



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 \$1,919 plus \$2,000 deposit - \$3,919 total	NO	N/A	N/A
Belmont	18	7	YES	YES	NO	YES	YES. Public reviews from 2007-2009, now waiting for withdrawal from applicant.	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).	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