



COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL MEMORANDUM RECEIVED

2019 FEB -4 A 11: 32

February 4, 2019

TO: Supervisor Dianne Jacob, Chairwoman
Supervisor Greg Cox, Vice Chairman
Supervisor Kristin Gaspar
Supervisor Nathan Fletcher
Supervisor Jim Desmond

FROM: Geoff Patnoe, Director
Office of Strategy and Intergovernmental Affairs

SUPPORT: H.R. 530 (ESHOO) ACCELERATING WIRELESS BROADBAND DEVELOPMENT BY EMPOWERING LOCAL COMMUNITIES ACT OF 2019

There have been several attempts in recent years at the state and federal level to streamline and reduce the permitting processes for small cell deployment by reducing the authority of local governments to regulate the deployment of wireless communications infrastructure.

Last year, the County of San Diego (County) joined the National Association of Counties and dozens of local governments in opposing the Federal Communications Commission's (FCC) proposed ruling that would, among other things, shorten the time local governments have to process small cell applications, limit allowable local aesthetic requirements and limit application fees. On September 26, 2018, despite objections from local governments throughout the United States, the FCC passed these new regulations, effective January 14, 2019.

Counties argue these regulations impose unfair timelines on local governments, preempt local zoning and regulatory authority and limit the ability of local governments to raise revenue. For example, under these new regulations, the County has less time to ensure full environmental and safety compliance and to receive proper input from the community. In addition, if an application is not processed in the mandated period, the County would have inadequate recourse as wireless site applicants can seek expedited injunctive relief in court within 30 days of a local government missing a deadline. The regulations also create concern regarding the County's involvement in the process of deploying small cell technology. Currently, the County works with providers on the location and size of wireless infrastructure. The process has been successful and helped the infrastructure better integrate into neighborhoods around the County through visual impact analysis, noise analysis, and other steps to preserve community character. These new regulations impede the County's ability to oversee right of ways and manage private use of public property.

This month legislation was introduced in Congress to address the FCC ruling. House of Representatives Bill 530 (H.R. 530), authored by California Congresswoman Anna Eshoo, would repeal the FCC's regulations and would restore the authority of local governments to regulate small cell wireless infrastructure deployment that was limited under the FCC ruling. The National Association of Counties supports H.R. 530 and was featured in Congresswoman

Eshoo's media announcement of her legislation. Congresswoman Eshoo is a former member of the San Mateo County Board of Supervisors.

Authority to engage on H.R. 530 is authorized by the Board's approval of the Legislative Program Policy Guidelines (Section VI.C.2), regarding erosion of the land use authority of local government.

In accordance with Board Policy M-2, and by copy of this memorandum, I have authorized the County's Washington, D.C. Representatives to convey the County's support of H.R. 530 to the appropriate members of Congress and the Administration.

If I can be of further assistance, please contact me at (619) 531-5202.

Respectfully,

A handwritten signature in black ink, appearing to read "Geoff Patnoe", with a long horizontal line extending to the right.

GEOFF PATNOE
Director

cc: CAO, ACAO, LUEG, DPW, PDS, CNL, CLK, Federal Representatives

**COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS
TUESDAY, MARCH 12, 2019**

MINUTE ORDER NO. 15

SUBJECT: CLOSED SESSION (DISTRICTS: ALL)

OVERVIEW

- A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of Section 54956.9)
County of San Diego v. Travelers Casualty Insurance Co. of America, et al.; San Diego County Superior Court No. 37-2018-00006346-CU-IC-CTL

- B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of Section 54956.9)
In Re: National Prescription Opiate Litigation; United States District Court, Northern District of Ohio, No. 1:17-MD-02804-DAP

- C. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of Section 54956.9)
Christopher Luth, et al. v. County of San Diego; San Diego County Superior Court No. 37-2016-00023437-CU-PO-CTL

- D. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraph 4 of subdivision (d) of Government Code section 54956.9: (Number of Cases - 1)

- E. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraph 2 of subdivision (d) of Government Code section 54956.9: (Number of Potential Cases - 1)

ACTION:

County Counsel reported that for Closed Session on Tuesday, March 12, 2019, the Board of Supervisors took the following action:

Item D: Initiation of Litigation: By a vote of five Board members voting “Aye” and no members voting No, authorized County Counsel to file an amicus brief in support of other municipalities that are challenging a Declaratory Ruling and Order issued by the Federal Communications Commission concerning small cell wireless facilities.

State of California)
County of San Diego) §

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER
Clerk of the Board of Supervisors



Signed
by Marvice Mazyck, Chief Deputy

HOLLY MANION
17090 El Mirador
Rancho Santa Fe, CA 92067

February 19, 2019

Board of Supervisors
San Diego County
1600 Pacific Hwy #335
San Diego, CA 92101

RE: 5G Wireless Installation and Property Values

Dear Members of the San Diego County Board of Supervisors:

I'm writing to you as a real estate broker of 40 years and a member of the North San Diego Association of Realtors regarding my deep concern for property devaluation as 5G cell towers are permitted in and around residential areas.

My experience, as well as the literature and increasing industry norms, suggest that any resident who faces a 5G – or any cell tower – near their property is going to experience devaluation of property and difficulty selling their home.

As the County goes about syncing our present Ordinance for siting “small cell” 5G towers with recently issued FCC regulations, I urge you to consider San Diego County’s original cell tower ordinance which has stood the test of legislative time, having victoriously survived two appeals in the 9th Circuit Court of Appeals.

The four-tiered preferential option is less functional in the face of the new FCC regulations that include shot clocks for conditional and ministerial reviews. I would strongly urge you to include language in the new ordinance that includes **substantial setbacks from homes and residential properties**. Without these setbacks, I'm afraid the real estate market in San Diego will be diminished in terms of desirability, profitability, and there will be a taint to our industry that has long been an attribute to San Diego County.

Communities across the nation are working hard to protect their residential areas in view of these new FCC regulations. I know Susan Foster, who was originally on the cell tower siting ordinance committee in 2002 charged with creating the existing ordinance that has stood the test of legal challenge, has provided San Diego County planners with more than a dozen municipal zoning plans. Numerous cities inside California and across the country are working extremely hard to protect their residential areas from the encroachment of cell towers.

In my professional opinion we will lose real estate business if families cannot find what they consider to be safe homes and safe real estate investments in the San Diego area and likewise, if they find that these homes are difficult to sell with cell towers in front of them.

Below I will be citing several surveys done in this country and abroad that show concern dating back to 2003 with respect to cell towers and residences. Again, in my professional opinion, that concern has only grown. The perception of 5G is one of deep concern because of the failure to test this new technology and the fact the millimeter wave is also used in full body scanners that pregnant women are allowed to opt out of at airports. We have to exercise great caution to protect the real estate industry here in San Diego and *I would urge you all to be as generous as you possibly can be when it comes to residential setbacks from cell towers of all kinds.*

An EMF real estate survey conducted by the National Institute for Science, Law and Public Policy initiated in June 2014 was completed by 1000 respondents. The answer, published in “Neighborhood Cell Towers & Antennas—Do They Impact a Property’s Desirability?”, was an overwhelming yes. The majority of respondents (94%) **reported that the cell towers and antennas in a neighborhood or on a building would negatively impact their interest in a property and the price they would be willing to pay.** 79% said under no circumstance would they purchase or rent a property within a few blocks of a cell tower or antenna. 89% said they were generally concerned about the increasing number of cell towers and antennas in their residential neighborhood. <http://electromagnetichealth.org/electromagnetic-health-blog/survey-property-desirability/>

A survey conducted in New Zealand in 2003 showed there were concerns 16 years ago about living next to a cell site. “The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods” by Sandy Bond, PhD, and Ko-Kang Wang presents the results from both an opinion survey and a market sales analysis. The results of the sales analysis show *prices of properties were reduced by around 21% after a cell site was built in the neighborhood.* Please note this survey was conducted prior to all the adverse media publicity that continues to grow regarding cell sites. <http://electromagnetichealth.org/wp-content/uploads/2014/06/TAJSummer05p256-277.pdf>

We have to exercise great caution to protect the real estate industry and residential property values in San Diego County. I would urge you all to be as generous as you possibly can be when it comes to residential setbacks from cell towers of all kinds.

Thank you very much for your time and attention to this urgent matter.

Respectfully,



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