

City of Long Beach
City Clerk Office
411 West Ocean Boulevard
Long Beach CA 90802

Moira Hahn and Mark Hotchkiss, Homeowners
4351 Clark Avenue
Long Beach CA 90808-1414

February 26, 2021

Subject: Appeal of City of Long Beach Department of Public Works (PW) Approval of the Wireless Telecommunications Facility (WTF) at or near 43651 (sic) Clark Avenue, Long Beach CA 90808-1414; Permit Number: PWRW48749

Dear City Council, Department of Public Works, and other involved administrative employees of the City of Long Beach,

We are the homeowners who reside at 4351 Clark Avenue, Long Beach, California. We are the fee owners of said property which is described in our title insurance policy as “The southerly 60 feet of Lot 13 in Block “H” of Tract No. 10868, in the City of Long Beach, County of Los Angeles, State of California, as per Map Recorded in Book 188, Pages 31 and 32 of Maps, in the Office of the County Recorder of Said County.” We hereby appeal the decision of the City of Long Beach Department of Public Works (PW) granting Permit Number: PWRW48749 to install a Wireless Telecommunication Facility (WTF) at or near 43651 [sic] Clark Avenue, Long Beach CA, 90808-1414, for the following reasons.

1) The address on the letter informing us of this approved PW permit is incorrect. It states the address as 43651 Clark Avenue. There is no ‘6’ in our address, yet we know it’s the light pole in front of our home that will be replaced, because as of yesterday, there is a notification taped on it, facing outward, not facing our house. So ours may not even be the correct location.

2) We have not been provided with adequate time to consider the impacts of this permit approval. We received the letter from Synergy titled “Wireless Telecommunications Facility Permit Application Public Notice,” dated February 17, 2021, on February 19, 2021. We had never heard of Synergy Development Services, Inc. The letter was mailed by first class mail – not by certified mail -- and looked like junk mail. The letter was packaged to attract minimal attention from the recipient, with the obvious intent that it be thrown out without the envelope being opened. Fortuitously, we did open and review the letter several days after receipt, but the intentional inconspicuous manner of mailing by Synergy led to our even more curtailed time for review. A second form of notice – posted notice – was placed on the existing street light pole which the WTF is proposed to replace. However, the small notice was posted on the side of the pole facing the street, not toward our home, again with the intention of reducing the likelihood that we would see the notice. We are required to respond within 10 business days of the February 17, 2021 mailing. At best, we only

had a very short time to review the Synergy materials, analyze the proposed project, determine how the project may impact us, and decide whether or not to appeal. This curtailed notice period fails to afford us and our neighbors sufficient time to communicate with one another, to organize, to seek counsel and experts, and to make decisions about a significant project that presents tremendous impacts to our neighborhood, including but not limited to harm to the aesthetics and character of the neighborhood, devaluation of our property values, and the creation of substantial fire, public safety, health, and environmental concerns.

3) We are appalled to be required to pay a \$106.20 'administrative fee' in order to appeal a decision on an issue about which we were previously uninformed that will have devastating impacts on our daily lives and finances. The City's administrative fee is an unconstitutional fee under the Constitutions of the United States and California because it imposes a mandatory monetary fee on residents who desire to exercise their First Amendment rights -- at the first opportunity they have received any notice of the applicant's proposed project -- to petition their government to oppose the issuance of a permit by the City of Long Beach Department of Public Works to a private corporation to install a WTF directly adjacent to affected residents' homes. The City of Long Beach's Municipal Code provides an unconstitutional procedure whereby the *very first chance* a person has to challenge a significant project that causes major impacts to the neighborhood's aesthetics and property values and poses substantial fire, public safety, health, and environmental threats – an appeal of an already-granted PW permit – requires the person to pay money to the City, *and*, limits the standing to appeal to only the homeowner whose property will be most directly, physically violated, one adjacent neighbor, and one neighbor across the street. The wireless radiation that will be generated if this WTF is installed will not end at our driveway. In stark contrast to the City of Long Beach's unconstitutional process, virtually *all* municipalities throughout the United States conduct open public hearings before either land use boards, planning commissions, or the municipal council itself to consider projects like the subject of the instant appeal. During such public hearings, members of the public may speak – at no monetary cost – during public comment periods – about the project at issue. Throughout our nation's history, this First Amendment right to petition the government for free is a fundamental tenet of democracy. The City of Long Beach mandatory \$106.20 'administrative fee' to appeal the PW Permit at issue, and the limitation of that right to only three homeowners, unconstitutionally chills the public's First Amendment rights to petition the government, and must be voided.

Besides this First Amendment infringement, the City's mandatory administrative fee for an appeal, without affording persons a "free" opportunity to challenge the project, and denying the right to appeal to all of the other members of the community who will be affected, violates due process protections under the Fourth and Fourteenth Amendments to the United States Constitution and the California Constitution.

4) The description of the proposed installation, as set forth in the February 17, 2021 Synergy letter, is materially flawed, in at least the following ways:

A) The attachment labeled 'Photo Simulation of Project', before/after, shows almost exactly the same configuration, color and height as the current light pole. The photo simulation of the project "After" is materially misleading, and fails to show an accurate simulation of what the WTF will look like upon completion. Moreover, a so-called "vault" is described in the letter. Where is the vault? No vault is shown in

the photo simulation. The Department of Public Works erred in granting the permit because of these material omissions.



(A) 'Photo Simulation of Project', before/after

Synergy's preposterous "After" Photo Simulation fails to show any realistic semblance of the WTF upon its installation. Indeed, the word balloon inserted into the "After" Photo Simulation acknowledges the omission of any of the WTF components, stating: "Proposed AT&T

- *Replace (E) Streetlight with ConcealFab Pole
- * (2) Install Ericsson 4402 Radio
- * (1) Install Ericsson 2205 Radio
- * (1) Install Future Radio
- * (1) Raycap Surge Protector CEQ 20914"

Remarkably, the "After" Photo Simulation fails to mention any "Antenna" at all.

A second word balloon states: "Proposed AT&T
*RF Signage"

That proposed RF signage is indicated to be placed at a height about 20% below the top of the pole, where even a giraffe standing atop a second giraffe would still be unable to read the sign.

The Department of Public Works nevertheless approved the permit application without any realistic photo simulation of the proposed WTF with all of its components installed. Thus, the Department of Public Works failed to consider the aesthetic effects of this monstrous aggregation of uncamouflaged antenna and unsightly accoutrements on the character of this residential neighborhood. Further, the proposed RF signage is supposed to warn passersby of the dangers of close exposure to wireless radiation. Placing a small rectangular warning sign near the top of a tall pole ensures that no member of the public will ever be able to read the sign. The Department of Public Works failed to consider this public safety hazard in the proposed design when it improperly granted the permit.

B) The dimensions of the 'vault' are described in the Synergy letter as 17" x 30". If it's a 'vault', as stated in the Synergy letter, it must be three-dimensional, and the applicant's failure to include the third dimension is material. This currently two-dimensional "vault" is supposed to house the undefined "WTR disconnect." No explanation of said equipment is provided. The applicant also fails to include the

weight of the so-called vault, the radios, the antenna, the WTR disconnect, or any other equipment. Moreover, the application fails to explain how the vault will be attached to the pole or the location of the vault on the pole. Given the extreme weather conditions we now experience as a result of climate change, these material omissions render it impossible to determine the safety and durability of the WTF during extreme weather conditions. The Department of Public Works erred in granting the permit because of this material omission.

C) What noise level will the fans and/or other WTF components generate? This important factor is not described at all. Other municipalities report 60 decibel noise levels, 24/7 from similar small cell wireless facilities. The Department of Public Works has not conducted a noise study of the proposed WTF. The “Public Health Compliance Standard” set forth in LMC 15.34.020 R(b) relating to “noise at any time of the day or night from the proposed wireless telecommunications facility described in an application” limits such noise to “not greater than forty-five (45) dBa as measured at a distance three (3) feet from any residential building façade.” The Department of Public Works erred in granting the permit because it failed to create a record of admissible evidence that this WTF would not create noise in excess of this limit.

D) The Department of Public Works has apparently not conducted any environmental review of the proposed WTF nor any public health or safety review. The Department has failed to explain why this WTF, which is part and parcel of a roll-out of a very large number of similar WTFs in the City of Long Beach by AT&T, warrants exemption from environmental and public health and safety reviews given the substantial negative impacts wireless radiation from such WTF cause.

5) I (Moira Hahn) suffer from medical disabilities, including long-term migraine and cluster headaches, 100% deafness in my left ear and chronic infections and disorders in my right ear. My doctor believes to a reasonable degree of medical certainty, that because I suffer from these medical disabilities, I have developed hypersensitivity to wireless radiation. He believes that chronic, indeed, continuous, near-range exposure to an operating 5G WTF will exacerbate my existing medical disabilities, and potentially, may eventually cause brain cancer, a disease to which I may have a genetic predisposition because of my family’s medical history. My doctor believes that my medical condition constitutes a disability within the meaning of the Americans with Disabilities Act (“ADA”).

A letter from my medical doctor describing my medical disabilities and his demand that I be afforded reasonable accommodation under the ADA is submitted herewith. We hereby demand from the City of Long Beach a “reasonable accommodation” pursuant to the ADA such that no WTF be erected or operated within 1000’ from our residence at 4351 Clark Avenue, Long Beach, California. Failure by the City of Long Beach to provide me with such reasonable accommodation will constitute a violation of the ADA and subject the City of Long Beach to liability under the Act.

Furthermore, LBMC 15.34.030B(1)(b)(6)(viii) requires that the proposed WTF and its location shall comply with the Americans with Disabilities Act. As amply demonstrated above, the proposed WTF fails to comply with the ADA with respect to my medical disabilities, and I require the “reasonable accommodation” of having said WTF located no closer than 1000’ away from our residence.

In February 2021, in *Brown v. Los Angeles Unified School District (2d Dist., Div. Eight)*, Case No. B294240, The California Court of Appeal approved a claim of a woman who asserted a disability of “electromagnetic hypersensitivity, or, as the concurring justice put it, “Wi-Fi sickness.” The court recognized Wi-Fi sickness as a disability under laws against discrimination. The Fair Employment and Housing Act (FEHA) also prohibits discrimination in all aspects of housing (rental, lease, terms and conditions, etc.) because of a person's disability. The definition of disability used in California exceeds the Federal definition. and can be found in the housing section of the Act.

6) The City of Long Beach has violated LBMC15.34.010 by the Department of Public Work's issuance of Permit Number: PWRW48749. LBMC 15.34.010 B sets forth as a goal of the City's WTF ordinance:

'Minimize the negative impacts of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities in the context of other uses and users in the public right-of-way, and protect the health, safety and welfare of the City of Long Beach'

The Department of Public Works approval of the permit violated the law because there was no fair and efficient process for review and approval. As described above, the process violated the First, Fourth, and Fourteenth Amendments to the United States Constitution and the California Constitution. No environmental impact review whatsoever was conducted, and no effort was expended to protect the health, safety and welfare of the City of Long Beach, its residents, and visitors. Instead, the Department of Public Works granted the permit with virtually no substantive review or study, and the permit was simply shoved down residents' throats as a fait accompli, during a world-wide pandemic crisis.

7) The City of Long Beach has violated LBMC 15.34.10 C which seeks to:

Strongly encourage the location of wireless telecommunications facilities in those areas of the City where the adverse aesthetic impact on the community is minimal.

This section is violated. The Department of Public Works utterly ignored the fact that our neighborhood is residential, with single family houses the predominant structures. The aesthetic impact on our lovely residential neighborhood of this WTF in particular, and any others AT&T intends to construct nearby, will be devastating. Such WTF should be constructed in industrial zones of the City, not in the middle of residential neighborhoods.

8) The City of Long Beach has violated LBMC15.34.010 D which seeks to:

*Promote the public **health, safety, convenience, and general welfare** of the City's residents, and **to protect historical resources, property values and the aesthetic appearance of the City of Long Beach;***

This section is violated. The Lakewood Village neighborhood, on Clark Avenue, the street between Mark Twain Elementary School and Long Beach City College, ½ block from each school, is a poor location at which to erect a WTF/cell antenna. This is a residential neighborhood, and the WTF will be close to an elementary school and a junior college.

Although Synergy failed to provide any realistic simulation of the WTF as constructed, the un-camouflaged WTF, with the antenna, radios, and other equipment mounted at the top of a tall ersatz concrete "streetlight" will be grotesque and will detract greatly from the aesthetics of this well-kept residential neighborhood. Property values will be severely diminished.

Small cell facilities such as this one commonly experience fires, which pose a dire public safety threat to the neighborhood. Moreover, with increasing extreme weather conditions, tall poles bearing heavy equipment at the top present a significant risk to residents and passersby should the equipment detach and become dangerous projectiles during heavy winds. Likewise, in an earthquake, the pole or the heavy equipment atop the pole may collapse or fall, again posing a significant public danger. Finally, the serious health risks from wireless radiation, which are recognized in thousands of independent peer-reviewed scientific studies, should not be imposed on me (Moirá Hahn), my husband (Mark Hotchkiss), or our neighbors, against their wills, simply so that a greedy telecommunications corporation can line the pockets of its shareholders and executives.

This 5G WTF would be 25' from our bedroom. The City of Long Beach has as its foremost duty the responsibility to protect the health and safety of its residents. It is utterly irresponsible for the City of Long Beach to force this unwanted infrastructure at close proximity to its residents given the serious health and safety dangers the WTF presents. Due to valid concerns about health and safety, adverse aesthetics and noise generation, this WTF will gut our property value.



Photo B, Australian Pine (*Casuarina Equisetifolia*), City owned Parkway tree at 4351 Clark Avenue, and light pole that would be replaced by the AT&T 5G WTF, photographed by Mark Hotchkiss on 2/26/2021

9) § 15.34.030. Requirements and standards for wireless telecommunications facilities in the public right-of-way. _

3) (i) *Site location preferences:*

Within the public right-of-way, not in a center median, and not requiring the removal of existing parkway trees, reduction of the size of any parkway landscape planters, and not requiring any modifications to the existing location of any infrastructure within the public right-of-way

The WTF tower would be erected next to a huge, dried-out 'Australian Pine' (*Casuarina equisetifolia*) tree, conservatively estimated at 40' tall, far exceeding the height of the light pole (see photo exhibits A; and B, above). The tree's branches currently envelope the light pole. This (City) tree is highly flammable. The species is grown specifically for firewood, throughout the world. A request by the homeowners to remove the tree from the right-of-way was rejected in 2017 (document attached), via the city's Tree Committee, the City Arborist, and the Long Beach Department of Public Works. We were informed by the aforementioned that the tree has aesthetic and historical status as a Lakewood Village 'Parkway Tree'. This tree would greatly increase the fire hazard of the (heat-generating) WTF. The City Code section 15.34.030 specifically states that City trees cannot be removed for this project.

10) The City of Long Beach has violated LBMC15.34.010 E which seeks to:

Strongly encourage wireless telecommunications providers to configure all facilities in such a way that minimizes displeasing aesthetics through careful design, siting, landscaping, screening, and innovative camouflaging techniques;

The review process was nonexistent for the affected residents. The Photo Simulation sent with the letter is small, fuzzy, and grossly deficient in substance and detail. We do not know what the WTF would look like, though we do know that the tall concrete “streetlamp” will be adorned at the top with at least one antenna of undescribed dimensions, three radios, with a fourth to be added, and a surge protector of undescribed dimensions. Also, a “vault” housing an undescribed “WTR disconnect” of unknown dimensions will be located somewhere, also unstated. The deficient “photo simulation” shows no “careful design,” no effort at careful “siting,” no “landscaping,” no “screening” whatsoever, and the “innovative camouflaging techniques” of “hiding in plain sight” – i.e., utilizing no camouflaging at all, unless the City is counting on the adjacent firewood tree. The Department of Public Works has utterly failed to uphold this provision.

11) The City of Long Beach has violated LBMC15.34.010 H which seeks to:

Encourage economic development while preserving aesthetic and other community values and preventing proliferation of above ground wireless telecommunication equipment.

As stated above, the proposed WTF destroys the neighborhood aesthetic while substantially devaluing the residential properties, including our property value. Moreover, this WTF will tower over the neighborhood and is part of a roll-out of many similar above ground WTF planned for deployment in this immediate area of the City of Long Beach. The Department of Public Works has egregiously violated this Code provision by granting the permit.

12) The Department of Public Works violated LBMC 15.34.030B(1)(b)(iii) because this WTF needed to be reviewed under the CEQA and was not so reviewed, and yet the Department issued the permit anyway.

13) The Department of Public Works violated LBMC 15.34.030B(1)(b)(iv) because it failed to assure that the applicant had obtained a certificate of public convenience and necessity issued by the California Public Utilities Commission.

14) The Department of Public Works violated LBMC 15.34.030B(1)(b)(vi) because it failed to ensure that the WTF was designed and located to eliminate or substantially reduce its visual and aesthetic impacts upon the surrounding public rights-of-way and public vantage points.

15) The Department of Public Works violated LBMC 15.34.030B(1)(b)(6)(vi) because it failed to ensure that the facilities were designed to be as visually unobtrusive as possible. The Department failed to require the applicant to size the antennas, cabinet equipment, and other facilities to minimize visual clutter. Moreover, the facilities haven’t been sited to avoid or minimize obstruction of views from public vantage points and to otherwise minimize the negative aesthetic impacts of the public right-of-way.

16) The Department of Public Works violated LBMC 15.34.030B(1)(b)(6)(x)(8) because it granted the permit even though the permittee cannot procure and maintain in full force and effect throughout the term of the Wireless Right-of-Way Facility Permit,

an insurance policy or policies issued by an insurance company or companies satisfactory to the City's Risk Manager covering all of the permittee's operations, vehicles, and employees, and providing "commercial general liability insurance" with limits not less than five million dollars (\$5,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations. This insurance shall include coverage for electric and magnetic fields (EMF) liability products and completed operations liability.

Because of the enormous risk posed by wireless radiation, no insurer, not even fabled Lloyd's of London, will provide insurance coverage for electric and magnetic fields (EMF) liability products and completed operations liability. The permittee cannot obtain from any reputable insurance company anywhere in the world an insurance policy providing a minimum of \$5,000,000 of coverage for each occurrence, combined single limit, for bodily injury and property damage, including contractual liability, personal injury, products, and completed operations coverage for electric and magnetic fields (EMF) liability, otherwise known as wireless radiation liability. Nor will permittee's self-insurance provide acceptable or equivalent protection to the City. The permittee, Synergy, is a division of Advantage Engineers, a small company that specializes in the siting, development, acquisition, leasing, and construction of telecommunications facilities, including WTF. It lacks the financial resources to self-insure against commercially uninsurable risks posed by wireless radiation. Even a telecommunications behemoth like AT&T is unable to purchase insurance coverage for EMF risks, and AT&T discloses in its SEC filings that it faces unknown risks from litigation regarding the health risks of its wireless operations and equipment which may have a material adverse impact on its financial results and operations.

Finally, the Notice provided by Synergy to us violated LBMC 15.34.030 K(3) as follows:

The Notice failed to comply with subpart (a) because, as described in detail above, the description and photo-simulation of the proposed wireless telecommunications facility was materially misleading and incomplete.

The Notice failed to comply with subpart (b) because rather than summarizing the determinations of the City departments that were necessary for the tentative approval of the application, the Notice merely states in conclusory terms that the City Departments found that the WTF satisfied the relevant standards.

In summary, we are opposed to this 5G WTF, and we vehemently refuse to permit it.

Under the federal ADA, and the state FEHA, I (Maira Hahn) demand "reasonable accommodation," meaning the City must revoke the permit granted for this WTF because the operation of this WTF at this location will exacerbate my existing, well documented, medical disabilities and cause me (potentially, us) personal harm. Reasonable accommodations under these circumstances means that the proposed WTF must be moved a distance of at least 1,000 feet from our residence.

The proposed WTF violates CEQA. The Department of Public Works improperly granted a permit for this WTF in violation of the Long Beach Municipal Code Sections cited above. The WTF will injure children who pass under it, several times a day, it will destroy our landscaping, kill the birds and bees that pollinate our vegetable garden a few feet away, and its permitting process was fatally flawed. We believe that the WTF will damage our health and safety, severely damage our property value, emit noise pollution, 24/7, and violate our privacy.

Authorities in many other cities, states, and countries, world-wide, have recently banned the erection of 5G antennae in residential areas, and around schools, fire stations and hospitals.

In addition, we object to the manner and timeline on which the permit was approved, the complete lack of transparency, and the lack of opportunity afforded to the affected public to understand the ramifications of the project, defend their rights, or to participate in the decision-making process. We look forward to the appeal.

Sincerely,

Moira Hahn and Mark Hotchkiss

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attachments:

- (1) Letter from Dr. Richard J. Wexler, MD 2/24/2021
- (2) Letter from Department of Public Works denying Parkway tree removal, 3/25/2017
- (3) Letter, Photo Sim. and envelope from Synergy Development Services, Inc.
- (4) Photo of notice on light pole to be replaced by AT&T 5G WTF
- (5) Petition in denial of 5G in Residential neighborhoods from neighbors (6 pages)