease with the property owner or cessation of operations.

Recommendation #4

Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.

Response

The City has **implemented** this recommendation. Municipal Code Section 17.39.110 states that *"If technological improvements or developments occur which allow the use of materially smaller or less visually obtrusive equipment, the applicant shall be required to replace or upgrade the approved facility upon renewal of a permit application to minimize adverse effects related to land use compatibility, visual resources, public safety or other environmental factors."* This code section applies to all wireless facilities, on both public and privately-owned property. While the City's lease agreements do not explicitly cite this code section, it would still apply to City leases. The City could easily include more direct language in its lease agreements pertaining to DCMC 17.39.110.

Recommendation #5

Develop a webpage within the County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.

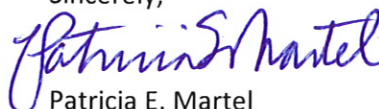
Response

The City **will implement** this recommendation. Given the volume of applications for wireless facilities, both new and renewals of existing permits, and the public interest in these facilities it is reasonable to have the applicable ordinance and description of the review process available on-line. The City could complete this action by the end of the calendar year.

In conclusion, the City of Daly City appreciates the opportunity to provide written responses to the San Mateo County Grand Jury Report on Cell Towers: Public Opposition and Revenue Source. The City Council of Daly City approved the responses contained herein on August 8, 2011.

Should you or the Grand Jury require additional information or clarification concerning the response provided, please contact me directly at (650) 991-8127.

Sincerely,



Patricia E. Martel
City Manager



City of East Palo Alto

2415 University Avenue
East Palo Alto, California 94303
Phone: (650)853-3100
Web: <http://www.ci.east-palo-alto.ca.us>

CITY COUNCIL

Carlos Romero, Mayor
Laura Martinez, Vice Mayor
Ruben Abrica
Peter Evans
David Woods

September 20, 2011

Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063

Re: Response to the 2010-2011 Grand Jury Cell Tower Report

Dear Judge Bergeron:

The City of East Palo Alto submits the following in response to the Grand Jury Report on cell towers throughout San Mateo County. Please note that the East Palo Alto City Council was on recess during the month of August 2011. This matter was considered at the City Council meeting held on September 20, 2011.

The Grand Jury Findings are:

1. There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.
2. Locating applicable cell tower ordinance and policies on county and city websites is cumbersome
3. Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.
4. Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires
5. The County and all cities have varying filing and processing fees for processing cell tower applications
6. The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements
7. Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.

The City of East Palo Alto staff has not fully researched and verified the accuracy of the Grand Jury's Findings; however, the City has no reason to doubt the accuracy of the Findings and agrees the Findings reflect the Grand Jury's perceptions.

The Grand Jury is recommending to the County Board of Supervisors and the City Councils of all cities in San Mateo County the following:

1. Review and revise, if needed the current fee structure to recoup staff costs for processing cell tower applications;
2. Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community;
3. Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements;
4. Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers; and
5. Develop a webpage within County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.

More specifically, the Grand Jury further recommends the City Councils of Daly City, East Palo Alto, Half Moon Bay, Portola Valley, and Woodside pursue new or amended leases for existing cell towers on public property that are not currently generating revenue or other community benefits.

With respect to the Grand Jury recommendations, the City of East Palo Alto responds to each recommendation as follows:

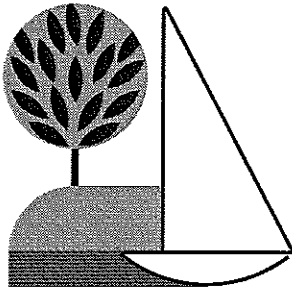
1. The City is already in the process of creating a Cost Allocation Plan, which will lead to a revised fee structure, including cell tower installation fees
2. The City will research by November 15, 2011 what other cities are doing regarding lease agreements and will consider entering into future lease agreements for installations on City-owned land, although there is limited City-owned land in East Palo Alto.
3. The City already requires maintenance and removal provisions as a condition of approval, and this was noted in the report.
4. The City will research by November 15, 2011, best practices regarding provisions in lease agreements that reduce the footprint of cell tower installations, as new technology becomes commercially available.
5. The City already prepared and is planning to issue within the next few months a request for proposals to update and upgrade the City's website. As part of this process, the City will review how it posts local ordinances, policies and procedures. The City is not persuaded, however, that federal regulations are an appropriate item to be posted on its website.

Furthermore, the City will review, as time permits, existing leases and will consider the feasibility of amending any leases that are not currently generating revenue.

Very truly yours,



Carlos Romero,
Mayor



City of Foster City
ESTERO MUNICIPAL IMPROVEMENT DISTRICT

610 Foster City Boulevard
Foster City, CA 94404-2222
650-286-3200
650-574-3483 (fax)

July 18, 2011

Hon. Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Dear Judge Bergeron

Subject: Response to Grand Jury Report – “Cell Towers: Public Opposition and Revenue Source”

We are in receipt of the Grand Jury’s final report entitled “Cell Towers: Public Opposition and Revenue Source.” Pursuant to your letter dated May 19, 2011 requesting a response, the City Council of the City of Foster City held a public meeting on July 18, 2011 and approved the following responses.

Findings

All findings in the report were applicable to all agencies within the scope of the report. The responses contained herein provide the perspective based on the City of Foster City’s past experience. Specific responses to findings that are inconsistent with the City’s findings are so noted.

Finding #1 - There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.

Response: The City agrees with this finding.

Finding #2 - Locating applicable cell tower ordinances and policies on County and city websites is cumbersome.

Response: The City agrees with this finding.

Finding #3 - Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.

Response: The City agrees with this finding.

Finding #4 - Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.

Response: The City disagrees partially with the finding. The Grand Jury indicated in researching the City's cell towers that Foster City does not have a provision requiring service providers to remove cell towers if obsolete or if the permit expires. This is partly incorrect.

With respect to lease agreements on City property, every one of the four lease agreements has requirements for removal of all facilities upon termination of those lease agreements.¹

Finding #5 - The County and all cities have varying filing and processing fees for processing cell tower applications.

Response: The City agrees with this finding.

Finding #6 - The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements.

Response: The City agrees with this finding.

Finding #7 - Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.

Response: This finding is not applicable to Foster City.

Recommendations

The Grand Jury makes one specific recommendation to the City Councils of Daly City, East Palo Alto, Half Moon Bay, Portola Valley and Woodside. For this recommendation, the City has no response. With regards to the five (5) recommendations made by the Grand Jury applicable to all agencies, the City provides the following responses:

Recommendation #1 - Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.

Response: The City has already been reviewing and revising its fee structures on an annual basis by reviewing its Master Fees and Charges Schedule as part of the budget process to determine if the fees charged are appropriately established to recover the costs of providing those services. In this case, fees such as architectural, use permit, and building and electrical permits are reviewed annually. The City

¹ Sections of existing lease agreements containing removal provisions are as follows:

- AT&T / Cingular Lease Agreement – Sections 5.1 and 7.5
- Nextel Lease Agreement – Sections 5.1 and 7.5
- Sprint (Edgewater Park) Lease Agreement – Sections 5.1 and 8.5(c)
- Sprint (Gateshead Drive) Lease Agreement – Sections 5.1 and 7.5

Council approved a resolution on June 6, 2011 updating the Master Fees and Charges Schedule for FY 2011-2012 that includes these fees.

Recommendation #2 - Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.

Response: The City has already been negotiating lease agreements on public land that generate revenue. In 2000, the City Council approved the City's first Telecommunications Policy that set forth policies, goals and objectives in addressing the telecommunications needs of the community. The Policy was again updated in 2007. Goal D of that policy is to "facilitate creation of advanced telecommunications infrastructure". To that end, one of the policy statements included in that policy is to allow for the use of City-owned property in balancing the interests of the community and telecommunications providers. Specifically, the policy indicates that

"The City shall designate zones within its owned property that may be leased to telecommunications service providers for purposes outlined within this Telecommunications Policy. Such leases can be deemed short-term or long-term depending upon the needs of the telecommunications provider requesting such space and the City. Use of such property shall not be determined to be "in perpetuity" or a "land purchase". The City is not obligated to find space for providers, particularly if such designated space is deemed to be unavailable. All providers will be obligated to submit written plans and specifications for the work to be performed as required by the City's Public Works and/or Community Development departments and local law.

The City, at its sole discretion, may elect to allow private organizations to lease such property providing that there is expected to be a community benefit for the use of such property. Such community benefits may include, but are not limited to, enhanced property values, promoting economic development, and the provision of services that may benefit multiple persons or entities."

The policy goes on to state that "the City shall be compensated at a reasonable price for the use of such property."

In accordance with the Policy, the City has demonstrated its ability to work with telecommunications providers in accordance with federal, state and local law in reviewing proposals for the use of City property to enhance the telecommunications infrastructure within the City.

Recommendation #3 - Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements.

Response: The City has already been including maintenance and removal provisions in its lease agreements with cell service providers.

Regarding City ordinances, Chapter 17.60 "Regulation of Antennas" of Title 17 "Zoning" of the Foster City Municipal Code governs the installation of cell antennas and related facilities. The Ordinance refers to the issuance of Use Permits by the Community Development Department. The current Conditions of Approval for Use Permits pertaining to cell towers does not incorporate language relative to the removal of facilities upon either expiration of the permit or the abandonment of the site. This recommendation requires further analysis by the Community Development Department and, to the extent necessary, by the Planning Commission. It will be considered for implementation by December 31, 2011.

Recommendation #4 - Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.

Response: This recommendation is a matter of local determination. While the desire for newer technology is consistent with the City's Telecommunications Policy, mandating these requirements in a lease agreement will need to be weighed against the other aspects of the agreement (lease term, rent, maintenance requirements, provision of services, etc) in terms of securing the best overall negotiated agreement for the community's benefit. The City will consider this recommendation when it believes it appropriate to do so when future requests from cell providers are received.

Recommendation #5 - Develop a webpage within County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.

Response: This recommendation has not yet been implemented, but will be implemented by December 31, 2011. The City's Municipal Codes and Telecommunications Policy are all currently available on the website. However, they are not combined together on one webpage. The City is in the final stages of design and implementation of a new website which is expected to be completed by December 31, 2011. A page will be devoted to cell tower installations under the new website design.

Sincerely,



Linda Koelling
Mayor



CITY OF HALF MOON BAY
City Hall, 501 Main Street
Half Moon Bay, CA 94019

July 20, 2011

Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Subject: Half Moon Bay Responses to Grand Jury Findings and Recommendations

Dear Judge Bergeron:

At its regular meeting on July 19, 2011, the City Council of the City of Half Moon Bay (City) reviewed and approved responses to the Grand Jury report entitled "Cell Towers: Public Opposition and Revenue Source" as summarized below.

RESPONSES TO FINDINGS

FINDINGS:

1. *There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to the application.*

Response: The City agrees with this Grand Jury Finding.

2. *Locating applicable cell tower ordinances and policies on the City's website is cumbersome.*

Response: The City disagrees with this Grand Jury Finding. The regulations pertaining to cell towers are contained in the Municipal Code, which is readily accessible on the City's website.

3. *Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.*

Response: The City agrees with this Grand Jury Finding.

4. *Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.*

Response: The City agrees with this Grand Jury Finding.

5. *The County and all cities have varying filing and processing fees for processing cell tower applications.*

Response: The City agrees with this Grand Jury Finding.

6. *The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements.*

Response: The City agrees with this Grand Jury Finding.

7. *Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on private property.*

Response: The City disagrees with this Grand Jury Finding. The attachment (Matrix) to the report indicates that the City has one cell tower on public property and is one of five cities that do not generate revenue by charging service providers for land use. The City has one tower located at the sheriff's substation on which a pager system for city employees had been installed (Pagenet). This was not a service provider for cell phone service and there are no other providers on that site. There are currently four active sites in the City that accommodate four different providers.

RESPONSES TO RECOMMENDATIONS

1. *Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.*

Response: This recommendation has already been implemented. The City currently regulates cell towers as development that requires Site and Design Review and a Coastal Development Permit subject to the review and approval of the Planning Commission. The application for processing requires a deposit of \$1,300, from which staff time and materials costs are deducted.

2. *Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.*

Response: This recommendation requires further analysis. The City will investigate the demand among service providers for leasing a cell site. If there is interest, the City will prepare a lease agreement form for that purpose and prepare a resolution for City Council to adopt that establishes the policies and procedures for the leasing of cell sites on City property by October 18, 2011.

3. *Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements.*

Response: This recommendation has been implemented. The Planning Commission includes such provisions as conditions of approval for Site and Design Review and a Coastal Development Permit.

4. *Require that all new lease agreements contain a provision that requires service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.*

Response: This recommendation requires further analysis and will be incorporated into the study described in the Response to Recommendation #2 above.

5. *Develop a webpage on the City website which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.*

Response: This recommendation requires further analysis and will be incorporated into the study described in the Response to Recommendation #2 above.

A copy of the resolution approving this response to the Grand Jury is attached.

Sincerely,



Laura Snideman, City Manager
City of Half Moon Bay

cc: City Council
City Attorney
City Clerk

PDF to: grandjury@sanmateocourt.org



TOWN OF HILLSBOROUGH

1600 FLORIBUNDA AVENUE
HILLSBOROUGH
CALIFORNIA
94010-6418

August 9, 2011

Hon. Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center 2nd Floor
Redwood City, CA 94063-1655

Re: Response to Grand Jury Report – “Cell Towers: Public Opposition and Revenue Source”

Dear Judge Bergeron,

Please accept this letter as the Town of Hillsborough's formal response to the May 19, 2011 letter from the Superior Court relaying comments made by the current Civil Grand Jury regarding “Cell Towers: Public Opposition and Revenue Source”.

The Town has reviewed the Grand Jury's comments. Listed below are the Town's responses to the findings and recommendations that were reviewed by the City Council at its August 8, 2011 meeting.

Findings:

1. There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.

Response: The Town agrees with this finding.

2. Locating applicable cell tower ordinances and policies on County and city websites is cumbersome.

Response: The Town disagrees with this finding as it relates to the Town of Hillsborough. The Town has the municipal code on its website and the links to find specific areas are straightforward.

3. Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.

Response: Based on the Town's knowledge of federal law, we agree with this finding.

4. Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.

Response: The Town cannot speak for other agencies, but has no reason to disagree with the information compiled and listed on the attachment to the report.

5. The County and all cities have varying filing and processing fees for processing cell tower applications.

Response: The Town has no reason to disagree with the information provided in the attachment to the report.

6. The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements.

Response: The Town has no reason to disagree with the information provided in the attachment to the report.

7. Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.

Response: The Town has no reason to disagree with the information provided in the attachment to the report.

Recommendation #1

Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.

The Town agrees with this recommendation and it has been implemented.

The Town reviews its fee structure annually with each budget cycle and makes the appropriate adjustments if necessary. Currently applicants pay a flat fee for the wireless facility application and permit along with a deposit to cover additional staff time should it be needed.

Recommendation #2

Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.

The Town agrees with this recommendation and it has been implemented.

The Town has several lease agreements in place and is collecting rental amounts similar to other agencies in the County. Any company desiring to place cellular equipment on Town property is required to follow the Town's ordinance and enter into a lease agreement, where applicable, which will require a monthly rental fee.

Recommendation #3

Add cell tower maintenance and removal provisions if they are not already included in the existing ordinances and lease agreements.

The Town agrees with this recommendation and it has been implemented.

Hillsborough Municipal Code Section 15.32.120 requires any permittee who intends to abandon or discontinue use of a wireless communications facility to notify the city engineer and follow the appropriate action.

Recommendation #4

Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.

The Town agrees with the principle of reducing the footprint of wireless towers where possible, but the recommendation will not be implemented as the Town disagrees in "requiring service providers to install newer technology as it becomes commercially available".

The Town is not in a position to competently monitor, much less evaluate all of the varied technological factors necessary to determine whether a newer technology will actually result in the reduction of the footprint of a particular cell tower, or even whether that newer technology will be commercially available. The difficulties just stated are compounded by the fact that various wireless carriers use sometimes incompatible technologies thus potentially yielding a result that could violate Congress's mandate that state and local governments "not unreasonably discriminate among providers of functionally equivalent services." 47 U.S.C. § 332(c)(7)(B)(i)(I).

Recommendation #5

Develop a webpage within County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.

The Town agrees in principle that the public should have various means of accessing government information. To that end, the recommendation has been implemented as the Town currently publishes a wide variety of government information for public benefit. However, the Town disagrees with the recommendation that it should re-publish "federal regulations related to cell tower installations."

For several years the Town has published its wireless code on the Town's website (Chapter 15.32 of the Hillsborough Municipal Code). The Town also maintains online its commonly used forms, including the forms for applying for wireless permits. The Town also maintains various informational handouts in electronic format on its web site, but because of the complex and individualized nature of wireless tower siting, and the differences produced by varying technologies, the Town does not believe that a general handout would be as useful as person-to-person interactions between the Town's professional staff, its residents, and its applicants.

The Town respectfully disagrees with the Grand Jury that the Town should provide on its website "federal regulations related to cell tower installations." The federal government publishes a tremendous amount of information related to cell tower installations. A search conducted by the Town at the U.S. Government's website, www.Search.U.S.A.Gov, produced nearly twenty-one million page hits for the exact term "cell towers". Accordingly, the Town does not plan to implement this recommendation because it would be impossible for the Town to provide the information suggested by the Grand Jury in an up-to-date and legally reliable format. Moreover, any attempt to implement this recommendation would likely not be only an incomplete but a redundant and costly use of administrative resources.

Sincerely,



Thomas M. Kasten
Mayor

RICHARD CLINE
MAYOR

KIRSTEN KEITH
MAYOR PRO TEM

ANDREW COHEN
COUNCIL MEMBER

KELLY FERGUSSON
COUNCIL MEMBER

PETER OHTAKI
COUNCIL MEMBER



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July 26, 2011

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City Manager's Office
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Transportation
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Judge Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

**Re: San Mateo County Grand Jury Report Titled
"Cell Towers: Public Opposition and Revenue Source"**

Dear Judge Bergeron,

The City of Menlo Park received the San Mateo County Grand Jury report titled "Cell Towers: Public Opposition and Revenue Source." The report contains 7 findings, 6 of which are applicable to Menlo Park. The report, issued in late May, also contains 5 recommendations regarding cell towers.

This letter, approved by the City Council at their July 19, 2011 meeting, respectfully responds to the findings and recommendations contained in the Grand Jury's letter.

Grand Jury Findings

Finding #1

There is no apparent correlation between the existence of policies and /or ordinances regarding cell towers and the likelihood of public resistance to an application.

The City of Menlo Park agrees that placement of cell towers often results in public resistance which is why the City processes such requests through a use permit process.

Finding #2

Locating applicable cell tower ordinances and policies on County and City websites is cumbersome.

The City of Menlo Park partially agrees with this finding. City websites are filled with current and historical information, creating a struggle to highlight "important" information to the user searching for very specific information. We continue to work to develop our website to enhance its usability to the online user. City ordinances related to utility transmission facilities, as well as noticing, staff reports, and minutes from public meetings are available for interested parties on our website.

Finding #3

Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot be feasibly addressed by alternatives.

The City of Menlo Park agrees with this finding to the extent that Council actions should conform to federal and state law.

Finding #4

Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.

The City of Menlo Park agrees with this finding to the extent that it is within the capacity of the City to control the maintenance and removal of existing installations. The City has authority over cell towers on private and public property through the use permit and encroachment permit processes, as well as through lease agreements on public property. The City does not have any regulatory authority concerning cell antenna on public utilities. The City includes provisions for maintenance and removal in lease agreements.

Finding #5

The County and all cities have varying filing and processing fees for processing cell tower applications.

The City of Menlo Park agrees with this finding in that our fees are set to fully recover the cost of processing the applications, and it may be that other cities have not adopted that same cost recovery model.

Finding #6

The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements.

The City of Menlo Park agrees that as with any individual negotiated agreement, revenues may vary depending on a number of factors such as the location of the property, the term of the agreement, and the availability of information regarding similar leases in surrounding jurisdictions. The City would agree that the City should achieve the best value possible. The City did seek out comparable information from other jurisdiction when negotiating the existing lease that we hold with Cingular, in an effort to achieve a fair market rent for those types of facilities at the time.

Finding #7

Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.

The City of Menlo Park agrees with the intent of charging for the use of public land or infrastructure, although Menlo Park is not one of the eight cities referred to above.

Grand Jury Recommendations

Recommendation #1

Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.

Implemented: The City of Menlo Park fully recovers the cost to process use permit applications for cell tower installations. In rare cases, if an application is appealed to the City Council costs of processing the appeal may not be fully recovered. The City re-evaluates its fee structure annually to maximize cost recovery.

Recommendation #2

Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.

Implemented: The City of Menlo Park will continue to require revenue generating lease agreements for use of public land.

Recommendation #3

Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements.

This recommendation requires further analysis. The City of Menlo Park currently requires the removal of the "communication facility" at the end of our lease agreement. Our practice has been to incorporate such requirements into new agreements or leases rather than adopting ordinances which are cumbersome to modify. Incorporating controls into the actual lease agreement enables the City to be more nimble in incorporating new requirements into new or renegotiated agreements. The City will also consider incorporating this recommendation as a condition of approval in use permits.

Recommendation #4

Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.

This recommendation requires further analysis. The City of Menlo Park agrees to study the inclusion of this requirement into our use permit process when an update of our process is undertaken. It should be noted that the City does not maintain any "cell tower technology experts" on staff. As a result, there may be an inherent lack of expertise in recognizing that newer technology is available for installation to reduce the footprint of towers.

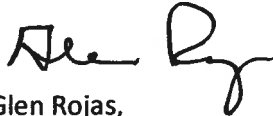
Recommendation #5

Develop a webpage within County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations

The City of Menlo Park agrees with this recommendation in concept but it requires further analysis. If achievable, the suggested changes will be incorporated as future website improvements occur. The City currently posts City ordinances related to utility transmission

facilities as well as ordinances, guidelines and application submittal information for use permits. Federal Regulations are not within the purview of the City, and are typically complex, requiring some expertise in their interpretation.

The City Council and staff acknowledge that planning applications are often complex, and in the case of cell towers, controversial. We appreciate the time and effort of the San Mateo Grand Jury in scrutinizing the issues involved.

A handwritten signature in black ink, appearing to read "Glen Rojas". The signature is fluid and cursive, with the first name "Glen" and last name "Rojas" clearly distinguishable.

Glen Rojas,
City Manager



City of Millbrae

621 Magnolia Avenue, Millbrae, CA 94030

DANIEL F. QUIGG
Mayor
MARGE COLAPIETRO
Vice Mayor
GINA PAPAN
Councilwoman
NADIA V. HOLOBER
Councilwoman
PAUL SETO
Councilman

July 12, 2011

Hon. Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655

Dear Judge Bergeron:

We are in receipt of the Grand Jury's final report entitled, "Cell Towers: Public Opposition and Revenue Source". Pursuant to your May 19, 2011 request, the Millbrae City Council held a public meeting on July 12, 2011 and approved this response. The City of Millbrae responds to the Grand Jury's findings and recommendations as follows:

Findings

Cell Towers: Public Opposition and Revenue Source

1. *There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.*

Response: The City of Millbrae agrees with the finding.

2. *Locating applicable cell tower ordinances and policies on County and city websites is cumbersome.*

Response: The City of Millbrae agrees with the finding. The City's website posts the entire Municipal Code and the generic development application form, but no specific instructions or federal regulations for cell sites are provided. This information instead is provided to applicant at the time a request is submitted to staff.

3. *Federal law precludes the use of perceived health risk as a basis for denying an application – Telecommunication Act of 1996; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.*

Response: The City agrees with the finding.

City Council/City Manager/City Clerk
(650) 259-2334

Building Division/Permits
(650) 259-2330

Community Development
(650) 259-2341

Finance
(650) 259-2350

Fire
(650) 259-2400

Police
(650) 259-2300

Public Works/Engineering
(650) 259-2339

Recreation
(650) 259-2360

4. *Some cities in the County do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.*

Response: The City of Millbrae disagrees with the finding. The City's Ordinance relating to cell tower sites includes the maintenance and removal provision (removal within 90 days of the discontinuation of the use with the caveat that the site to be restored to its original preconstruction condition). Approvals for City's cell site always include a condition requiring ongoing maintenance of the site and cell tower. City requires that the lessees maintain their site in good condition at all times.

5. *The County and all cities have varying filing and processing fees for processing cell tower applications.*

Response: The City of Millbrae agrees with the finding.

6. *The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements.*

Response: The City of Millbrae agrees with the finding. City staff negotiates a new lease for every new proposed cell tower which is reviewed and updated by the City Attorney. Rents are usually based on similar rent revenues collected by other cities in the area and depend in part upon the square footage of the cell tower site requested.

7. *Five cities in the County which have some cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.*

Response: The City of Millbrae agrees with the finding. However, the City is one of 12 cities in the County which is generating revenue from cell tower installations on its five public properties. City's average annual revenue from cell tower installations - by leasing of public land - is about \$18,000 per facility or a total of approximately \$160,000 per year, deposited in City's general fund for variety of uses.

Recommendations

The 2011 San Mateo County Civil Grand Jury recommends to the County Board of Supervisors and the City Councils of all cities in San Mateo County the following:

1. *Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.*

Response: Reviewed and no revision is necessary. The recommendation has been implemented.

2. *Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.*

Response: The City has in the past and will in the future negotiate new leases for every new proposed cell tower which are reviewed and updated by the City Attorney, once proposed. The recommendation has been implemented.

3. *Add cell tower maintenance and removal provision if they are not already included in existing ordinances and lease agreements.*

Response: This recommendation is currently in effect. The recommendation has been implemented.

4. *Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.*

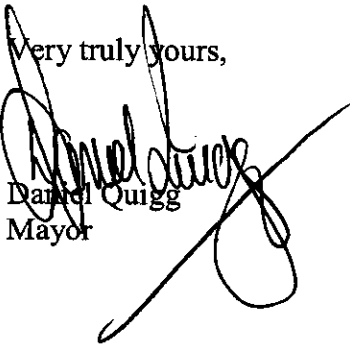
Response: While the City requires the installation of newer technology as it becomes commercially available, it does not require cell sites lessee to reduce their footprints as recommended by the Grand Jury. A reduction in the footprint could constitute a reduction of the revenue for the City which is not in the City's interest. The recommendation will not be implemented because it is not warranted or reasonable.

5. *Develop a webpage within County and city websites that clearly posts local ordinances, policies and procedures as well as federal regulations related to cell towers installations.*

Response: The City currently has website posts of the entire Municipal Code and the generic development application form, but no specific instructions or federal regulations for cell sites are provided. Staff agrees and recommends adopting the Grand Jury's recommendation by adding the specific instruction for cell tower installations and the relevant federal regulations to City's webpage, to be implemented by current Community Development Department staff. The recommendation has not been implemented, but will be implemented within six months from the date of publication of the Grand Jury report.

The members of the City Council and City Staff are committed to provide the public with a balanced and improved wireless reception throughout the City while considering local concerns in addition to the recognition of the rights of service providers under federal law. We appreciate the Grand Jury's time and effort into compiling the report on "Cell Towers: Public Opposition and Revenue Source". We hope you will find our commentary helpful.

Very truly yours,



Daniel Quigg
Mayor

Cc: Marcia Raines, City Manager



Scenic Pacifica

CITY HALL

170 Santa Maria Avenue • Pacifica, California 94044-2506

www.cityofpacifica.org

MAYOR
Mary Ann Nihart

MAYOR PRO TEM
Peter DeJarnatt

COUNCIL
Sue Digre
James M. Vreeland, Jr.
Len Stone

CITY MANAGER'S OFFICE

TEL. (650) 738-7301
FAX (650) 359-6038

CITY ATTORNEY

TEL. (650) 738-7409
FAX (650) 359-8947

CITY CLERK

TEL. (650) 738-7307
FAX (650) 359-6038

CITY COUNCIL

TEL. (650) 738-7301
FAX (650) 359-6038

FINANCE

TEL. (650) 738-7392
FAX (650) 738-7411

FIRE ADMINISTRATION

TEL. (650) 991-8138
FAX (650) 991-8090

HUMAN RESOURCES

TEL. (650) 738-7303
FAX (650) 359-6038

**PARKS, BEACHES &
RECREATION**

TEL. (650) 738-7381
FAX (650) 738-2165

PLANNING

TEL. (650) 738-7341
FAX (650) 359-5807

• **Building**

TEL. (650) 738-7344

• **Code Enforcement**

TEL. (650) 738-7341

POLICE DEPARTMENT

TEL. (650) 738-7314
FAX (650) 355-1172

PUBLIC WORKS

TEL. (650) 738-3760
FAX (650) 738-9747

• **Engineering**

TEL. (650) 738-3767
FAX (650) 738-3003

• **Field Services**

TEL. (650) 738-3760
FAX (650) 738-9747

August 9, 2011

Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice - 400 County Center, 2nd Floor
Redwood City, California 94063-1655

Dear Judge Bergeron,

Our agency is in receipt of the 2010-2011 San Mateo County Civil Grand Jury report titled, "Cell Towers: Public Opposition and Revenue Source", which contains findings and recommendations regarding "Do cities and the County of San Mateo (the County) have effective governing policies and/or ordinances for cell tower installations that provide the public with a clear understanding of how applications are adjudicated and are cell tower installations a source of revenue for cities and the County?" The City of Pacifica agrees with the findings in the report.

In regards to the recommendations, the City of Pacifica has already implemented the following recommendations:

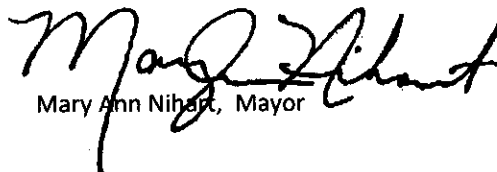
1. The City reviews and revises the fee structure to recoup staff costs for processing cell tower applications on an annual basis.
2. The City has just completed negotiations for lease agreements for installations on public land that generate revenue or other tangible benefit to the community.
3. The City has always had provisions for cell tower maintenance and removal in existing ordinances and lease agreements.
4. The City currently requires that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.

The City of Pacifica has not yet implemented the following recommendation but will over the next 6 months explore options to expand information available on the City's website.

5. The City is exploring the options to add more information to the City website which would more clearly describe our ordinance, policies and procedures as well as federal regulations related to cell tower installations.

The City of Pacifica's response to the Grand Jury report was presented at the City of Pacifica City Council meeting on August 8, 2011 and was subsequently approved. If you have any questions regarding our response, please do not hesitate to contact us.

Respectfully,


Mary Ann Nihart, Mayor

TOWN of PORTOLA VALLEY



COUNCIL:

Ted Driscoll - Mayor
Maryann Moise Derwin - Vice Mayor
F. John Richards
Steve Toben
Ann Wengert

August 2, 2011

TOWN OFFICERS:

Angela Howard
Town Manager
Sandy Sloan
Town Attorney

Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center
Redwood City, CA 94063-1655

**Re: Response to 2010–2011 Grand Jury Report
Cell Towers: Public Opposition and Revenue Source**

Dear Honorable Bergeron:

The Town Council (“Respondent”) for the Town of Portola Valley (“Town”) has reviewed the recommendations in the 2010–2011 Grand Jury Report that affect the Town and approved the following responses at the public meeting on July 27, 2011:

Cell Towers: Public Opposition and Revenue Source

Recommendation No. 1

Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.

Response No. 1

Respondent agrees with the recommendation. The Town’s current Zoning Ordinance includes the requirement that an applicant pay for all cell tower application processing fees. In addition, over the past several months, the Town has been working to develop new policies, guidelines and regulations for the placement of wireless communication facilities in the Town. This update includes revising the fee structure to recoup all staff costs for processing applications.

Recommendation No. 2

Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.

Response No. 2

Respondent agrees with the recommendation, in part. The Town is not legally entitled to lease or charge for installations in the public right-of-way. See Public Utilities Code Sections 7901 and 7901.1; see also Williams Communications,

LLC v. City of Riverside (2004) 114 Cal.App.4th 642, indicating that a license requiring payment for use of utility poles in the right-of-way is illegal. If in the future there is an installation proposed on public land, not in the right-of-way, the Town will implement the recommendation.

Recommendation No. 3

Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements.

Response No. 3

Respondent agrees with the recommendation. The Town's current Zoning Ordinance includes cell tower maintenance and removal provisions. In addition, over the past several months, the Town has been working to develop new policies, guidelines and regulations for the placement of wireless communication facilities in the Town. This update includes updating the required maintenance and removal provisions.

Recommendation No. 4

Require that all new lease agreements contain a provision requiring service providers to install new technology as it becomes commercially available to reduce the footprint of cell towers.

Response No. 4

Respondent agrees with the recommendation, in part. In general, wireless communication facilities in the Town are not subject to a lease, but a Conditional Use Permit. Government Code Section 65964(b) indicates that absent public safety or substantial land use reasons a limitation of less than ten (10) years on a permit for a wireless communication facility is unreasonable. With this limitation in mind, the Town has been working to develop new policies, guidelines and regulations regarding wireless communication facilities that include the requirement that as new technology becomes available the provider will upgrade the wireless communication facilities to minimize community impacts.

Recommendation No. 5

Develop a webpage within County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.

Response No. 5

The Town agrees with this recommendation. The Town's ordinances, policies and procedures regarding cell tower installations are currently available on the Town's website. Any updates to the Town's ordinances, policies and procedures will be provided on the website as well.

Recommendation No. 6

Pursue new or amended leases for existing cell towers on public property that are not currently generating revenue or other community benefits.

Response No. 6

Respondent disagrees with the recommendation, in part. Currently, there are no cell towers on property or cell facilities on poles owned by the Town. The five (5) cell tower sites in Town listed in the Grand Jury Report are antenna and equipment mounted on utility poles located in the right-of-way. These utility poles are not owned by the Town. Pursuant to Public Utilities Code Sections 7901 and 7901.1, the Town may not charge for the use of utility poles in the right-of-way not owned by the Town. See also Williams Communications, LLC v. City of Riverside (2004) 114 Cal.App.4th 642, indicating that a license requiring payment for use of utility poles in the right-of-way is illegal. Government Code Section 50030 limits the Town to permit fees for a cell company's use of the right-of-way. The Town can and does require an encroachment permit for accessing the public right-of-way. If and when a cell tower becomes located on public property, the Town will implement this recommendation.

The Town thanks the Grand Jury for bringing this complex issue to our attention in an informative and thorough manner. Please let me know if you require additional information.

Sincerely,



Ted Driscoll
Mayor

cc: Town Council
Town Manager
Town Attorney

Planning Services

Community Development Services
1017 Middlefield Road
P.O. Box 391
Redwood City, CA 94064



Telephone: (650) 780-7234
Facsimile: (650) 780-0128
TDD: (650) 780-0129
Email: planning@redwoodcity.org
Website: www.redwoodcity.org

July 12, 2011

Judge of the Superior Court
Hall of Justice
Attn: Hon. Joseph E. Bergeron
400 county Center; 2nd floor
Redwood City, CA 94063-1655

Re: Cell Towers: Public Opposition and Revenue Source – Grand Jury Report

Dear Hon. Joseph E. Bergeron:

At their regularly scheduled public meeting of July 11, 2011, the City of Redwood City Council reviewed the Grand Jury Report issued on May 19, 2011 on the above subject. As evidenced in the enclosed minutes and action (Attachment A), the Redwood City Council approved this report and its related findings and recommendations as follows:

- 1) The City of Redwood City Council agrees with the findings and recommendations of the Grand Jury Report.
- 2) The recommendations outlined in the Grand Jury Report have been implemented as summarized below:

2011 San Mateo County Civil Grand Jury Recommendations:

1. **Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.**

Redwood City currently has a fee structure in place to process cell tower applications. For parcels that have an area which is greater than a quarter of an acre (10,890 square feet), a cost recovery deposit is required to cover the staff costs for processing the cell tower application. An architectural permit is required for all cell tower applications in Redwood City; in addition, a use permit approval may be required for installing a cell tower, depending on the zoning district in which the proposed cell tower site is located. For cell tower sites on parcels with an area of less than a quarter of an acre, a flat fee is required to process the architectural permit application for the proposed cell tower; in addition, a use permit approval may be required for installing a cell tower, depending on the zoning district in which the proposed cell tower site is located. The current application fees and cost recovery deposit structure were established by the City on May 6, 2006 to recoup staff costs to process such applications. The specific application costs are listed in the table below:

Wireless antenna application fees*		
	Fee	Deposit
Architectural Permit	\$1,000	\$5,000
Use Permit	\$2,830	\$5,000

* Such fees, deposit levels, and billing rates may be updated from time to time

- 2. Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.**

All proposed cell tower installations on City-owned land currently require a lease agreement with the City. The specific terms and conditions of the subject lease agreements are negotiated with each cell tower carrier. The City receives revenue from these agreements.

- 3. Add cell tower maintenance and removal provisions if they are not already included in existing ordinance and lease agreements.**

The City of Redwood City currently has regulations within its "Wireless Communications Facilities Ordinance" (regulating cell towers) which provide for the maintenance and removal of discontinued and abandoned wireless communication facilities. This provision is currently incorporated to the permits issued by Redwood City Planning Services, as well as to the lease agreements for cell towers (Attachment B, Articles 38.6 & 38.7 of the Redwood City Zoning Ordinance).

In the table of the Grand Jury report entitled "Cell Tower Cities and County Survey Responses", the response to the question in the column asking: "Is there a provision requiring service providers to remove cell towers if obsolete or a use permit ends" should therefore be corrected to state: "Yes", instead of "No", for Redwood City.

- 4. Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.**

All approved cell tower agreements on Redwood City lands currently incorporate such provisions. (Attachment C, Technological Upgrade Provision in City Agreements for Cell Towers).

- 5. Develop a webpage within County and City websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.**

The City of Redwood City's "Wireless Communications Facilities Ordinance" (Article 38 of the Redwood City Zoning Ordinance) is currently accessible via the City's webpage. Additionally, a "Wireless Facility/Cell Tower Antenna" information handout is currently available with other Redwood City Planning Services forms on-line, as well as at the Planning/Building counter of Redwood City Hall located at 1017 Middlefield Road, Redwood City (Attachment D) Wireless Facility/Cell tower application handout.

If you have any questions or need additional clarification on this topic, please feel free to contact Charles Jany, Principal Planner at (650) 780-7239 or via e-mail at cjany@redwoodcity.org

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jill Ekas". The signature is fluid and cursive, with the first name "Jill" and last name "Ekas" clearly distinguishable.

Jill Ekas
Planning Manager

Encl.

- Attachment A) Minute Order and Staff Report of the Redwood City Council meeting of July 11, 2011
- Attachment B) Article 38.6 & 38.7 of the Redwood City Zoning Ordinance
- Attachment C) Technological Upgrade Provision in City Agreements for Cell Tower
- Attachment D) "Wireless Facility/Cell Tower Application" information handout

MINUTE ORDER
JOINT MEETING
CITY COUNCIL
REDEVELOPMENT AGENCY BOARD

July 11, 2011
MO. 11-117

CITY CLERK DEPARTMENT
Redwood City

DATE: July 12, 2011

Attention: City Attorney
Planning Department
hard copy available upon request

SUBJECT: Acceptance of Grand Jury Report on Wireless Cell Towers

AGENDA ITEM: 6.1 I (302)

Meeting of the Council of the City of Redwood City on July 11, 2011.

Present: Council Members Gee, Seybert, Bain, Pierce, Vice Mayor Aguirre and Mayor Ira

Absent: Council Member Foust

M/S Bain/Gee to approve the Grand Jury report dated May 19, 2011 with the finding that the Grand Jury recommendations have been implemented by the City of Redwood City.

The motion carries 6-0 by electronic vote with Council Member Foust absent.



Silvia Vonderlinden
Municipal City Clerk

REPORT

To the Honorable Mayor and City Council
From the City Manager

July 11, 2011

SUBJECT

Acceptance of Grand Jury Report on Wireless Cell Towers

RECOMMENDATION

Approve the Grand Jury report dated May 19, 2011 with the finding that the Grand Jury recommendations have been implemented by the City of Redwood City.

BACKGROUND

On May 19, 2011 the San Mateo County Grand Jury released a report regarding the regulation of cell tower installations in San Mateo County (Attachment 1). This report responds to public opposition on how cell towers regulations were being processed and identified a need for providing clear information to the public. The report also prescribes that specific maintenance and upgrade requirements be included in lease agreements for cell tower installations that are a source of revenue for cities and the County.

Information collected by the Grand Jury in 2011 indicates that San Mateo County and eighteen out of twenty cities in the County reported public opposition to a cell tower application within the past five years. The County and six out of twenty cities reported public opposition to cell tower applications more frequently than once a year. The report also found that some cities did not require service providers to maintain cell towers and or remove installations when they are no longer used, become obsolete or the permit expires. Public opposition occurs most often from individuals living in close proximity to a proposed cell tower site. To date, per the Federal Telecommunications Act of 1996, concerns about electromagnetic radiation are regarded as scientifically unproven. Federal law also governs some cell tower decision-making authority; for example, each application by a service provider must be considered on an individual basis and one government entity cannot favor one telecommunications provider over another.

City staff have reviewed the Grand Jury report in detail and prepared a response to the Superior Court of California, San Mateo County, (Attachment 2). Responses are due within 90 days from the date of the Grand Jury finding (no later than August 17, 2011).

As indicated in the City's reply letter to the Grand Jury, Redwood City is in agreement and in substantial compliance with the Grand Jury recommendations, and confirms that the specific Grand Jury recommendations have been implemented as follows:

- 1) **"Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications"**. Redwood City's fees for processing cellular communications facilities are predominately cost recovery based and meet the above recommendation.
- 2) **"Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community"**. Redwood City currently negotiates lease agreements in compliance with the above recommendation.
- 3) **"Add cell tower maintenance and removal provisions if they are not already included in existing ordinance and lease agreements."** Redwood City's Wireless Communications permit regulations are contained in Sections 38.6 and 38.7 of the Redwood City Zoning Ordinance. These regulations were adopted in March 26, 1997 (Ordinance 1130.297) and conform to the most current regulations on the topic of wireless antennae, including the Telecommunications Act of 1996. Both the Zoning Ordinance and the lease agreements contain maintenance and removal provisions as prescribed in the *above* recommendation.
- 4) **"Require that all new lease agreements containing a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers"**. Redwood City agrees to include a similar provision in its standard cell tower lease agreement and at the same time recognizes that most companies will agree to do this over time as they replace towers and/or related equipment, but not necessarily to replace the components of the installations as soon as new technology becomes available.
- 5) **"Develop a webpage within County and City websites which clearly post local ordinances, policies and procedures as well as federal regulations related to cell tower installations."** To facilitate public understanding of the *above*, a "Wireless Communication Permit" handout is available at the City's application counter and this document is also on the City's website along with the necessary permit application information. (Attachment 3)

ALTERNATIVES

Disagree wholly or partially with the Grand Jury finding, in which case the response shall specify the portion of the finding that is disputed, and shall include an explanation of the reasons therefore.

FISCAL IMPACT

None, Redwood City's permit fee structure and lease agreements are in compliance with the Grand Jury recommendation.

ENVIRONMENTAL REVIEW

Approval of the Grand Jury recommendations does not trigger California Environmental Quality Act regulations.



CHARLES JANY, PRINCIPAL PLANNER
STAFF ORIGINATOR



JILL EKAS
PLANNING MANAGER



ROBERT B. BELL
CITY MANAGER

ATTACHMENTS

1. Grand Jury Report dated May 19, 2011
2. Response Letter from City to Grand Jury
3. Wireless Communication Facilities Handout

38.6 - Determination of Abandonment.

A wireless communications facility, the use of which has been discontinued for one hundred eighty (180) consecutive days, shall be deemed abandoned. In cases in which a wireless communications facility has been deemed abandoned, the permittee of the Use Permit for such facility or the property owner (as applicable) shall reactivate or dismantle and completely remove the wireless communication facility within ninety (90) days of the date of a written Notice to Reactivate or Dismantle has been given by the Zoning Administrator. In such instance, the Architectural Permit and Use Permit (in cases in which a Use Permit is required) theretofore granted for the installation and operation of the facility shall automatically expire, provided, that the wireless communication facility has not been reactivated within said ninety (90)-day period.

(Ord. 1130.297, eff. 3-26-97)

38.7 - Operation and Maintenance.

- A.** All wireless communications facilities shall be fully automated and operable without personal occupancy on a daily basis, and shall be visited only for periodic or emergency maintenance purposes.
- B.** All wireless communications facilities shall be kept in good working order, and maintained in a clean and orderly condition.
- C.** All periodic and/or non-emergency maintenance activity for wireless communications facilities located on property adjacent to residentially zoned or residentially developed property, shall occur only between the hours of 7:00 a.m. and 8:00 p.m., Monday through Friday, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturday.

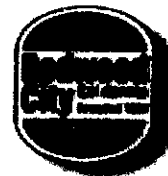
(Ord. 1130.297, eff. 3-26-97)

Attachment C

Technological Upgrade Provision in Redwood City Agreements for Cell Tower

"Any approved wireless antenna is conditioned based on the following statement: It is the ongoing obligation of the telecommunications carrier to maintain the facility with the highest quality equipment available to insure the lowest possible R/F emission levels, lowest noise levels, and the least aesthetic impact possible."

REDWOOD CITY



PERMITS FOR WIRELESS COMMUNICATIONS FACILITIES

WHAT IS THE PURPOSE FOR A WIRELESS COMMUNICATIONS PERMIT?

Permits for wireless communications are legal mechanisms that regulate the installation of wireless communications facilities (e.g. towers, antennas, etc.) which provide for communications needs to the residents and workers of the City and region, as well as to local business and government. The main purpose of the wireless communications permit is to minimize adverse visual and operational effects of such facilities through appropriate design, location, siting, and screening.

Pursuant to United States Code Section 332 (c) (7) (B) (iv), the Federal Communications Commission (FCC) has the authority to regulate the environmental effects of Radio Frequency (RF) emissions.

CITY EVALUATION PROCESS: ARTICLE 38, WIRELESS COMMUNICATIONS FACILITIES

City Planning staff and the Zoning Administrator of the City of Redwood City will review and determine what, if any, potential issues may be created as a result of the new installation and what measures must be taken to mitigate anticipated impacts. In reviewing an application for wireless communication facilities, the Zoning Administrator will evaluate items such as:

- | | |
|---|-----------------------|
| ▶ Location – adjacent uses | ▶ Height |
| ▶ Size | ▶ Screening/color |
| ▶ Treatment aesthetically with surroundings | ▶ Security & lighting |
| ▶ Placement - setbacks | |

WHAT TYPE OF PERMIT(S) ARE REQUIRED FOR WIRELESS COMMUNICATION FACILITIES?

An Architectural Permit is required for the installation of a wireless communication facility in any of the following zoning districts: IR, IP, GI, and PF. Additionally, both a Use Permit and Architectural Permit are required for the installation of a wireless communication facility in the following zoning districts: PO, CA, CN, CB, CG, CP, CBR, RH, R-1, R-2, R-3, R-4, AND R-5.

If the wireless communications facility is proposed to be located on **City-owned property** or in the **right-of-way**, please contact City Planning staff to review the process for Antenna Leases on City Owned Property.

APPLICATION REQUIREMENTS:

For Use Permits & Architectural Permits:

1. Completed **application form**.
2. **Permit Seven sets of the Site Plan** drawn to scale and completely dimensioned. The Site Plan shall show all of the existing and proposed structures, off-street parking and loading facilities, driveways, curb cuts, areas to be landscaped, location and size of existing trees, setbacks, signs, lighting, fencing, and property lines. In addition, the site plan shall include detailed location of setbacks and surroundings of the proposed wireless communications facility.
3. **Seven sets of elevations** drawn to scale (recommended scale 1/4" or 1/8") showing all applicable sides including context of the proposed installation. For additions, please indicate if material, color, trim, etc. will match the existing building.

Community Development – Planning Services
P. O. Box 391, Redwood City, CA 94064
1017 Middlefield Road, Redwood City, CA 94063
(650) 780-7234, FAX (650) 780-0128

www.redwoodcity.org – E-Mail: planning@redwoodcity.org

4. **Seven sets of floor plans** if applicable, showing equipment to be installed within each room and/or space e.g. equipment room.
NOTE: All drawings furnished shall be folded to approximately 8 1/2" x 11".
5. **Two copies of a Radio Frequency (RF) Report** indicating the maximum permissible exposure (MPE) limits for the City's files.
6. **Photo simulations** of the proposed wireless communication installation, including the existing setting.
7. **Description of proposed use** including type of installation, number of antennas, height, type of screening proposed, and other relevant information. In addition, a statement of technology status shall be included, citing co-locating inventory of all carriers on site and report status of most modern equipment proposed to be installed. *In some instances where more or less detailed information is needed, the Zoning Administrator shall determine if fewer or additional items will be required for the specific application.*
8. **Signed application by the owner or authorized agent** proof of ownership must be submitted such as a title report or copy of a tax bill.
9. **Title Report.** If Title Report indicates that easements or other conditions are present, they must be depicted on the site plan.

For Use Permits:

Statement of Justification either on the form or on a separate letter. The applicant should explain how the proposed use would not be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood or would not be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the City.

FEES:

Property less than ¼ acre	Architectural Permit	\$1000
Property less than ¼ acre	Use Permit	\$2,630
Property less than ¼ acre	Newspaper advertisement	\$200

A fee will be assessed on all returned checks.

HOW LONG DOES THE PERMIT PROCESS TAKE?

The length of time involved in processing a Wireless Communication Permit varies according to the complexity and type of your project. An Architectural Permit may be processed in as little as four (4) weeks. Normal processing time for a Use Permit may take between six to eight weeks (6 to 8 weeks). Furthermore, larger projects that require Design Review and/or Environmental Review may take longer.

Incomplete applications will not be accepted.



July 27, 2011

Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 95063-1655

Dear Judge Bergeron:

This letter serves as the City of San Bruno's formal response to the May 24, 2011 letter from the Superior Court transmitting the San Mateo Civil Grand Jury Report "Cell Towers: Public Opposition and Revenue Source." The San Bruno City Council authorized this letter and the attached response at its meeting on July 26, 2011.

The City Council was requested to submit comments within 90 days. For the seven findings, the City Council was to indicate one of the following:

1. City Council agrees with the finding.
2. City Council disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed, and shall include an explanation of the reasons therefore.

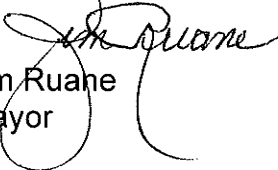
Additionally, for the Grand Jury's recommendations, the City Council was requested to report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing board of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation thereof.

I would like to take this opportunity to commend the San Mateo County Civil Grand Jury for its work on the report, Cell Towers: Public Opposition and Revenue Source. Community opposition to cell towers is not uncommon. Cell towers in San Bruno are located on City property, but are more likely approved on privately held or public utility owned lands. A better public understanding of the application and approval process can only enhance public participation when these matters come before the City Council.

Thank you for the opportunity to comment on this report. If any additional information or response would be helpful, please feel free to contact me.

Sincerely,


Jim Ruane
Mayor

cc: City Council
City Manager

CITY OF SAN CARLOS

CITY COUNCIL

ANDY KLEIN, MAYOR
MATT GROCOTT, VICE MAYOR
BOB GRASSILLI
BRAD LEWIS
RANDY ROYCE



CITY MANAGER
600 ELM STREET
SAN CARLOS, CALIFORNIA 94070-3085

TELEPHONE: (650) 802-4228

FAX: (650) 595-6729

WEB: <http://www.cityofsancarlos.org>

July 12, 2011

Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd floor
Redwood City, CA 94063-1655

Re: Civil Grand Jury Report – Cell Towers: Public Opposition & Revenue Source

Dear Judge Bergeron,

I am writing to you on behalf of the San Carlos City Council. This will serve as the City of San Carlos' formal response to the letter from the Superior Court communicating comments made by the Civil Grand Jury about siting Cellular Antennas entitled "Cell Towers: Public Opposition and Revenue Source". The City Council has reviewed this letter at a public meeting of the Council and has authorized that it be sent.

In the report from the Civil Grand Jury on siting Cellular Antennas and Towers in cities in San Mateo County, a number of recommendations are made. Here is the City of San Carlos response to these recommendations for cities in the County:

1. Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.

Response: We agree with the finding. San Carlos reviews its fees for services annually to insure that they recover staff costs for development applications including processing cell tower applications.

2. Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.

Response: We agree with the finding. San Carlos has worked with and has been receptive to leasing City-owned property, such as City Parks, for locating Cellular Antennas. These leases have provided revenue to the City as well as providing better phone and data services in the community. They are subject to the City's Use Permit process prior to approval.

3. Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements.

Response: We agree with the finding. San Carlos agrees that cell antenna maintenance and removal provisions make sense and should be included when the City signs leases for these antennas to be installed on City-owned property. These provisions are part of the City's Telecommunications Ordinance.

4. Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.

Response: We agree with the finding. San Carlos agrees that requiring service providers to install newer technology as it becomes available is a good one. This provision is part of the City's Telecommunications Ordinance.

5. Develop a web page within County and City websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.

Response: We partially agree with this finding. San Carlos posts copies of its Municipal Code, Zoning Ordinance and related policies on the City Web Site. The City has also recently updated and modernized its Telecommunications Antenna Ordinance during a review and updating of the City Zoning Ordinance. This information is also available on the City Web Site.

As for federal regulations related to cell tower installations, those rules are governed by Federal Law and Federal Regulations. The City believes that these regulations are better posted and maintained by the Federal Government agencies that propose and implement these regulations than if the City duplicated this task.

Sincerely Yours,



Andy Klein
Mayor

cc: City Council
City Manager
Assistant City Manager
Community Development Director
Planning Manager
City Attorney



July 19, 2011

Honorable Joseph H. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd floor
Redwood City, CA 94063-1655

Re: City of San Mateo Response to San Mateo County Grand Jury Report on Cell Towers

Dear Judge Bergeron:

We are in receipt of the Grand Jury's report entitled "Cell Towers: Public Opposition and Revenue Source." Pursuant to your May 19, 2010 request for responses, the San Mateo City Council held a public meeting on July 18, 2011 and approved this response. Below is the City of San Mateo's response to the Grand Jury's findings and recommendations. Please note that for the purpose of this response, the term "cell towers" is used generally to describe both stand-alone towers as well as antennae that are located on existing structures.

Findings

1. There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.

Response: Respondent agrees with the finding. Based on the Grand Jury report, whether a jurisdiction has an ordinance governing cell tower installations does not seem to correlate with potential of public opposition. 15 of 20 cities in San Mateo County along with the County reported having ordinances or codes in place related to cell tower installation while only 6 of 20 cities along with the County reported public opposition to cell tower applications occurring more than once a year. As noted in the Grand Jury report, primary opposition comes from individuals living in close proximity to a proposed installation site, which could occur regardless of whether policies or ordinances existed. In San Mateo, there has not been significant public resistance that the City is aware of over proposed installations on either private or public property.

2. *Locating applicable cell tower ordinances and policies on County and city websites is cumbersome.*

Response: Respondent cannot assess the validity of this finding for websites in other cities and the County. In San Mateo, cell tower applications are submitted through the standard design review planning process which is described on the City's website. However, there is not a reference on the City's website about the submission of cell tower applications through the design review process. The Community Development Department has developed a brochure about cell tower applications, but this has not been put on the City's website.

3. *Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.*

Response: Respondent agrees with the finding. This finding is consistent with the City's understanding of federal law regulating cell tower applications and the valid reasons by which a jurisdiction can deny or modify an application.

4. *Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.*

Response: Respondent disagrees partially with the finding. Based on the Grand Jury report, some jurisdictions do not appear to require service providers to maintain cell towers and remove towers if obsolete or a use permit ends. San Mateo is indicated as one such city that does not have these maintenance and removal provisions in place. However, though this was the case for some cell towers in the past, the City now requires these provisions as part of the lease agreements for all cell towers on City property. Similar policies may now be in place for other jurisdictions listed in the Grand Jury's report as not requiring these maintenance and removal provisions.

5. *The County and all cities have varying filing and processing fees for processing cell tower applications.*

Response: Respondent agrees with the finding. Based on the Grand Jury report, the filing and processing fees to process cell tower applications vary from \$905 in Colma to \$7,813 for the County. Filing and processing fees can also vary substantially based on the level of staff time involved. San Mateo charges a deposit based on the estimated staff time involved with deposits for recent applications for cell towers in park facilities ranging from \$2,100 to \$5,250.

6. *The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements.*

Response: Respondent agrees with the finding. Based on the Grand Jury report, the annual amount of revenue generated by the County and the cities which currently receive revenue for use of public property to locate cell towers varies from \$18,000 in Brisbane to \$168,000 in South San Francisco. San Mateo currently has one active cell tower located on City property, an

antenna located in 2001 on a ball field pole at Bayside Joinville Park. However, the City does not receive annual revenue from this cell tower as the service provider provided one-time funding for the re-surfacing of the tennis courts at the park when the tower was installed in 2003. There are other active cell towers on easements adjacent to or within City property, including an antenna located in 2010 adjacent to Casanova Park (for which the City received a one-time fee of \$20,000 for the service provider to use the park to access the tower site) and an antenna located over 10 years ago on a PG&E transmission tower in Shoreline Park (for which the City did not receive revenue given the wording of PG&E's easement).

Previous cell towers on City property included a tower located at Fire Station 25 between 2006 and 2009 that produced approximately \$9,600 in annual revenue and "micro-cellular data network radios" (a previous technology from modern cell phones) located on certain City street light poles in 1995 that produced approximately \$3,000 in annual revenue until the radios were deactivated in 1999. These radio devices have remained on the light poles and are being removed as work is done on individual poles.

7. Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.

Response: Respondent cannot assess the validity of this finding for the cities identified. As noted above, San Mateo currently has one active cell tower located on City property and also does not currently receive revenue for this tower, though the service provider provided one-time funding to re-surface the tennis courts at the park at which the tower is located.

Recommendations

1. Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.

Response: Recommendation has been implemented. The City currently requires applicants to pay a deposit based on the estimated level of staff time involved in reviewing the cell tower application. For the three recent applications involving park facilities, the deposit amount has varied from \$2,100 to \$5,250. This deposit is intended to recoup the staff costs involved in processing cell tower applications. The City will consider whether further changes are needed to these fees as part of the City's annual review of its fee structure.

2. Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.

Response: Recommendation has been implemented. The City's practice has been to negotiate agreements for cell towers that generate revenue or other tangible benefit to the City, though the amount and duration of the revenue/benefit has varied for each proposed agreement. Lease agreements for pending and future cell tower applications are intended to be consistent across departments and will specify an ongoing revenue amount throughout the term of the lease. The revenue amount will vary based on the location and size of the cell tower and other factors.

3. *Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements.*

Response: Recommendation has been implemented. As acknowledged in the response to finding 4, the City requires these provisions as part of the lease agreements for cell towers on City property.

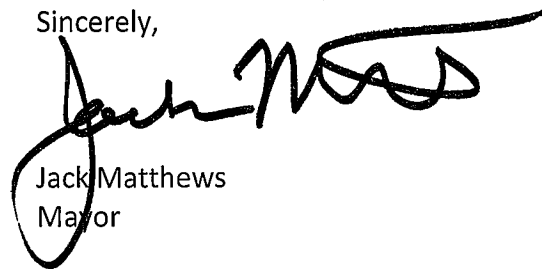
4. *Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers*

Response: Recommendation requires further analysis. Requiring such a provision could offer value in producing a smaller footprint for future cell tower sites on City property. However, the enforcement of such a provision could be challenging given the complexity and subjectivity of terms such as "newer technology" and "commercially available." More specific criteria would likely need to be used that involved the size, capacity, and/or bandwidth of the equipment. In addition, following this provision could likely lead to service providers accessing and changing their cell tower sites more frequently, which could cause a greater impact to landscaping and other facility interests. This provision will be further reviewed to determine its feasibility as either a general provision in future lease agreements or on a case-by-case basis for specific applications.

5. *Develop a webpage within County and city websites which clearly posts local ordinances, policies, and procedures as well as federal regulations related to cell tower installations.*

Response: Recommendation will be implemented in the future. The Community Development Department will update its website during this fiscal year to provide information about cell tower applications on both private and public property and indicate that such applications are considered as part of the standard planning design review process. This website information will also include links to relevant documents, codes, and other information such as federal regulations related to cell tower installations.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Matthews", written over a circular stamp or mark.

Jack Matthews
Mayor

OFFICE OF THE CITY CLERK
CITY OF SAN MATEO
330 WEST TWENTIETH AVENUE
SAN MATEO, CA 94403

Date: July 21, 2011

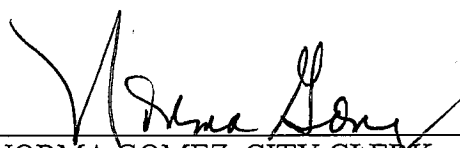
Minute Order No. 130-11

Honorable Joseph E. Bergeron
Judge of the Superior Court

In the matter of: Response to San Mateo County Grand Jury Report on Cell Towers in San Mateo County

(Agenda Item 19)

At the meeting of the City Council of the City of San Mateo on July 18, 2011, at which were present Council Members: LIM, LEE, GROTTÉ, ROSS and MATTHEWS, and, upon motion of Council Member GROTTÉ, seconded by Council Member LIM, duly carried and entered in the minutes, it was ordered to approve the letter responding to the May 19, 2011, Grand Jury report on cell towers in San Mateo County; and authorize the Mayor to sign and send the letter in response to that report.



NORMA GOMEZ, CITY CLERK

cc: Assistant City Manager



CITY COUNCIL 2011

KEVIN MULLIN, MAYOR
RICHARD A. GARBARINO, VICE MAYOR
MARK ADDIEGO, COUNCILMEMBER
PEDRO GONZALEZ, COUNCILMEMBER
KARYL MATSUMOTO, COUNCILMEMBER

BARRY M. NAGEL, CITY MANAGER

OFFICE OF THE MAYOR

August 5, 2011

Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

RE: Response to the 2010-2011 San Mateo County Civil Grand Jury Report of May 19, 2011-
Titled "*Cell Towers: Public Opposition and Revenue Source*"

Dear Judge Bergeron:

We are in receipt of the Grand Jury's final report titled, "*Cell Towers: Public Opposition and Revenue Source*". Pursuant to your May 19, 2011 request for response; the South San Francisco City Council held a public meeting on July 27, 2011 and approved this response. The City of South San Francisco responds to the Grand Jury's findings, conclusions and recommendations as follows:

FINDINGS

Cell Towers: Public Opposition and Response Scope:

1. *There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.*

Response: Respondent agrees with the findings.

2. *Locating applicable cell tower ordinances and policies on County and city websites is cumbersome.*

Response: Respondent agrees with the findings.

3. *Federal law precludes the use of perceived health risk as a basis for denying an application; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.*

Response: Respondent agrees with the findings.

4. *Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires.*

Response: Respondent agrees with the findings.

5. *The County and all cities have varying filing and processing fees for processing cell tower applications.*

Response: Respondent agrees with the findings.

6. *The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements.*

Response: Respondent agrees with the findings.

7. *Five cities which have cell towers on public property are not charging service providers for land use; three cities do not currently have cell towers located on public property.*

Response: Respondent agrees with the findings.

CONCLUSIONS:

1. *The County and most cities have governing policies and/or ordinances that prescribe cell tower installations. Having an ordinance in place does not reduce the likelihood of public opposition to a cell tower application.*

Response: Respondent agrees with the conclusions.

2. *The County and cities need to balance public desire for improved wireless reception with local concerns regarding health, aesthetics, and property values while recognizing the rights of service providers under the federal law.*

Response: Respondent agrees with the conclusions.

3. *The County and cities which have cell towers located on public property should establish lease agreements with service providers to generate revenue to the general fund.*

Response: Respondent agrees with the conclusions.

4. *The County and cities have varying cell tower application fees for recouping staff costs in processing these often complex applications and use permits.*

Response: Respondent agrees with the conclusions.

5. *There is no standard way of ensuring that cell towers are maintained or removed when they are no longer used or the permit expires. Cities which do not already have maintenance and removal provisions required of service providers may be responsible for cell tower maintenance and/or removal on public property.*

Response: Respondent agrees with the conclusions.

6. *Educating the public about applicable governmental regulations may help to alleviate some of the angst generated by cell tower installations.*

Response: Respondent agrees with the conclusions.

RECOMMENDATIONS:

1. *Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.*

Response: Respondent agrees with the recommendations.

2. *Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.*

Response: Respondent agrees with the recommendations.

3. *Add cell tower maintenance and remove provisions if they are not already included in existing ordinances and lease agreements.*

Response: Respondent agrees with the recommendations.

4. *Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.*

Response: Respondent agrees with the recommendations.

The Honorable Joseph E. Bergeron
Grand Jury Response
August 5, 2011
Page 4

5. *Develop a webpage within County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.*

Response: Respondent agrees with the recommendations.

These responses were reviewed and approved by the governing board of the City of South San Francisco at a public meeting on Wednesday, July 27, 2011.

Sincerely,



Kevin Mullin, Mayor
City of South San Francisco

Enclosure: City of South San Francisco City Council Resolution

RESOLUTION NO. 90-2011

CITY COUNCIL, CITY OF SOUTH SAN FRANCISCO, STATE OF CALIFORNIA

A RESOLUTION CONCURRING WITH THE 2010-2011 SAN MATEO COUNTY CIVIL GRAND JURY REPORT OF MAY 19, 2011, TITLED “CELL TOWERS: PUBLIC OPPOSITION AND REVENUE SOURCE”

WHEREAS, City of South San Francisco (“City”) staff has received and reviewed the 2010-2011 San Mateo County Civil Grand Jury (“Grand Jury”) Report titled, “Cell Towers: Public Opposition and Revenue Source,” attached hereto as Exhibit A;” and

WHEREAS, staff recommends that the City Council adopt a resolution concurring with the findings, conclusions and recommendations of the “Cell Towers: Public Opposition and Revenue Source” Report (“Cell Towers Report”), filed on May 19, 2011; and

WHEREAS, the Grand Jury Cell Towers Report focused on answering the following two questions: (1) “Do cities and the County of San Mateo have effective governing polices and/or ordinances for cell tower installations that provide the public with a clear understanding of how applicants are adjudicated?”, and (2) “Are cell tower installations a source of revenue for cities and the County”; and

WHEREAS, the 2010-2011 Grand Jury asks cities to report back to the Grand Jury by August 17, 2011 with comments on the Cell Towers Report’s findings, conclusions and recommendations.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of South San Francisco that the City of South San Francisco hereby concurs with the findings, resolutions and recommendations of the 2010-2011 Grand Jury Cell Towers Report.

BE IT FURTHER RESOLVED by the City Council of the City of South San Francisco, that the City of South San Francisco, with respect to the Cell Towers Report recommendations, “has implemented or had them in place.”

* * * * *

I hereby certify that the foregoing Resolution was regularly introduced and adopted by the City Council of the City of South San Francisco at a regular meeting held on the 27th day of July 2011 by the following vote:

AYES: Councilmembers Mark Addiego, Pedro Gonzalez, and Karyl Matsumoto,
Vice Mayor Richard A. Garbarino and Mayor Kevin Mullin

NOES: None

ABSTAIN: None

ABSENT: None

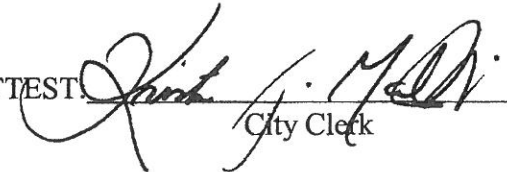
ATTEST. 
City Clerk

EXHIBIT A

San Mateo Civil Grand Jury Report
Cell Towers: Public Opposition and Revenue Source



Cell Towers: Public Opposition and Revenue Source

Issues | Background | Findings | Conclusions | Recommendations | Responses | Attachments

Issues

Do cities and the County of San Mateo (the County) have effective governing policies and/or ordinances for cell tower installations that provide the public with a clear understanding of how applications are adjudicated?¹ Are cell tower installations a source of revenue for cities and the County?

Summary

There are more than 450 cell tower installations in San Mateo County. Although people want reliable cell phone reception, community opposition to cell towers is common. The County and 18 of 20 cities reported public opposition to a cell tower application within the past 5 years.²

The County and 12 of 20 cities generate varying amounts of revenue from cell tower installations, primarily from the leasing of public lands.³ Although it may not pose a large source of revenue, cities that are not already taking advantage of lease agreements as a steady revenue source should negotiate such agreements with service providers in the future. In addition, any new leases should require service providers to maintain existing structures, remove unused or obsolete equipment, and replace structures with newer low profile structures as they become available.

Improving information available to the public and providing clearer communications can improve public response to future cell tower installation applications.

Background

While there is universal public demand for improved and more reliable cell phone transmissions, there exists a “not in my backyard” approach to having cell tower installations in close proximity to residences or commercial establishments. This statement is based on survey data and the number of incidences of public opposition recorded in local news articles or communications collected by members of the grand jury over a seven-month period in Fiscal Year 2010-2011. At least 8 of the 20 cities in San Mateo County had newspaper articles or communications of overt public opposition to cell tower applications during this timeframe.⁴

¹ For purposes of this report, “cell towers” refers to any wireless communications facility or structure erected for purposes of transmission on either public or private property.

² Only two cities, Colma and East Palo Alto, did not report incidences of public opposition.

³ Belmont, Brisbane, Burlingame, Foster City, Hillsborough, Menlo Park, Millbrae, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco.

⁴ Daly City, Half Moon Bay, Menlo Park, Pacifica, Portola Valley, San Bruno, San Carlos, South San Francisco.

Public opposition occurs most often from individuals living in close proximity to a proposed cell tower site. Individuals or homeowner associations may make their own case to the city or form new groups for the purpose of galvanizing opposition. These new groups typically exist only until a final decision is rendered, making it impractical for the grand jury to interview representatives.

Data shows opposition is typically based on perceived health risks such as electromagnetic radiation. To date such concern is regarded as scientifically unproven and has not been a legal basis for permit denial in accordance with provisions in the (federal) Telecommunications Act of 1996.⁵

An appellate court ruling in 2009 supported the decision by the City of Palos Verdes Estates in Southern California to deny the installation of cell towers on the basis of aesthetics alone. Service providers had argued that there must be a compelling “substantive” reason to deny an application or it must be approved in favor of communication expansion. The appellate court ruled that aesthetics were a valid reason to deny a cell tower application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.⁶

Federal law governs some cell tower decision-making authority. For example, each application by a service provider to install a cell tower must be considered on an individual basis, and a government entity cannot favor one telecommunications provider over another under protections provided by the Telecommunications Act of 1996.⁷ Thus opposition is targeted to a specific application for cell tower installations.

Cell phone vendors compete for improved range, clarity of reception, and a reduction of dropped calls. Some cities report that cell tower installations have been increasing over the past five years to meet these demands.⁸

Investigation

The 2011 San Mateo County Civil Grand Jury collected information about cell towers via a survey sent to city managers and planning directors, or their counterparts, in the County and each of the 20 cities (see Attachment).

Online research was conducted, including a review of excerpts of the Telecommunications Act of 1996 and the United States Court of Appeals, Ninth Circuit decision in the *Sprint PCS Assets PCS LP v. City of Palos Verdes Estates*.

Newspaper articles and communications from neighborhood groups regarding cell tower placement were collected and reviewed.

⁵ Peter M. Degnan et al, *The Telecommunications Act of 1996: §704 of the Act and Protections Afforded the Telecommunications Provider in the Facilities Siting Context*, May 18, 1999, pps. 7-8.

⁶ No. 05-56106 – *Sprint PCS Assets PCS LP v. City of Palos Verdes Estates*, argued and submitted July 6, 2009 – October 14, 2009.

⁷ Degnan et al., op. cit., p. 5.

⁸ Belmont, Brisbane, Daly City, East Palo Alto, Foster City, Menlo Park, Portola Valley, Redwood City, San Carlos, South San Francisco.

Discussion

The County and 15 of 20 cities in San Mateo County have ordinances in place related to cell tower installation.⁹ These ordinances vary considerably in scope and comprehensiveness. Whether or not the County or a particular city has an ordinance governing cell tower installations does not seem to insulate it from public opposition. Service providers must make application to the County or cities whether or not there is an ordinance in place.

The County and 6 of 20 cities reported public opposition to cell tower applications occurred more frequently than once a year.¹⁰ The primary opposition came from individuals living in close proximity to the proposed installation site. The most frequent reason cited for such opposition was public safety such as perceived health risks from electromagnetic radiation, although it is not a valid basis on which the County or city can deny a permit. Visual or aesthetic impacts, which are a valid issue upon which to base a decision regarding denial or modification of a cell tower application, were less frequently mentioned.¹¹

In the County and 7 of 20 cities, service providers have withdrawn applications for cell tower installation due to public opposition.¹² In 2008 (referred to as the “2007 decision”), a service provider filed a lawsuit against the County because of a denied cell tower renewal application subsequent to an appeal filed by residents which overturned the initial approval.¹³ There have been no incidences of litigation reported by cities because an application for cell tower installation was denied.

The County and 12 of 20 cities generate revenue from cell tower installations, primarily from the leasing of public lands.¹⁴ In most cases, revenue is deposited to the general fund with no specific use indicated. The revenue is paid by service providers in addition to application or permit fees. Costs to file an application vary widely, with many cities requiring a deposit toward staff time.

Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires. These provisions are important because wireless technology continues to innovate and may in the future be replaced by devices significantly smaller with improved range.¹⁵

⁹ Belmont, Brisbane, Daly City, East Palo Alto, Hillsborough, Menlo Park, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco, Woodside.

¹⁰ Belmont, Daly City, Millbrae, Pacifica, Redwood City, San Carlos.

¹¹ *Sprint PCS Assets PCS LP v. City of Palos Verdes Estates*, op. cit.

¹² Belmont, Burlingame, Daly City, Hillsborough, Pacifica, San Bruno, San Carlos.

¹³ Litigation pending ; case no. CV11 0056 *Sprint v. County of San Mateo et al*, amended complaint filed Jan. 6, 2011, U.S. District Court of Appeal, Northern District of CA.

¹⁴ Belmont, Brisbane, Burlingame, Foster City, Hillsborough, Menlo Park, Millbrae, Redwood City, San Bruno, San Carlos, San Mateo, San Francisco.

¹⁵ Svensson, Peter AP Technology Writer, *Wireless Advances Could Mean No More Cell Towers*, February 12, 2011, and Bloomberg Businessweek, *Alcatel-Lucent's Tiny Cell Tower*, February 28-March 6, 2011.

Findings

The 2011 San Mateo County Civil Grand Jury finds that:

1. There is no apparent correlation between the existence of policies and/or ordinances regarding cell towers and the likelihood of public resistance to an application.
2. Locating applicable cell tower ordinances and policies on County and city websites is cumbersome.
3. Federal law precludes the use of perceived health risk as a basis for denying an application¹⁶; visual or aesthetic impacts are a valid reason to deny or modify an application, so long as the denial does not cause a significant gap in service coverage that cannot feasibly be addressed by alternatives.¹⁷
4. Some cities do not require service providers to maintain cell towers and/or remove installations when they are no longer used, become obsolete, or the permit expires (see Attachment).
5. The County and all cities have varying filing and processing fees for processing cell tower applications (see Attachment).
6. The County and 12 of 20 cities generate widely varying amounts of revenue through cell tower lease agreements (see Attachment).¹⁸
7. Five cities which have cell towers on public property are not charging service providers for land use¹⁹; three cities do not currently have cell towers located on public property.²⁰

Conclusions

The 2011 San Mateo County Civil Grand Jury concludes that:

The County and most cities have governing policies and/or ordinances that prescribe cell tower installations. Having an ordinance in place does not reduce the likelihood of public opposition to a cell tower application.

The County and cities need to balance public desire for improved wireless reception with local concerns regarding health, aesthetics, and property values while recognizing the rights of service providers under federal law.

¹⁶ Telecommunications Act of 1996.

¹⁷ No. 05-56106 – *Sprint PCS Assets PCS LP v. City of Palos Verdes Estates*, op. cit.

¹⁸ Belmont, Brisbane, Burlingame, Foster City, Hillsborough, Menlo Park, Millbrae, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco.

¹⁹ Daly City, East Palo Alto, Half Moon Bay, Portola Valley, and Woodside have cell towers on public property and do not receive revenue for land use.

²⁰ Atherton, Colma, and Pacifica do not currently have cell towers located on public property.

The County and cities which have cell towers located on public property should establish lease agreements with service providers to generate revenue to the general fund.

The County and cities have varying cell tower application fees for recouping staff costs in processing these often complex applications and use permits.

There is no standard way of ensuring that cell towers are maintained or removed when they are no longer used or the permit expires. Cities which do not already have maintenance and removal provisions required of service providers may be responsible for cell tower maintenance and/or removal on public property.

Educating the public about applicable governmental regulations may help to alleviate some of the angst generated by cell tower installations.

Recommendations

The 2011 San Mateo County Civil Grand Jury recommends to the County Board of Supervisors and the City Councils of all cities in San Mateo County the following:

1. Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications;
2. Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community;
3. Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements;
4. Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers; and
5. Develop a webpage within County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.

The Grand Jury further recommends the City Councils of Daly City, East Palo Alto, Half Moon Bay, Portola Valley, and Woodside pursue new or amended leases for existing cell towers on public property that are not currently generating revenue or other community benefits.

Cell Tower Cities and County Survey Responses

	Number of cell towers on private property	Number of cell towers on public property	Does the city have codes or ordinances governing cell towers?	Does the city's code/ordinance cover both public and private property?	Is there a provision requiring service providers to maintain cell towers?	Is there a provision requiring service providers to remove cell towers if obsolete or a use permit ends?	Have you had applications withdrawn by service providers due to public resistance?	What is the current cost to file an application or permit for a cell tower structure?	Does the city generate revenue paid by service providers in addition to application or permit fees from cell towers installations?	If yes, what is the average annual revenue paid by service providers to the city that is generated from cell towers?	If yes, how is revenue generated by cell towers used by the city?
Atherton	3	0	NO	N/A	N/A	NO	NO	Conditional use permit - Fee \$1,319 plus \$2,000 deposit - \$3,319 total	NO	N/A	N/A
Belmont	18	7	YES	YES	NO	YES	YES, Public reviews from 2007-2008, now waiting for withdrawal from applicant.	-complex project fee \$13,272 (deposit) -new construction engineering fee \$2,691 or \$1,704 (equipment change only) -fire fee for plan check \$268 -Environmental review fee \$547 -county recording fee \$30 -3rd party review of RF exposure study (deposit during review).	YES. There are leases for cell towers placed on public properties (parks, city hall, etc.)	Unknown	Deposited to general fund for a variety of uses
Brisbane	15	3	YES	YES	NO	YES	NO	\$831 administrative permit \$2,698- planning commission use permit	YES, land lease	\$1,500/month	Deposited to general fund for a variety of uses
Burlingame	Unknown	Unknown	NO	N/A	NO	NO	YES, once (2010)	Depends upon level of review and cost of installation	YES. Only in instances where city owned property is leased for the installation	\$25,000 based on one installation on public property	Deposited to general fund for a variety of uses
Colma	4	0	NO	N/A	NO	YES	NO	Minor use permit \$905	NO	N/A	N/A
Daly City	45	15	YES	YES	YES	YES	YES, once (2010)	\$3,700	NO	N/A	N/A
EPA	Unknown	Unknown	YES	YES	YES	YES standard condition of approval	NO	Staff level-minor cell tower cost-\$667. Conditional use permit-major cell tower cost-\$3,882	NO	N/A	N/A
Foster City	26	8	NO	N/A	YES	NO	NO	Architectural review \$200. Use permit \$200 deposit. Applicant pays for cool to process	YES	The City receives approximately \$96,000 per year in revenue from the leasing of 4 sites for cell towers	Deposited to general fund for a variety of uses
HMB	2	1	NO	N/A	YES as a condition of CDP approval	YES as a condition of CDP approval	NO	\$1,300 deposit (actual cost determined by time required to complete processing)	NO	N/A	N/A
Hillsborough	0	11	YES	YES	YES	YES	YES, once (2008/07)	\$2,500	YES, if lease of public property is needed	The town collects \$162,120 annually for 7 sites. (\$1,830 monthly per site.)	Deposited to general fund for a variety of uses
Menlo Park	39	9	YES	NO, private property only	NO	NO	NO	Use permit deposit is \$1,650 subject to hourly billing rates for actual staff time expended toward the project	YES. Currently only one site in the Public ROW is subject to a lease agreement with the City.	\$2,500/month for the one cell site subject to a lease agreement	Deposited to general fund for a variety of uses
Millbrae	14	5	YES	YES	YES	YES	NO	\$7,000 on private property, \$2,000 on property	YES. Leases for facilities on city property	\$15,000/year per facility on city property	Deposited to general fund for a variety of uses
Pacifica	40	0	YES	No, private property only	YES	YES	YES, on more than one occasion	\$3,750	NO	N/A	N/A
Portola Valley	5	5	YES	YES	YES	YES	NO	\$400/fee; \$7,500/Deposit	NO	N/A	N/A
Redwood City	Unknown	Unknown	YES	YES	YES	NO	NO	If property > 1/4 acre \$5k deposit; < 1/4 acre \$1k for each. Permit, \$2,800 for use permit.	YES. One cell installation is on city land; a monthly or yearly lease is paid to the city	\$1k - \$1,868 per month	Deposited to general fund for a variety of uses
San Bruno	Unknown	Unknown	YES	YES	YES	YES	Yes, on more than one occasion	Use permit: \$2,145 Admin Approval: \$1,320	YES. Only if built on city owned parcel (e.g., water tank, park, etc.)	\$24,000 per year on average	Deposited to general fund for a variety of uses
San Carlos	9	3	YES	YES	YES	YES	YES, on more than one occasion	\$5,880.00	YES. Land lease of city property	\$2,000-\$3,000/mo \$24,000-\$38,000/yr.	Deposited to general fund for a variety of uses
San Mateo	Unknown	Unknown	YES not specific	YES	NO	NO	NO	Deposit amount of \$2,079; could ultimately be more based on staff time	YES. If in city parks or ROW on city equipment poles, a lease is negotiated	The city is still negotiating its first lease	If in parks, used for Park & Rec purposes. If on city poles, used for Public Works purposes
SBF	Approx 30	Approx 8	YES	YES	YES	YES	NO	Use permit application - \$4,070	YES. Revenue ranges from \$1,500-\$9,000 per month per site	Approximately \$168,000/year	Deposited to general fund for a variety of uses
Woodside	6	8	YES	YES	YES	YES	NO	\$1,790 for CUP and Building permit fees	NO	N/A	N/A
County	71	42	YES	YES	YES	YES	YES, on more than one occasion	Varies - generally about \$7,813	YES. Administrative reviews by the Planning and Building Dept is occasionally required. The County (Real Property) also receives revenue from carriers located on County Property	\$600 to the Planning and Building Dept. Unknown amount to the County.	Revenue for Administrative reviews allocated to the Planning and Building Dept. Revenue to the County unknown as to how it is allocated



The Town of
Woodside

July 18, 2011

The Honorable Joseph E. Bergeron
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

RE: 2010-11 GRAND JURY REPORT - CELL TOWERS: PUBLIC OPPOSITION AND REVENUE SOURCE

Dear Judge Bergeron:

The Town Council of the Town of Woodside reviewed the referenced Grand Jury Report during its meeting of July 12, 2011. On behalf of the Town Council, I would like to offer the following.

The Town of Woodside's Municipal Code includes regulations that govern the installation of cell towers. These regulations require that a Conditional Use Permit (CUP) be approved prior to such installations. At this time, there are fifteen active CUP's for cell towers. Of these, seven facilities are located on the property of other agencies or institutions within the Town over which the Town has no authority. Another six facilities are located within the road rights-of-way of the State of California. The last two facilities are located within the right-of-way of Town roads.

The Grand Jury's report includes six recommendations to which the Town must respond. We have restated each recommendation and provided responses to each.

Recommendation 1: Review and revise, if needed, the current fee structure to recoup staff costs for processing cell tower applications.

Response: This recommendation has been implemented. The Town Council updated the Town's fee schedule in 2010, including the fees for processing Conditional Use Permits. Additionally, the Municipal Code provides that the applicant shall bear the cost of needed technical evaluations and other technical assistance in making any determination required by the provisions of the Town's regulations.

Recommendation 2: Negotiate lease agreements for future installations on public land that generate revenue or other tangible benefit to the community.

Response: This recommendation has not been implemented because it is not applicable to the Town at this time. Lease agreements only come into play when Town-owned property is involved (as distinguished from road rights-of-way). No Town property is currently used for this purpose, but if an application for cell tower installation on Town property is ever made, an appropriate lease agreement will be negotiated under the guidance of the Town Attorney's Office.

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Recommendation 3: Add cell tower maintenance and removal provisions if they are not already included in existing ordinances and lease agreements.

Response: This recommendation has already been implemented. The Town's Municipal Code already includes an equipment removal requirement that is applicable when the Conditional Use Permit becomes void or is revoked.

Recommendation 4: Require that all new lease agreements contain a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.

Response: This recommendation has not been implemented because it is not applicable to the Town at this time. As has been indicated, the Town has no existing leases. If and when a lease for such a use is negotiated, the Town will include a provision requiring service providers to install newer technology as it becomes commercially available to reduce the footprint of cell towers.

Recommendation 5: Develop a webpage within County and city websites which clearly posts local ordinances, policies and procedures as well as federal regulations related to cell tower installations.

Response: This recommendation will not be implemented as proposed. The activity level for applications for Conditional Use Permits for cell towers is very low within the Town (fifteen since 1997). The Town is in the process of a major revision to its website. Staff will ensure that the Town's regulations governing cell towers are easily accessed and that appropriate links to federal regulations are provided.

Recommendation 6 (not numbered in the Grand Jury Report): The Grand Jury further recommends the City Councils of Daly City, East Palo Alto, Half Moon Bay, Portola Valley, and Woodside pursue new or amended leases for existing cell towers on public property that are not currently generating revenue or other community benefits.

Response: Since there are no cell towers located upon Town property and no existing leases exist, this recommendation is not applicable to the Town.

The Town greatly appreciates the efforts of the Grand Jury. On behalf of the Town Council, I would like to extend our thanks for the opportunity to review the work of the 2010-11 Grand Jury.

Please do not hesitate to call our Town Manager, Susan George, at (650) 851-6790, should you require any further information.

Sincerely,



Ron Romines
Mayor