

RESOLUTION NO. 2010-53

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY AN ADVISORY MEASURE PURSUANT TO SECTION 612 OF THE CITY CHARTER REGARDING WHETHER PRIVATE WIRELESS COMMUNICATION FACILITIES SHOULD BE A PERMITTED USE IN CITY- OWNED PARKS; SETTING PRIORITIES FOR FILING WRITTEN ARGUMENTS AND DIRECTING THE CITY ATTORNEY TO PREPARE IMPARTIAL ANALYSIS

WHEREAS, City Council Resolution No. 2010-34 has called a General Municipal Election to be held on Tuesday, November 2, 2010; and

The City Council also desires to submit to the voters at the election an advisory Measure pursuant to Section 612 of the City Charter regarding whether private wireless communication facilities (also known as mobile telephone antennas or cell towers) should be a permitted use in city-owned parks; and

Residents of the City of Huntington Beach have objected to placing mobile telephone antennas and related facilities at Harbour View Park at 16600 Saybrook Lane, and Bolsa View Park at 5741 Brighton Drive; and

WHEREAS, the City Council is authorized and directed by constitutional provision and statute to submit the question to the voters; and

City Council wishes to authorize arguments in favor of and in opposition to the as well as authorize impartial analysis of the measure identified herein,

NOW THEREFORE, THE CITY COUNCIL of the City of Huntington Beach does hereby resolve, declare, determine and order as follows:

SECTION 1. The City Council finds and determines that each of the findings set forth above are true and correct.

SECTION 2. That the City Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election the following Measure:

Huntington Beach Private Wireless Communication Facilities Advisory Measure. Shall the City permit the installation of a mobile telephone antenna at Harbour View Park located at 16600 Saybrook Lane and at Bolsa View Park located at 5741 Brighton Drive?	YES	
	NO	

SECTION 3. In all particulars not specified in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 4. Notice of the time and place of holding the election is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 5. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk within ten (10) days of the adoption of this Resolution.

SECTION 6. That with respect to the above entitled measure:

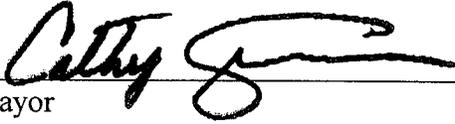
a. That the City Council authorizes

- _____ (Councilmember in Favor/Against)

members of that body, to file a written argument regarding the Measure as specified above in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and to change the argument until and including the date fixed by the City Clerk after which no arguments for or against the Measure may be submitted to the City Clerk. Said argument to be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers.

SECTION 7. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED AND ADOPTED this 20th day of July, 2010.



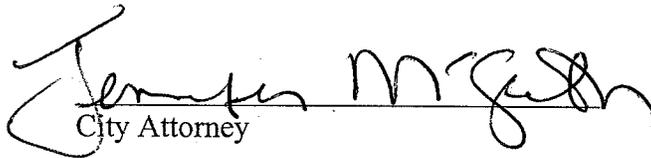
Mayor

ATTEST:

APPROVED AS TO FORM:



City Clerk



City Attorney

STATE OF CALIFORNIA
COUNTY OF ORANGE) ss:
CITY OF HUNTINGTON BEACH)

I, JOAN L. FLYNN the duly elected, qualified City Clerk of the City of Huntington Beach, and ex-officio Clerk of the City Council of said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing resolution was passed and adopted by the affirmative vote of at least a majority of all the members of said City Council at a **special** meeting thereof held on **July 20, 2010** by the following vote:

AYES: Carchio, Hardy, Green, Bohr, Dwyer, Hansen

NOES: None

ABSENT: Coerper

ABSTAIN: None



City Clerk and ex-officio Clerk of the
City Council of the City of
Huntington Beach, California

Impartial Analysis of Measure _____ Prepared By the City Attorney

Section 612(b) of the Huntington Beach City Charter provides that no structure costing more than \$100,000 for construction may be built in any City park or beach without voter approval.

This Measure asks the voters whether the City should permit the construction of a mobile telephone antenna at Harbour View Park located at 16600 Saybrook Lane and at Bolsa View Park located at 5741 Brighton Drive. The antenna at Harbour View is approximately 55 feet tall and designed to resemble a palm tree. The antenna at Bolsa View is approximately 57 feet tall and designed to resemble a broadleaf tree.

In September 2007, the City approved zoning permits for both antennas. In January 2009, the City Council approved 10-year license agreements with T-Mobile, a mobile telephone company, to locate mobile telephone antennas at Harbour View Park and Bolsa View Park. When the City learned in April 2009 that the cost of construction exceeded \$100,000, the City suspended the zoning permits and required that T-Mobile obtain voter approval.

In response, T-Mobile sued the City, and in a July 9, 2010 preliminary ruling, the Federal District Court determined that voter approval requirement violated the Federal Telecommunications Act to the extent that it impedes the City from acting on antenna applications “within a reasonable period of time.” At the same time, the Court allowed the City to conduct an “advisory” election on antennas. The Court then gave the City Council until September 7, 2010 to either grant or deny the antenna permits. If the City Council denies the antennas, the Court may overrule the Council at a hearing prior to trial, or may conduct a trial beginning on November 9, 2010, after the November 2, 2010 election, to review the Council’s decision.

In response to the Court’s ruling, the City Council decided to reconsider the antenna permits on August 30, 2010, and submit to the voters the question of whether the antennas should be permitted in the two Parks.

Because of the lawsuit, the impact of this Measure cannot be definitively stated. If the lawsuit proceeds to trial in November 2010, the election will inform the City Council and the Court whether the voters approve of constructing antennas at the two Parks. Further, the City Attorney disagrees with the conclusion of the Federal Court that Section 612 violates the Federal Telecommunications Act. By conducting an election now, the results will be available to be considered by the Ninth Circuit should the City appeal the District Court’s ruling.

JENNIFER MCGRATH
City Attorney

Measure “ ____ ”

Advisory Measure Regarding Private Wireless Communication Facilities - Shall the City permit the installation of a mobile telephone antenna at Harbour View Park located at 16600 Saybrook Lane and at Bolsa View Park located at 5741 Brighton Drive?

Argument Against Measure “ ____ ”

RESTRICT CELLULAR TOWER CONSTRUCTION FROM RESIDENTIAL LOCATIONS AND ELEMENTARY AND MIDDLE SCHOOLS

The jury is still out on the long-term effects of RF transmissions on children and adolescents. One of the proposed locations is 20 feet from the kindergarten playground and classes of Harbour View School; the other is in the middle of a residential neighborhood. Access to cellular service is not at issue here – caution is. Our city has countless retail developments, parking lots, and utility locations where cellular towers could be constructed away from schools and homes and still provide needed wireless coverage and competition. Let’s be safe. Let’s be smart. Don’t allow cell towers in Huntington Beach next to classrooms or outside your front door.

NOT WORTH THE RISK TO CHILDREN OR ADULTS

There continues to be considerable debate as to the adequacy of existing public exposure standards including those promulgated by the Federal Communications Commission. This technology is too new to know if the long-term and compounded exposure will have any effect on children. Moving the location of cellular facilities away from schools and residential areas will ensure individuals, especially children, are protected from the potential health effects associated with exposures to extremely low frequency electromagnetic and radiofrequency radiation.

A “NO” VOTE ON MEASURE “ ____ ” MEANS NO CELL TOWERS IN OUR SCHOOLS AND PARKS

Alan G. Rasmussen, Ed. D.
Superintendent, Ocean View School District

Cindy Osterhout
Principal, Harbour View Elementary School

Dr. Harry Pellman
Pediatrician, Edinger Medical Group