

Planning Division

WIRELESS TELECOMMUNICATIONS ORDINANCE COMMENTS RECEIVED

Project Schedule

Documents to Review

Submit Comments

Our basic democratic rights should be held higher than the goal of any single industry and the duty of the City Council and planning department is to protect citizens. So, why would the City of Pasadena literally give away to an industry already out of control what little local authority we have left? Pasadena should be looking into ways to strengthen local authority, not weaken it further, which they have done UNNECESSARILY with the proposed ordinance.

Instead of careful planning to deliver the best system and services to the public, we have really irresponsible, inefficient, "dumb growth" rooted in dumb competition. Our neighborhoods are being turned into corporate battlegrounds as these companies compete for market share.

In addition, few know that the telecom industry received over 200 billion in tax cuts and rate hikes meant to build a fiber optic infrastructure (faster, safer, and more stable) but pocketed the money instead. See: www.teletruth.org Now the industry is using the atmosphere as a cheap and easy way to deploy the bulk of the technology when it should be the other way around. "Future proof" FIBER OPTIC infrastructure to every home would greatly reduce the need for disposable wireless infrastructure and provide safer and better services.

Few wireless customers would be willing to give up their rights to protect their health, safety and property for increased reception or more wireless options IF given the opportunity to fully understand the options and what the trade-off is for wireless. Perhaps a public study session is in order to investigate our options and to help educate the public at large. If the city planners are interesting in protecting citizens instead of making it easier for industry, it would seem the rational thing to do.

Doug Brzescinski
Date: 4/22/2009

TO: Mayor Bogaard and All Pasadena City Council Members:
Subject: "Opportunity Sites" Wireless and Cable Ordinance

The Telecom Ordinance is worse than having no ordinance, so it would better to vote against this ordinance.

Sincerely,
Lonee Urtuzuastegui
The Church Street Homeowners Association

Date: 4/22/2009

The first part of my letter is going to be a copy of one I received early today and the last part is from an e-mail I sent to the Council last week but should be viewed by all those who either live in the City, work in the City, or visit the City as to what might happen to our City if we do not stop this insidious process in its tracks.

04/27/2009

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By the way the pictures are from the Honey Baked Ham Store at Sieera Madre and San Pasqual, right on the edge of our City. Sorry, but I found out a picture can not be inserted in this e-mail site.

The public does not accept the proposed Wireless and Cable Ordinance and demands that the City Council deny the entire Cable and Wireless Ordinance, and does not try to "fix" the proposed Ordinance. It is unworkable and disadvantages property owners and will destroy our neighborhoods. The Public will take our chances with the old zoning codes for the processing of Wireless and Cable applications, which will provide me with better notification and more public input.

I Demand that the City Council deny the Opportunities Site Map Plan. "Easy" money from the Telecom's will destroy property values and stigmatize homes adjacent to the Opportunities Sites.

I also demand the City adopt an ordinance in the exact same manner as San Diego!

Now the letter sent to the Council last week!

Please look closely at the picture and see how close to the building the tower is placed.

Is this where we are headed? - this the "City of Trees" - Is this what is meant by going "green"

I know this issue is on the agenda for the Council Meeting and I have to ask - Is this the direction the City plans on taking in regards to the placement of cell towers in our City?

What scares me is in my neighborhood we have a large vacant lot with contaminated soil so that nothing can be built on it, zoned for Open Space and the City has included this parcel in their site map as a target area. It seems it is good for some uses and not so good when something that would benefit our area is proposed.

This is located at the Honey Baked Ham store at San Pasqual and Sierra Madre Blvd..

What makes it even more hideous is it is situated somewhere between 5 to 10 feet from their FRONT DOOR! Heck, a few more feet and it would be on the inside of the store.

Would this be approved by our City? Please tell me "NO"

Sincerely,
Fritz Puelicher

P. S. Maybe the folks in the Playhouse District might find this a viable alternative to those scrawny little trees they seem favor. By the way, I hope the City now goes back to those same merchants and demands that they upgrade the frontal facades of their establishments. A lot of them look absolutely shabby now that their cover has been blown away.

Fritz Puelicher
Date: 4/22/2009

Dear Mayor Bogaard, City Manager and City Council Members,

SERIOUS CONCERNS ABOUT THE LEGALITY OF THE OPPORTUNITIES SITE

MAP AND THE DEFICIENCIES OF THE PROPOSED WIRELESS AND CABLE ORDINANCE:

In the February 23, 2009 City Council agenda, Correspondence part 1, is a letter submitted by John J. Flynn III of Nossaman, LLP, which contests the legality of the Opportunities Site Map.

He states on item 3. Certain Aspects of the City's Proposed Amendments to Titles 12 and 17 of the Municipal Code are Pre-empted by Federal and State Law. (a) "Opportunities Map".

"The amendments to the City's Municipal Code Provide for significant incentives, in the form of expedited processing, for facilities proposed to be installed at sites identified by the City on an "Opportunities Map." The only properties identified in the map are, in the City's own words, City-owned property, which suggests that the purpose of the program is to increase City revenues, which is not a recognized zoning criterion. As the City itself acknowledges, moreover, "there are many factors involved in finding a location that will address the installation needs of carriers." If that is the case, on what lawful basis does the City discriminate as between those providers who are, because of their network design, able to take advantage of the benefits of siting at an Opportunities Map location, and those who are unable to do so? For the reasons already stated above, it is not possible for the City to defend the discrimination, which suffers not only from state and federal constitutional infirmities, but also because it violates the federal Telecommunications Act of 1996, at 47 U.S.C. section 332(c)(7)(B)(i)(I).

Further, to the degree that the pressure exerted by the City to employ properties identified on the Opportunities Map represents a facilities-based restriction, such restriction is preempted by the Federal Communications of 1934."

Link to Attorney Flynn's letter. See Page 9:

http://www.cityofpasadena.net/councilagendas/2009%20agendas/Feb_23_09/6A%20CORRESPONDENCE%20PART%201.pdf

For once, I have to agree with Mr. Flynn's interpretation of the discriminatory nature of the Opportunity Site Map and of the "significant incentives" of the application process. The new concept of the Opportunities Site Map is not legally defensible and therefore should be removed from the proposed changes to Title 17.

WHAT WAS NOT NOTED IN FLYNN'S LETTER IS A HIDDEN LEGAL POINT FOR THE CITY. THE OPPORTUNITIES SITE MAP SETS A PRECEDENT FOR ANY CITY OWNED PROPERTY GIVEN THIS NEW DESIGNATION:

* All wireless applications are given equal access under the Telecommunications Act of 1996. The City cannot be seen as discriminating against any one of the Telecom companies.

* Once this designation is placed on a given site, the wireless applications will always have an EXPEDITED AND INCENTIVIZED APPLICATION PROCESS IN PERPETUITY. The legal precedent will be set.

* If the City wants to change or remove the designation at a later time, the City will not have the power to change back to a conventional and non-expedited and non-incentivized system of processing these applications for a site that already has an Opportunity Site designation and a built installation. This could be true for all the 189 Opportunity Sites.

THESE SITES DON'T NEED THIS SPECIAL DESIGNATION AND INCENTIVE PROGRAM IN ORDER TO ATTRACT WIRELESS AND CABLE DEVELOPMENT:

* The City Staff has advertised that the Opportunity Sites will remove wireless and cable equipment from our residential areas and from the public right of way. This is still true without the Opportunity Site designation.

The Telecom laws require the "least intrusive means" for siting cell antennas, so the

City owned sites would still be available for cell antenna siting.

* The City owned properties that don't have this designation will still be leased and developed by the wireless and cable industry by means of a non-expedited application process with public input instead of no public input.

WE NEED TO INSURE THAT THE NEW CONCEPT OF AN OPPORTUNITY SITE IS LEGALLY DEFENSIBLE, BEFORE THE CITY CREATES A LAND USE DESIGNATION THAT CAN NEVER BE CHANGED BACK OR LEGALLY UNDONE BECAUSE OF THE TELECOMMUNICATIONS ACT OF 1996:

* I request that the experimental and optional Opportunities Site Map be removed and eliminated from the proposed Wireless and Cable Ordinance.

* If the Staff is insistent on retaining the Opportunity Site Map it can be examined and added at a later time as an amendment change. This is also true for the Cable portion of the proposed Ordinance.

* The City of Pasadena as a property owner will be held to a higher standard than a private property owner.

* The City is creating the codes and wireless regulations that will be perceived as a conflict of interest and in conflict with the Telecom laws as noted in Mr. Flynn's letter.

THE 189 OPPORTUNITY SITES WILL DECREASE PROPERTY VALUES:

* Homeowners adjacent to an Opportunity Site would have a negative impact to the value of their home.

* If one pending cell application is a real estate disclosure when a homeowner sells his home, then what would be the negative impacts of an unlimited number of potential and pending cell and cable site applications?

* The Opportunity Site designation would stigmatize these homes. The City should find a better way to create revenue.

LACK OF PUBLIC NOTIFICATION FOR THE OPPORTUNITIES SITE MAP:

* I have done my own public notification and I have communicated with numerous Neighborhood Associations and residents. All of them had concerns that their residential zoning would become more commercial at the 189 Opportunity Sites than the sites original zoning, especially in Residential zones.

* The Neighborhood Associations that responded to my notification disapproved of the new concept of the Opportunities Site Map, which is a land use designation change and essentially acts as a zoning change for those sites.

TO MAKE THE PROPOSED ORDINANCE LEGALLY MORE DEFENSIBLE:

1.) DEFINITIONS: Wireless and Cable telecommunications Facilities should be defined and coded separately. In the proposed Pasadena zoning codes, "Telecommunications" will be defined as both Wireless and Cable/Video facilities.

* They are defined separately by the California Public Utilities Code.

2.) REQUIRE JUSTIFICATION STUDIES FOR ALL WIRELESS APPLICATIONS: All Wireless Applications should require a justification study, otherwise the City of Pasadena will have no legal reason to deny a wireless application.

* If you cannot deny an application then you have to accept it.

* If there is no justification study, then how does the City keep track of the Telecom's coverage needs or if there is unnecessary redundancy?

* Coverage maps are automatically generated by the Telecoms to determine their own coverage needs and it no extra effort by the company to submit a two page copy of their coverage maps.

* Justification Studies should also include studies for alternative sites to which the City is legally entitled.

* The Telecom laws require equal access for all cell companies. This could set a precedent at this site for NO JUSTIFICATION STUDIES IN PERPETUITY with no public notification and no public input.

3.) 10 + 10 YEAR LEASES: 10 +10 year lease with no secondary public hearing does not allow for public input for 20 years and a generation of living next to an equipment junkyard.

IN CONCLUSION:

THE PRIORITY AT THIS TIME IS ONLY THE WIRELESS ORDINANCE, which needs to be in place when the Wireless Moratorium is lifted sometime in June 2009 or earlier. The proposed Wireless and Cable Ordinance will limit our current rights which are severely restricted by State and Federal Telecom laws.

The controversial Opportunity Site Map and the Cable part of the Ordinance do not have a deadline. The City has not properly notified the impacted neighbors to the Opportunity Sites and should have mailed notifications to every property owner within 500 feet of the proposed site. These two elements of the Wireless Ordinance are not time sensitive and should be examined further by the public and possibly amended at a later date or eliminated completely.

The City should investigate the legality of Opportunities Site Map plan and the potentially discriminatory application process. I believe Mr. Flynn, representing T-Mobile has already sued the City of Pasadena regarding the application for a cell site in my neighborhood on Oak Knoll Ave. and Alpine St. I thought the City was trying to avoid lawsuits not encourage them.

We want the City attorney to draft a defensible and protective Wireless Telecommunications Ordinance that will not create more legal questions and invite more lawsuits.

Sincerely,
Miriam Nakamura-Quan
April 20, 2009

Full agenda to the February 23 City Council hearing:
http://www.cityofpasadena.net/councilagendas/2009agendas/Feb_23_09/agenda.asp

The Link to the streaming video and agenda for the February 23 City Council hearing will have the latest update and comments from the City Council, Staff and the Public:
http://pasadena.granicus.com/MediaPlayer.php?view_id=23&clip_id=840

Link to my letter from the February 23 City Council hearing regarding deficiencies in the proposed Ordinance:
On the agenda look at correspondence part 3

THERE IS NO FINAL DRAFT OF THE ORDINANCE AVAILABLE TO THE PUBLIC UNTIL THE THURSDAY BEFORE THE FIRST READ OF THE WIRELESS AND CABLE ORDINANCE AT THE MONDAY, APRIL 27, 2009 CITY COUNCIL HEARING @ 7:30 PM

PLEASE CHECK THE CITY WEBSITE FOR THE CITY COUNCIL AGENDA. SHOW UP TO THE HEARING TO VOICE YOUR CONCERNS.

Miriam Nakamura
Date: 4/20/2009

TO: Mayor Bogaard and All Pasadena City Council Members:
Subject: "Opportunity Sites"-Wireless and Cable Ordinance

The East Orange Grove Neighborhood Association strongly opposes any "Opportunity Sites" in our residential Neighborhood. We demand a public hearing on the issue and are extremely disappointed that the City has not yet held a public hearing on this very important issue.

Please remember that you have a duty to represent the interests of the residents of the City of Pasadena. We recommend that you resolve this problem, in a manner that comports with your duty to the City's residents.

Sincerely,

June Takenouchi
President
East Orange Grove Neighborhood Association, EOGNA
Date: 4/20/2009 10:49:43 AM

PASADENA HIRED ATTY. FLYNN FOR ADVICE ON THE TELECOM ORDINANCE YET THE PLANNING DEPT. REFUSES TO HEED HIS ADVICE. THIS NEW LAND USE DESIGNATION IS BEGGING FOR LAW SUITES. OUR TAX DOLLARS PAY FOR THE PLANNING DEPT, FOR THE ATTORNEY AND WILL PAY WHEN WE LOSE AGAIN IN COURT! IF THE CITY PLANNER DOESN'T "GET IT", WHO DOES?

THE CREATION OF THE OPPORTUNITIES SITE PLAN HAS CREATED A HOST OF ERRORS (AND FUTURE LAWSUITS) WHICH HAVE BEEN ADDRESSED BY RESIDENTS AT MORE THAN ONE CITY COUNCIL MEETING AS WELL AS IN NUMEROUS EMAILS, YET "THE CITY" STICKS TO IT AS IF THEY HAVE SOME PERSONAL INVESTMENT.

TO INSURE THIS PLAN IS IN PLACE FOR 20 YEARS WITHOUT PUBLIC INPUT & NO PROTECTION SEEMS TO BACK-UP THE NOTION THAT RESIDENTS ARE OF LITTLE CONCERN REGARDING THIS ORDINANCE.

NO STATE OR FEDERAL REGULATIONS PROHIBIT JUSTIFICATION STUDIES YET CITY STAFF REFUSES THAT ALSO. WHY?

LUMPING THE WIRELESS, CABLE & TELECOMS INTO ONE ORDINANCE WILL FURTHER COMPLICATE , NOT SIMPLIFY AS STAFF CLAIMS, THE ISSUE FOR RESIDENTS. IF WE RESIDENTS TELL THAT TO STAFF, WHY DO THEY INSIST ON THE OPPOSITE?

WHERE IS THE TRANSPARENCY?

THERE HAS BEEN NO FAIR PUBLIC PROCEDURE. PERHAPS THE CITY HAS MET THE LETTER OF THE LAW BUT THEY HAVE CERTAINLY NOT MET THE SPIRIT OF THE LAW!! WE WILL PAY A HIGH PRICE FOR THIS ARROGANCE.

FREDDIE HANNAN
Date: 4/17/2009

myself and my neighbors DO NOT want any [word omitted] cell towers any where near our property.

kim santell
Date: 4/17/2009

Madison Heights Neighborhood Position of Concern Regarding Opportunity Site for Telecommunications and Cable Equipment

The Board of the Madison Heights Neighborhood Association is concerned about the designation of the South Lake Pocket Park as an opportunity site for cable and wireless equipment. We recognize the need for effective communications services and the fact that Federal and State laws grant telecommunications companies favorable access to sites for cellular antennae and related equipment. Our major area

of concern with respect to the opportunity site status for the South Lake Pocket Park is that no mechanism exists to limit the number of telecommunications companies that could make use of the site. Our understanding of current laws is that all companies must be given equal access to the site. Installation of one company's equipment may be handled in a manner that would not destroy the park, but there appears to be no available means to prevent "commercialization" of the park site. Installation of equipment from multiple companies would effectively make the site unsightly and render it useless as a park. Our City has strict zoning regulations to prevent "mansionization" of residences. We ask the City to implement similar regulations to prevent "commercialization" of opportunity sites in residential areas. A site should not be suitable for designation as an opportunity site in a residential area unless it can adequately support installations from multiple companies without becoming an unsightly blight on the immediate surroundings. Residents of Madison Heights are passionately concerned about protection of green space in our City and consider use of park land as an undesirable alternative. Therefore we recommend the following as possible regulations for consideration.

1. Minimum separation of 500 feet between installations of ground equipment located in a park
 2. Prohibition of equipment clusters from more than one service provider as this would have an adverse impact on residents adjacent to the cluster.
 3. Ground equipment in parks should be camouflaged with appropriate plantings
- We hope these suggestions will help the City Attorney draft an ordinance that provides adequate regulations for protection of residential areas and parks that address location, concentration and aesthetics.

Neil Kleinman
Date: April 16, 2009

Dear City Council,

I am unable to attend the City Council meeting April 27th, so I am writing to request that the Catalina Library at Washington/Catalina be taken off the Opportunities Site Map for Pasadena and I also want to register my opinion that the entire Opportunities Site Map for Pasadena be made null and void, that is, terminated, as part of the Wireless Ordinance for the City. It is unworkable and sets a legal precedent at the designated 'Opportunity' sites which restricts public input and notification. Not only that, but it also facilitates expedited and incentivized applications for the wireless telecommunications companies, as well as the cable companies. The FCC requires municipal governments to encourage public participation and it appears to me that the Ordinance and map accomplish just the opposite. This map also appears to be a blatantly self-serving way of compensating for decreases in permit fees for the City in a way that harms the property values and beauty of my historic neighborhood, Historic Highlands, and other neighborhoods in the city. Further, the Ordinance itself ought to be crafted in such a way that it applies to wireless telecommunications companies only. Cable companies should not be included under the umbrella of this Ordinance.

I mentioned in a previous City Council meeting that I have a building permit ready and waiting to be used for an *extensive* renovation of my 1914 Craftsman house, one of the finest examples of its kind in this part of the city. The renovation project is in limbo, pending the outcome of a cell tower proposed for St. Elizabeth's in Altadena, just up the street from my house. This means that there is revenue not flowing to a local Pasadena architect, local Pasadena contractors, etc. Not to mention, no investment in the long-term structural health and integrity of my Pasadena house and neighborhood. I question how the Pasadena Wireless Ordinance will protect me and others property owners like me at the edge of our fair city...property owners who WANT TO INVEST IN OUR CITY.

Lastly, I advocate for using fiber optic networks everywhere in the city, as opposed to designing a system of wireless repeaters on top of lamp posts in the right of way. Connecting wireless antennae to fiber optic cable increases transmission speed and lowers the signal strength at the antenna itself, so it is a win on both counts. Give the current constraints of the FCC and PUC, it would be wise to hold the wireless

telecommunications industry to a higher standard of design which will benefit the city in the future, since fiber optic represents the truly sustainable future of digital communication.

Sincerely,
JMD

J. Donnelly
Date: April 16, 2009

Last modified on April 23, 2009

RECEIVED

--- On Thu, 4/16/09, Jody Donnelly <nettaxi@earthlink.net> wrote:

From: Jody Donnelly <nettaxi@earthlink.net>

09 APR 16 P5:26

Subject: Pasadena Wireless Ordinance

To: "Margaret McAustin" <mmcaustin@sbcglobal.net>, bbogaard@cityofpasadena.net, jkent@cityofpasadena.net, jacquerobinson@cityofpasadena.net, jmcintyre@cityofpasadena.net, tinawilliams@cityofpasadena.net, "Margo Fuller" <mfuller@cityofpasadena.net>, cholden@cityofpasadena.net, shaderlein@cityofpasadena.net, vgordo@cityofpasadena.net, vdelacuba@cityofpasadena.net, smadison@cityofpasadena.net, suzuki@cityofpasadena.net, pthyret@cityofpasadena.net, styler@cityofpasadena.net, mbeck@cityofpasadena.net, rbruckner@cityofpasadena.net, mpastuca@cityofpasadena.net, rstone@cityofpasadena.net, jrad@cityofpasadena.net, mbagneris@cityofpasadena.net, drix@cityofpasadena.net, jpaige@cityofpasadena.net, josejimenez@cityofpasadena.net

Cc: "jmd Donnelly" <nettaxi@earthlink.net>

Date: Thursday, April 16, 2009, 4:26 PM

Dear Ms. McAustin,

I am unable to attend the City Council meeting April 27th, so I am writing to request that the Catalina Library at Washington/Catalina be taken off the Opportunities Site Map for Pasadena and I also want to register my opinion that the entire Opportunities Site Map for Pasadena be made null and void, that is, terminated, as part of the Wireless Ordinance for the City. It is unworkable and sets a legal precedent at the designated 'Opportunity' sites which restricts public input and notification. Not only that, but it also facilitates expedited and incentivized applications for the wireless telecommunications companies, as well as the cable companies. The FCC requires municipal governments to encourage public participation and it appears to me that the Ordinance and map accomplish just the opposite. This map also appears to be a blatantly self-serving way of compensating for decreases in permit fees for the City in a way that harms the property values and beauty of my historic neighborhood, Historic Highlands, and other neighborhoods in the city. Further, the Ordinance itself ought to be crafted in such a way that it applies to wireless telecommunications companies only. Cable companies should not be included under the umbrella of this Ordinance.

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Sincerely,

Jody Donnelly

959 E. Topeka St.