

**CORRESPONDENCE  
FROM MEETING OF  
APRIL 27, 2009**



**Richard Roche**  
Director  
External Affairs

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April 27, 2009

Michael J. Beck  
City Manager  
City of Pasadena  
100 N. Garfield Avenue, Room S228  
Pasadena, CA 91109

**Hand Delivered**

Re: Proposed Amendments to Titles 12 and 17 of the Pasadena Municipal Code  
Pertaining to the Permitting of Telecommunications Facilities (“Proposed  
Ordinance”)

Dear Mr. Beck:

Though we have written to you on previous occasions about AT&T’s conceptual issues with the City of Pasadena’s (the “City”) proposed amendments to Titles 12 and 17 of the Pasadena Municipal Code (the “Code”), we have now had an occasion to review the Proposed Ordinance and take this opportunity to provide our thoughts in anticipation of this evening’s public hearing.

As stated in our letter dated November 27, 2009, AT&T is concerned with the City’s attempts to single out telecommunications service providers by treating them differently than other users who place similar above-ground structures in the public rights-of-way. Although the City states that the Proposed Ordinance is not intended to prohibit or have the effect of prohibiting telecommunications services, several of the provisions of the Proposed Ordinance are excessive and vague and will likely result in substantial delays in the deployment of necessary telecommunications facilities and/or the denial of applications.

To that end, and in order to allay these substantial concerns, AT&T respectfully requests that prior to adoption of the Proposed Ordinance, the City address the following issues:

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**1. 12.22.070.A – “Additional findings required for wireless telecommunications facilities”**

This section, as written, requires a “Justification Study” as a requirement for a ministerial permit. No other users of the public rights-of-way are required to submit a detailed study to explain their rationale for placement of structures. It is our view that this requirement is essentially a circumvention of the powers that belong exclusively to the FCC and is not permitted under the Communications Act of 1934. This issue has been raised in previous letters by AT&T and other carriers.

**2. 12.22.090.B – “Time for decision”**

The Proposed Ordinance does not define what is considered a “reasonable time” for the Public Works Director (the “Director”) to grant, deny or conditionally grant a permit for telecommunications facilities. The 60-day time limit for a decision on a permit for telecommunications facilities that provide video services should apply to all telecommunications facilities.

**3. 12.22.100 – “Appeals”**

The Proposed Ordinance allows any “interested person” the ability to appeal the decision of the Director. It is our opinion that this less than robust standing provision will result in the malicious filing of appeals to simply delay the installation of telecommunications facilities. At the very least, this provision should require a direct impact or direct harm to the appellant.

**4. 12.22.110.D – “Installation standards applicable to all telecommunications facilities”**

The Proposed Ordinance appears to require a retroactive permit condition that would require carriers to place their existing equipment underground if future technology so allows. Once an above ground facility is permitted and installed, it should not be retroactively subjected to such a requirement.

**5. 12.22.120 – “Additional Installation standards applicable to wireless telecommunications facilities”**

In the Proposed Ordinance, the City proposes to preclude the installation of support structures (monopoles) in the public right-of-way, and limits the use to only existing structures that are less than 25 feet in height.

Unfortunately, to this point, the City has not provided any justification for such a restriction. As such, it is difficult for AT&T to address any issues that may be the basis for the City's position. From a legal standpoint, and as addressed previously and by others, we believe this provision is violative of various provisions of the CPUC and preempted by the Communications Act of 1934.

**6. 12.22.130.D3 – “Maintenance Standards”**

The Proposed Ordinance essentially requires carriers to be in a position to keep its equipment in pristine condition or suffer the risk of being required to replace such equipment in its entirety. It is unreasonable for the City to require the replacement of ground-mounted, at-grade, and above-ground telecommunications facilities for what should be considered normal wear-and-tear conditions. Structures that belong to other users of the public right-of-way are not subject to this regulation and nor should the carriers.

**7. 17.50.310.C3 – “Requirements for all facilities support structures”**

In the Proposed Ordinance, the City requires that facilities “comply with any design guidelines adopted by resolution of the Council,” but does not list any specific guidelines. This type of vague future condition is unfair to those who are subject to the Proposed Ordinance, as it provides no present ability to comment. Any such future design guidelines adopted by the Council should be the subject of a fully vetted and approved amendment to the Ordinance.

**8. 17.50.310.D5 – “Requirements for new telecommunications facilities support structures”**

The Proposed Ordinance reduces the height limit for support structures from 60 feet to 50 feet above existing grade. This proposed revision would substantially limit the ability to develop collocation facilities that provide sufficient coverage for two or more carriers. This height limit may likely result in the need for additional facilities to fill in coverage gaps, and would severely harm all the favorable elements related to collocation facilities. We also question whether this provision will be applied to collocation applications on existing facilities that exceed the 50 foot limit.

Michael J. Beck, City Manager  
City of Pasadena  
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As you are aware, the Proposed Ordinance was first publically circulated on April 23, 2009. As such, AT&T has only had a few days to review and digest the Proposed Ordinance and to provide our first blush comments to the Proposed Ordinance. Given the importance of the issues at hand, AT&T would like to have additional time to provide comments prior to the first reading scheduled for this evening. To that end, and per my recent email to you, we once again request that this matter be continued to the next City Council meeting date.

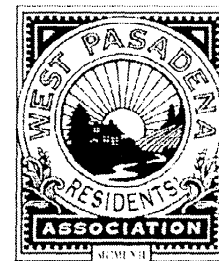
Thank you again for your consideration of the aforementioned issues. We look forward to working cooperatively with you on this issue and future issues.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Rich Roche". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rich Roche  
External Affairs Manager

cc: Jose Jimenez, Planner, City of Pasadena



April 13, 2009

Via E-Mail & Hand Delivery

Mr. Richard Bruckner,  
Director of Planning and Development  
100 N. Garfield Ave. 3rd Floor  
Pasadena, CA 91109

Re: Telecommunications Issues

Dear Mr. Bruckner,

The West Pasadena Residents' Association appreciates that the city is engaging in ongoing analysis and discussions while preparing policy for the placement of Wireless telecommunications facilities and Cable/Video telecommunications facilities across our city. In order to protect our city's historic character and property values while facilitating equipment placement and service delivery, we would like to offer suggestions regarding opportunity sites.

The Opportunity Map presented to the City Council meeting February 23, 2009 is an excellent idea serving as a "Master Plan for co-locating (minor) facilities" for telecommunications throughout Pasadena. Offering applicants the opportunity to co-locate their facilities in these areas and thereby receive expedited approval of their requests is a way to encourage applicants to locate "where we want them" and could prove to be a win-win situation. The city gets the facilities where it wants them and the applicants get speedier approval.

However, we believe that some city-owned property is not suitable for either wireless or wired telecommunications facilities and that without proper controls some of the selected sites could be overburdened by telecommunications facilities. For instance, the map shows two sites on the west side of the Arroyo, one at La Loma and the other a couple of blocks further north. We certainly don't want cell towers or telecommunications boxes in the Arroyo. There is another site on Grace Walk which is a 12 feet wide "street" with dense housing on both sides and no place to put any facilities. We urge caution as you develop these sites. Further, we believe that the citizens should have some input in choosing opportunity sites. After an initial look at the map we believe that some designated sites are inappropriate for telecommunications facilities and should be reconsidered.

It would be advantageous to implement a process to get input from the citizens across the city, on the final "Opportunity sites", as well as provide a means to differentiate among sites, designating those sites that are appropriate for one kind of facility and inappropriate for another. The

**WEST PASADENA RESIDENTS' ASSOCIATION**  
**POST OFFICE BOX 50252 • PASADENA, CA 91115**

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Opportunity Sites should be widely published and public hearings should be held to give citizens a chance to present their reasons for eliminating sites from the map.

We believe that implementing the forgoing suggestions offers a win-win situation. The city will be able to provide sites that will fulfill applicants' and citizens' needs, while keeping disputes and appeals at a minimum.

Please let us know at your earliest convenience if this would be possible and how we may support and participate in this effort.

Finally, there are two other issues that we believe were not covered in the City Council meeting. The first is that justification studies should be required for all wireless facilities. There are many reasons for companies to want to erect wireless facilities. Some of these have to do with competitive strategies between companies and other reasons that do not directly benefit consumers. By requiring justification studies the city can ensure that all new facilities will result in improved services to consumers, and that excessive facilities will not be built.

The second issue is the frequency of review of these sites. We understand that current plans call for review only after 20 years. We believe that much more frequent review is in order. Particularly since the technology is continuing to evolve and facilities that were necessary at one time become obsolete and should be removed.

Sincerely,

Robert C. Holmes, Chair  
Telecommunications Committee

Audrey O'Kelley  
President

Cc: Steve Madison, City Councilman  
Michael Beck, City Manager

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>, bbogard@cityofpasadena.net, jkent@cityofpasadena.net, jacqueroobinson@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,

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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.

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

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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,

Jody Donnelly

959 E. Topeka St.

**Jomsky, Mark**

**From:** Kathy Blomo [kablomo@hotmail.com]  
**Sent:** Sunday, April 26, 2009 5:58 PM  
**To:** Kent, Judy; Gordo, Victor; Bogaard, Bill; Robinson, Jacque; Haderlein, Steve; Fuller, Margo; Jomsky, Mark; jjimenez@cityofpasadena.net; Beck, Michael; Madison, Steve; Pastucha, Martin; Holden, Chris; Thyret, Pam; McAustin, Margaret; Stone, Rhonda; Williams, Tina; McIntyre, Jacqueline; Bagneris, Michele; Tyler, Sid; De La Cuba, Vannia; Bruckner, Richard; Suzuki, Takako  
**Subject:** April 27, 2009 Agenda Item - Telecommunications - Public Comment

*Kathleen A. Blomo*  
703 Lakewood Place  
Pasadena, CA 91106  
626.862.0052 / [kablomo@yahoo.com](mailto:kablomo@yahoo.com)

Via E-Mail

April 26, 2009

Attention City Clerk Jomsky: Please distribute and place in the public record at or before the April 27, 2009 Public Hearing – Thank you!

Dear Mayor Bogaard, Members of the City Council, City Manager Michael Beck, City Attorney Michele Beal Bagneris, Director of Planning and Development Richard Bruckner, and City Staff:

Regarding: Public Comment Regarding April 27, 2009 Agenda Item 8. A. 2. – Public Hearing Regarding Telecommunications Regulations Ordinance: Serious Concerns Relative to the Telecommunications Regulations Ordinance and the Opportunities Site Designations

First, thank you for your commitment to the Pasadena community and for your collective and individual efforts to protect the interests of City residents.

Second, I respectfully request that you do whatever is possible to protect all open space areas and parks in residential areas in the City, including “pocket parks” (regardless of the current zoning for each parcel) from commercialization, specifically that which would be allowed by the placement of telecommunications and cable equipment. Open space areas and City parks are precious and limited resources that must be protected, as they are crucial elements of what makes Pasadena a special place to live.

As background, I have been resident of Pasadena for over 20 years and have lived directly across the street from the South Lake Avenue Pocket Park since July 2005. Only 21 feet (approximately) separate my property from the park, curb to curb. Needless to say, what happens in that park literally happens in my front yard.

Due to this proximity, I called District 7 Councilman Sidney Tyler about a year ago regarding what appeared to be survey-type work in the park. Councilman Tyler's Field Representative Pam Thyret, was kind enough to call me back; she assured me that nothing would be allowed to happen in that park as its open space use was a priority of Councilman Tyler's and the City. Councilman Tyler's commitment to protect the park gave me tremendous peace of mind.

Now, as the South Lake Avenue Pocket Park is identified on the Opportunities Site Map for Telecommunications Equipment, the peacefulness and serenity of this park is being jeopardized, which is

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both disturbing and very disappointing.

The South Lake Avenue Pocket Park sits squarely in a residential neighborhood. I purchased this home specifically for its location; my neighbors and I chose to live in a residential neighborhood with a park as part of the package; we did not choose to live next to a commercialized parcel that hosts telecommunications and cable equipment. Allowing the placement of such equipment would change the character and serene nature of the park, and thus would change the very nature of our residential neighborhood.

I urge the Mayor and Council to direct staff to remove the residential area pocket parks identified on the Opportunities Sites Map from consideration for placement of wireless and cable equipment and I also respectfully request that staff be directed to protect said pocket parks through amending the Zoning Code to memorialize such protections.

Thank you again for your commitment to protecting the interests of Pasadena residents.

Sincerely,

Kathleen A. Blomo

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## Planning Division

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### WIRELESS TELECOMMUNICATIONS ORDINANCE COMMENTS RECEIVED

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Project Schedule

Documents to Review

Submit Comments

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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](http://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

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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

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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.

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By the way the pictures are from the Honey Baked Ham Store at Siera 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

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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](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/2009/agendas/Feb\\_23\\_09/agenda.asp](http://www.cityofpasadena.net/councilagendas/2009/agendas/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](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

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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

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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

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

kim santell  
 Date: 4/17/2009

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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

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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

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Last modified on April 23, 2009

From: nakaquan@netscape.net

To: dtrader\_91104@yahoo.com; bkinpas@charter.net

Subject: Historic designation in the Pasadena Wireless Ord is deficient

Date: Mon, 27 Apr 2009 10:46 am

HISTORIC DESIGNATION  
RENEE MORGAN HAMPTON

Hi Bob or Dale,

Our City council promised the most protective Ordinance. The final draft does not reflect this. I would like to see the Pasadena Ord follow the San Diego County Wireless Ord. (No cable or Opp Sites in this Ord.). I would like to include the wording from San Diego Ord which just affirmed the right for a Municipality to have a Wireless Ord. San Diego's Ord was just approved by the Ninth Circuit Court recently.

Miriam

**NOTES ON ITEMS THAT SHOULD BE INCLUDED IN THE PASADENA WIRELESS TELECOMMUNICATIONS ORDINANCE**

**County of San Diego: 18 Page document**

ORDINANCE NO. 9549(N.S.)

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ZONING ORDINANCE RELATING TO WIRELESS TELECOMMUNICATIONS FACILITIES

PREFERRED SITES, 6986:

Page 10:

(A). The County has determined that certain zones and locations are preferable to others for siting wireless facilities due to aesthetics and land use compatibility.

Page 12:

(C). Projects in a non-preferred zone or non-preferred location SHALL NOT BE APPROVED when siting in a preferred zone or preferred location is feasible unless a finding is made that the proposed site is preferable due to aesthetic and community character compatibility.

(C). No facility shall be allowed on any building or structure, or in any district, that is listed or eligible for listing on any Federal, State or local historical register unless it is determined by the Historic Site Board that the facility will have no adverse effect on the appearance of the building or structure or its eligibility for historic designation. No change in architecture nor High Visibility facility is permitted on any such building, any such site or in any such district.

**PASADENA TITLE 17**

**WIRELESS AND CABLE INSTALLATIONS ON PRIVATE PROPERTY:**

Page 31:

**8. LOCATION.**

c. A support structure shall not be located within any designated historic district or landmark district.

To Mayor Bogaard and the City Council:

PASADENA CITY COUNCIL HEARING FOR APRIL 27, 2009  
FIRST READ OF THE TELECOMMUNICATIONS FACILITIES ORDINANCE  
REPEAL OF THE WIRELESS MORATORIUM

If you think the Colorado Street tree fiasco is bad the FAKE CELL TOWER TREE SITUATION WILL BE WORSE!

Less than 4 days is not enough time to read, understand and compare the new Ordinance with City's own zoning codes, the prior City Council documents, and the San Diego County Ordinance. There has not been enough time for the Public as well as the City Council to have sufficient time to examine this draft Ordinance.

The documents expanded from a 13 Page Staff Report to a 53 Page final draft of the Ordinance, which is brand new to all of us. Can the City Council In good conscience approve of this draft Ordinance, without giving it appropriate time and study?

I would request that this hearing be continued and agendized for both May 4th and the 11th. There is enough time to agendize those two dates to coincide with the expiration of the Wireless Moratorium OR deny this Ordinance at the end of today's hearing.

LA County has had a Wireless Telecommunications Ordinance in a holding pattern for almost two years. As it stands the final draft of the Pasadena Wireless and Cable Ordinance is deficient and needs more work. The public will take their chances with the Old Wireless Ordinance. This is not the protective Ordinance that the City Council promised.

On the first page of Title 12 of Pasadena's proposed Telecom Ordinance it states: "WHEREAS, The City does not intend that this ordinance prohibits or has the effect of prohibiting telecommunications service: rather, the City seeks to Limit development of telecommunications facilities in and around residential neighborhoods to the fullest extent allowed by law;"

This needs to be stated for title 17 as well. After reading the Ordinance I don't believe the final draft of this Ordinance meets this goal. The Pasadena Telecom Ordinance does not adequately borrow enough from the best parts of the County of San Diego's Wireless Ordinance. It needs to be as protective as that Ordinance since it recently won its court case in the Ninth Circuit Court.

04/27/2009  
8.A.2.  
Submitted by  
Miriam Nakamura-Quan

## **AT EVERY HEARING I HAVE REPEATEDLY ASKED FOR JUSTIFICATION STUDIES:**

For our Ordinance to be protective it needs Justification Studies for all Wireless applications? Without it, the City has no legal reason to deny a Wireless application without a Justification Study. **San Diego requires it for all their Wireless applications and so should we.**

At the February 23 City Council meeting Jennifer Paige-Saeki said in her discussion of the San Diego County Wireless Ordinance:

“For the Justification Studies. They don’t call it a justification study. They call it a “coverage gap map.” But it essentially does the same thing. They require it for all their applications, so they want to know from the carriers what coverage gap that facility is going to serve.”

“Again tonight with our revised recommendation, we are proposing the justification study for the wireless applications in the ROW. We are also proposing those for the monopoles on private property. That was under our previous recommendation from the last meeting. We don’t propose the justification study for minor facilities on private property as an incentive to have them co-located. That is one of our incentives. Our justification for private property is to tell us why you need the monopole and why you can’t co-locate. Whereas on the ROW it’s tell us why you chose this location and what other sites you have considered, so they serve a little bit of a different purpose.”

**San Diego requires a co-location contract or letter.** Pasadena should require a letter of willingness to co-locate as a part of their application process. The Ordinance states:

A letter stating the applicant’s willingness to allow other carriers to be co-located on their facilities wherever technically and economically feasible and aesthetically desirable.

## **DEFINITIONS ARE NOT THE MOST PROTECTIVE:**

From the proposed Pasadena Telecom Ordinance:

From Title 12 Definitions, 12.22.020:

“For the purpose of this Chapter, certain words and phrases are defined in this section, unless it is apparent from the context that a different meaning is intended.”

Once again the Staff is getting creative with the Telecom definitions and now has a “**DEFINITION DISCLAIMER**”, so they can change the meaning whenever they want. Legal language is usually very specific. Telecom law and language is even more legally specific.

The Telecom Industry uses legal language in order to gain greater access for placement of wireless sites. I believe the Staff is enabling the Telecom Industry by crafting the definitions and language in the Ordinance to allow greater access to the Telecoms and weaken the City's authority over the Telecom Industry.

**The Wireless and Cable need to be separated from one another in Title 12 and 17. The City of Pasadena is creating greater access when you define the two together.**

PASADENA SHOULD DEFINE CO-LOCATION AS DEFINED IN THE SAN DIEGO COUNTY ORDINANCE:

Page 2:

(C). Co-location: - Locating wireless telecommunications equipment from more than one provider on a single site.

**OPPORTUNITIES SITES QUESTION:**

ARE THESE SITES CONSIDERED CO-LOCATION SITES ACCORDING TO THE PASADENA DEFINITION, SO THE FIRST APPLICATION FOR WIRELESS AT THIS SITE HAS PUBLIC INPUT WHILE THE SUBSEQUENT APPLICATIONS ONLY HAVE A MINISTERIAL REVIEW (NO PUBLIC INPUT)?

The Telecom laws which requires least intrusive means and proof of significant gap would have the City owned properties be a first choice for siting without creating a new designation. I request the City **Eliminate the Opportunities Map.**

**10 + 10 year lease = A 20 year lease without any public input is too long.**

**The public as well as the City Council needs an informational presentation where the public can ask questions about this proposed Ordinance. This Ordinance is one of the most difficult to read and understand. It is not user friendly.**

The Pasadena Staff has included items in the Ordinance that are detrimental and weakens the authority of the City in reviewing Telecom applications.

**Regards,  
Miriam Nakamura-Quan  
April 27, 2009  
nakaquan@aol.com**

Please place in the public Record

**NOTES ON ITEMS THAT SHOULD BE INCLUDED IN THE PASADENA WIRELESS TELECOMMUNICATIONS ORDINANCE**

**From the County of San Diego Wireless Telecommunications Facilities:**  
18 Page document

**ORDINANCE NO. 9549(N.S.)  
AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ZONING ORDINANCE  
RELATING TO WIRELESS TELECOMMUNICATIONS FACILITIES**

**DEFINITIONS:**

Page 2:

**(C). Co-location:** - Locating wireless telecommunications equipment from more than one provider on a single site.

Page 5:

**(T). Telecommunications** – The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**(W). Wireless Telecommunications Facility** – Any facility that transmits and / or receives electromagnetic waves, including, but not limited to, antennas, dish antennas and other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting said equipment, equipment buildings, parking area and other accessory development. Also known as a wireless communications facility. This definition does not apply to Amateur Radio Stations as defined by the Federal Communications Commission, Part 97 of the Commission's Rules nor to TV and radio transmission facilities.

**APPLICATION REQUIREMENTS, 6984:**

Page 6:

**(A). Geographic Service Area.** Identify the geographic service area for the subject installation, including a map showing all the applicant's existing sites in the local service network associated with the gap the facility is meant to close. Describe how this service area fits into and is necessary for the company's service network.

**(B). Visual Impact Analysis.** A visual impact analysis shall be provided showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening. The analysis shall include photo simulations and other information as necessary to determine visual impact of the facility. A map depicting where the photos were taken shall be included.

**(C). Narrative.**

**(6). Fire Service.** Provide evidence of compliance with Fire Policy FP-2 or a service letter from the applicable fire district.

**(7). Hazardous Materials.** Listing of all hazardous materials to be used onsite.

Page 7:

**(8).** For all applications for facilities located in the public right of way, include on the plot plan the location of parking for maintenance personnel.

**(9).** A letter stating the applicant's willingness to allow other carriers to co-located on their facilities wherever technically and economically feasible and aesthetically desirable.



**Tier 4 – MAJOR USE PERMIT:**

**C. General Regulations:**

Page 9:

(3). No more than three facilities are allowed on any site or parcel in commercial, industrial, rural or special purpose zones. No more than one facility is allowed on any parcel or site in a Residential zone. This requirement may be waived by the Director if a finding is made that co-location of more facilities is consistent with community character.

(4). Telecommunications towers located adjacent to a residential use shall be set back from the nearest residential lot line by a distance at least equal to its total height or 50 feet, whichever is greater. The setback shall be measured from that part of the tower that is closest to the neighboring property (i.e., the setback for a faux tree would be measured from the end of the branch closest to the neighboring property.)

Page 10:

(8). All facilities located on a utility pole shall be promptly removed at the operator's expense at the time a utility is scheduled to be undergrounded.

(12). As a condition of approval, prior to use of the facility, submit evidence, such as photos, to the satisfaction of the Director of Planning and Land Use to show proof that the facility is in conformance with photo simulations provided pursuant to Section 6984 (B) of this Ordinance.

**PREFERRED SITES, 6986:**

Page 10:

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Page. 13:

(M). No net loss in required parking spaces shall occur as a result of the installation of any wireless telecommunications facility.

Page. 14:

(R). No facility sited on a ridgeline or hilltop shall be approved unless the facility blends with the surrounding existing and man-made environment to the maximum extent possible and a finding is made that no other location is feasible.

**REVOCAION, 6990: Page 14 &15,**

Failure to comply with any condition of approval or standard in this ordinance shall constitute grounds for possible revocation of use pursuant to Sections 7174, 7380 and 7382 of the Zoning Ordinance.

Miriam Nakamura-Quan