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Thomas Schwab  
City manager  
City of Grand Terrace  
22795 Barton Rd  
Grand Terrace, CA 92313

Dear Mr. Schwab:

**Re: Proposed ordinance adding Chapter 18.72 consisting of Sections 18.72.010 through 18.72.080 to Title 18 of the Zoning Code of the City of Grand Terrace.**

I am a volunteer attorney with the American Radio Relay League (ARRL) who sometimes advises and/or represents amateur radio operators in matters involving zoning regulations affecting antennas and antenna structures. I realize that we are a late arrival at the table, however it was just within the past week or so that we became aware of your proposed ordinance. I have reviewed the proposed ordinance noted above and would like to comment on a few of its provisions. First, thank you for the adequate definitions that allow those reading the proposed ordinance to understand exactly what it is you are trying to regulate. That being said, I must inform you the ordinance does not conform to established Federal law or the more recent State law.

Section 18.72.040 A 1 sets an absolute height limit on antennas and antenna structures. Both the FCC and the Federal courts have stated that absolute height limits are contrary to the limited Federal preemption originally set out in FCC Order PRB-1, 101 FCC 2d 952, 50 Fed. Reg. 38813 (September 25, 1985) commonly referred to as PRB-1. Regarding amateur service generally and antennas in particular, PRB-1 states as follows:

24. . . . [T]here is . . . a strong federal interest in promoting amateur communications.

25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. For example, an antenna array

for International amateur communications will differ from an antenna used to contact other amateur operators at shorter distances.

47 CFR §97.15(b) specifically

**Sec. 97.15 Station antenna structures.**

(a) Owners of certain antenna structures more than 60.96 meters (200 feet) above ground level at the site or located near or at a public use airport must notify the Federal Aviation Administration and register with the Commission as required by part 17 of this chapter.

(b) Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. (State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose.”

In reaffirming and clarifying its earlier ruling the FCC stated in **FCC 99-2569** as follows:

“7. . . . PRB-1 decision precisely stated the principle of "reasonable accommodation". In PRB-1, the Commission stated: "Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose." **Given this express Commission language, it is clear that a "balancing of interests" approach is not appropriate** in this context.

. . .9. . . . [W]e believe that PRB-1's guidelines brings to a local zoning board's awareness that **the very least regulation necessary** for the welfare of the community must be the aim of its regulations **so that such regulations will not impinge on the needs of amateur operators** to engage in amateur communications.”

The United States Congress has indicated its support of amateur radio and affirmed the limited Federal preemption as follows:

**Public Law 103-408 (J.Res., 103d Congress, 1994)**

“Congress finds and declares that –

(3) reasonable accommodation should be made for the effective operation of amateur radio from residences, private vehicles and public areas, and that

regulation at all levels of government should facilitate and encourage amateur radio operation as a public benefit.”

Many Federal cases have supported the FCC’s ability to formulate regulations regarding amateur radio antennas and their support structures and have upheld the limited Federal preemption in this area.

*Bulchis v. City of Edmonds, WA*, 671 F. Supp. 1270 (W.D. WA 1987)

Operator applied for retractable tower (21.5 to 70 foot). Summary judgment in favor of the ham, finding ordinance (CUP required for >25') *as applied* did not provide for reasonable accommodation

*Bodony v. Sands Point, NY*, 681 F. Supp. 1009 (E.D. NY 1987)

Ordinance with 25' height limit. Tower: 86'. Summary judgment for ham; settled with permit granted and \$60,000 in legal fees to ham on \$1983 claim because town was seeking ways to deny his rights.

*Izzo v. River Edge, NJ*, 843 F.2d 765 (3d Cir 1988)

Upholds preemptive effect of PRB-1 on 35' height limitation. "The effectiveness of radio communication depends on the height of antennas." At 768. Holds that Court need not abstain. River Edge paid legal fees of \$10,000 to Izzo, after conversations with the District Court Judge in chambers.

*Palmer v. City of Saratoga Springs, NY*, 180 F. Supp. 2d 379 (N.D.N.Y. 2001)

Absolute height limit of 20' in ordinance preempted. "(A)n unvarying height restriction on amateur radio antennas would be facially invalid in light of PRB-1."

Section 18.72.050 A 6 and 8 may impose unreasonable burdens on the amateur applying for the required land use application. When these two items are considered together, the costs may be excessive in relation to the project proposed. The FCC, in response to an ARRL petition for reconsideration of certain aspects of PRB-1 (*RM 8763 (2000)*, on *Petition of the ARRL and Barry Gorodetzer*) further stated with regards to fees that are or may be imposed by municipalities for land use applications

“7. . . . The ARRL's second request in its Petition concerns imposition of excessive costs for, or the inclusion of burdensome conditions in, permits or variances needed prior to installation of an outdoor antenna. As it did in its petition for rule making, ARRL requests a ruling from the Commission that imposition of unreasonable or excessive costs levied by a municipality for a land use permit, or unreasonable costs to fulfill conditions appended to such permit, violates PRB-1. In our Order, we concluded that the current standards in PRB-1 of reasonable accommodation and minimum practicable regulation are

sufficiently specific to cover any concerns related to unreasonable fees or onerous conditions. With these guidelines in place, **an amateur operator may apprise a zoning authority that a permit fee is too high, and therefore unreasonable, or that a condition is more than minimum regulation**, and, therefore, impracticable to comply with". It would seem more reasonable that notice to the adjacent land owners would serve the legitimate purposes of the City regarding notice."

Section 18.72.060 C & D mandates a review of the application by the Planning Commission if there are objections based upon health and safety concerns. The Planning Commission is required to make finding in accordance with Section 18.72.040 of the Municipal Code. Section 18.72.040 imposes a test that balances the needs or desires of the neighbors against the needs of the applicant. The FCC and the case decisions have made it clear that the use of a balancing test is improper. In its 1985 decision (PRB-1) the FCC stated

"25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. For example, an antenna array for International amateur communications will differ from an antenna used to contact other amateur operators at shorter distances. We will not, however, specify any particular height limitation below which a local government may not regulate, nor will we suggest the precise language that must be contained in local ordinances, such as mechanisms for special exceptions, variances, or conditional use permits. Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose."

In its 2000 decision regarding PRB-1 the Commission reaffirmed its stand that the decisions should be based on the needs of the amateur. In its ruling the FCC stated

"8. We take this opportunity to amplify upon the meaning of 'reasonable accommodation' of amateur communications in the context of local land use and zoning regulations. The Commission adopted a limited preemption policy for amateur communications because there is a strong federal interest in promoting amateur communications. We do not believe that a zoning regulation that provides extreme or excessive prohibition of amateur communications could be deemed to be a reasonable accommodation. For example, we believe that a regulation that would restrict amateur communications using small dish antennas, antennas that do not present any safety or health hazard, or antennas that are similar to those normally permitted for viewing television, either locally or by satellite, is not a reasonable accommodation or the minimum practicable

regulation. On the other hand, we recognize that a local community that wants to preserve residential areas as livable neighborhoods may adopt zoning regulations that forbid the construction and installation in a residential neighborhood of the type of antenna that is commonly and universally associated with those that one finds in a factory area or an industrialized complex. Although such a regulation could constrain amateur communications, we do not view it as failing to provide reasonable accommodation to amateur communications.”

In the same way that restrictive height regulations are not in keeping with PRB-1, the restriction on the actual size of the antenna, as imposed by Section 18.72.030 E 1 b is improper. Assuming an amateur in your city lives on a typical residential lot of 7000 square feet, the smallest practical tri-band beam antenna would exceed the 5% lot size restriction. Limiting the size in this manner as opposed to considering the needs of the amateur for effective communication is not what the FCC meant by “reasonable accommodation” and would effectively disallow communication on those frequencies used by amateurs for world wide communications.

While the preamble to the ordinance acknowledges the existence of California Government Code Section 65850.3 it does not even attempt to recognize the true meaning of that statute. The statute, by its very language does not merely recognize the existence of PRB-1, it is a separate and distinct mandate to the cities and counties of California when regulating antennas and antenna support structures, that they “shall allow those structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications” and further that they “shall reasonably accommodate amateur radio service communications”. Further, any restrictions the local governmental entities choose to impose “shall constitute the minimum practicable regulation to accomplish the city’s or county’s legitimate purpose.” It is clear from the language recognizing PRB-1 and its limited preemption, that the Federal cases cited would, if not controlling, would at least be very compelling when interpreting this California law.

Based on the forgoing, we believe the City should not pass the ordinance in its present form but should consider these comments and make reasonable efforts to conform to PRB-1, Government Code Section 65850.3 and the many Federal cases which have decided these issues. There are members of the ARRL who are more than willing to work with the City of Grand Terrace to accomplish its legitimate goals while still allowing for reasonable accommodation of amateur radio operation.

Sincerely,

Leonard J. Shaffer, Esq