

ORDINANCE NO. ____ C.S.

Date: <MEETING_DATE>

Item No: <#>

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY**AMENDING MONTEREY CITY CODE CHAPTER ~~2838~~, ARTICLE 17, SECTION 112.4 –
WIRELESS COMMUNICATIONS FACILITIES**

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, the City of Monterey currently regulates the placement, design, construction and modification of wireless communications facilities in the City of Monterey;

WHEREAS, these regulations are designed to protect and promote the public's health, safety, and community welfare;

WHEREAS, the City's aesthetics, and the unique historic setting, and views of the City, which attributes benefit residents, attract visitors worldwide, enhance property values, are a catalyst for economic development, attract industry, and increase the City's tax base;

WHEREAS, the City finds that wireless communications facilities should not be placed in the rights-of-way at such points or in such manner as to incommode the public use of the same, except as such placement is required under federal law; and because of the impacts on the City and its residents, should not be placed at certain points or in such manner on public or private property unless required by federal law;

WHEREAS, the City finds it appropriate to amend the ordinance to clarify certain requirements in light of public comments received regarding the ordinance;

WHEREAS, the Planning Commission conducted a duly noticed public hearing on _____, took public testimony, held a discussion, and voted to recommend City Council adoption of the Zoning Ordinance amendment; and,

WHEREAS, the City of Monterey Planning Office determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines (Article 19, Section 15305, Class 5) because the project consists of a zoning ordinance amendment to modify existing regulations affecting wireless communication facilities, which would not result in any changes in density or traffic patterns. Additionally, the project is exempt from CEQA pursuant to CEQA Guidelines section 15308 (Class 8) as an action taken by a regulatory agency to assure the enhancement and protection of the environment, which includes the visual environment of the City. Furthermore, the project does not qualify for any of the exceptions to the categorical exemptions found at CEQA Guidelines Section 15300.2.

Exception a - Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located - a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. The environment is not particularly sensitive because the project is purely a zoning ordinance amendment. Therefore, impacts would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception b - Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. No cumulative impact would occur because the project is purely a zoning ordinance amendment that would regulate the visual appearance of communications structures in the City right-of-way with uniform, objective standards. Therefore, cumulative impacts would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception c - Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. There are no unusual circumstances with this project because the project is purely a zoning ordinance amendment and the land use limitations imposed by the amendment are commonplace under Class 5 and Class 8 categorical exemptions. Therefore, significant impacts would not occur. Any subsequent discretionary projects resulting from this action will be assessed on a project-by-project basis for CEQA applicability.

Exception d - Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified Environmental Impact Report (EIR). The project is purely a zoning ordinance amendment, which would not damage scenic resources, but rather, assure their protection. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception e - Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. The project is purely a zoning ordinance amendment regulating the visual effect of communications structures. Therefore, impacts to hazardous waste sites would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception f - Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. The project is purely a zoning ordinance amendment that would regulate the visual effect of communications structures in the City right-of-way, and not any historic resources. Therefore,

impacts to historic resources would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Now therefore, the Monterey City Council declares as follows:

Section 2: The foregoing recitals are true and correct and are hereby adopted by the City Council.

Section 3: Section 38-112.4 is hereby repealed in its entirety and replaced with the following:

38-112.4 Wireless Communications Facilities

A. Purpose.

This section is enacted to reasonably regulate, to the extent permitted under California and federal law, the placement, design, construction, and modification of wireless communications facilities within the City of Monterey. These regulations are designed to protect and promote public's health, safety, ~~and community welfare~~ welfare. The City's, aesthetics, ~~and the~~ unique historic setting, ~~and views of the City, which attributes~~ benefit residents, enhance property values, attract ~~tourists~~ visitors worldwide, enhance property values, are a catalyst for economic development, and ~~industry and~~ increase the City's tax base. The City's economy, as well as the ~~health and~~ well-being of all who work, visit or live in the City depends in part on maintaining the City's beauty.

B. Applicability.

1. The provisions in this section shall be applied to all applications for new wireless communications facilities and all applications for changes to existing wireless communications facilities filed ~~after 30 days or less prior to~~ the effective date of this section, unless the wireless communications facility is exempt from the permitting requirement. For all other ~~pending~~ applications, the provisions of Section 38-112.4 as it existed ~~31 days~~ before the effective date shall apply.
2. This section is not intended to exempt wireless communications facilities from any applicable laws, ~~including but not limited to the Americans with Disabilities Act.~~
3. This section shall be interpreted and applied in a manner consistent with state and federal law.
4. The time within which any act provided by this ordinance is to be done has been computed to permit the City to comply with state and federal regulations governing the time for action on ~~applications for wireless communications facilities~~ wireless applications, and may be extended by the City Manager where an extension will not result in a violation of those state or federal regulations, or otherwise prejudice the public, or shortened ~~by the City Manager~~ when necessary to prevent a violation of applicable law.

C. General Requirements.

1. Every wireless communications facility, whether or not installed pursuant to a use permit, ~~shall~~must:

- a. Comply at all times with Federal Communications Commission (“FCC”) standards for radiofrequency (“RF”) emissions currently in effect or as may be amended;
- b. Comply with all applicable state, ~~federal and local laws and requirements, and federal laws and City Code~~, including without limitation, the Americans with Disabilities Act;
- c. Comply with conditions applicable to encroachments if located in the public rights-of-way.

2. No wireless communications facilities may be installed speculatively.

3. All wireless communications facilities located within an airport safety zone as defined by the ALUC, or an airspace protection zone as defined by the FAA located within an airport safety zone shall comply with the applicable criteria in the Monterey Airport Land Use Compatibility Plan, and FAA standards. No work may proceed on a permit except in compliance with such standards, or without issuance of any required determinations of no hazard to aviation. No work may proceed on a permit where an applicant has failed to provide notices or seek reviews required under applicable requirements. Provided, nothing herein requires compliance with ALUC standards where such standards have been overruled in accordance with applicable law. Without limiting the foregoing, under the Airport Land Use Compatibility Plan in effect as of April 1, 2022:

a. In Runway Protection Zone 1, all structures are prohibited except facilities set by aeronautical function. No objects may exceed FAR Part 77 height limits as determined by the FAA. The City shall refer all objects within Zone 1 to the ALUC and FAA.

b. In Inner Airport/Departure Zone 2, Inner Turning Zone 3, and Sideline Safety Zone 5, wireless communication facilities shall comply with the following development conditions: i) Airport disclosure notice shall be provided; ii) Structures shall be located the maximum distance from extended runway centerline; and iii) The City shall refer objects greater than 35’ tall to the ALUC and FAA.

c. In Outer Approach/Departure Zone 4 and Airport Property Zone 6, wireless communication facilities shall comply with the following development conditions: i) Airport disclosure notice shall be provided; ii) The City shall refer objects greater than 70’ tall to the ALUC and FAA.

d. In Airport Influence Area Zone 7, wireless communication facilities shall comply with the following development conditions: i) Airport disclosure notice shall be provided; ii) The City shall refer objects greater than 100’ tall to the ALUC and FAA; iii) New structures are prohibited on existing terrain that penetrates 14 CFR Part 77

surfaces; and iv) New structures require additional airspace analysis and FAA form 7560 within the 50 foot terrain penetration buffer.

e. All structures that could penetrate 14 CFR Part 77 elevations must file Form 7460 with the FAA.

D. Planning Applications and Approvals Required

1. Use Permit Review. All new wireless communications facilities and all modifications to existing wireless communications facilities require a use permit issued pursuant to Section 38-156 et seq., except those subject to administrative review under this section. The use permit for placement in the public rights-of-way, if granted, shall be deemed to constitute the encroachment permit required by Monterey City Code Chapter 32, Article 8. The application for a use permit must satisfy all the requirements for an encroachment permit, and without limitation any use permit issued shall be subject to all conditions set forth in, and regulations adopted pursuant to, , and, without limitation shall be subject to all the conditions on encroachment set forth in that Chapter.
2. Administrative Review for Temporary Wireless Communication Facilities: A use permit may be issued for a temporary wireless communications facility by the Community Development Director or designee (“Director”) under this section.
 - a. Application. An application for a temporary wireless communications facility shall provide a detailed description of the facility including: how it will be anchored or otherwise supported; where it will be placed; how it will be designed, secured, and marked to protect against harm to persons or property; the purpose of the placement; the duration period it will be in place; and a certification by a qualified engineer licensed in California licensed structural engineer that the installation will be structurally safe.
 - b. Approval. Administrative approval shall be granted is permitted if:
 - i. The facility meets the definition of a temporary wireless communications facility;
 - ii. The proposed facility will be placed and protected to prevent hazards to persons and property, and so as not to unreasonably interfere with pedestrian or vehicular traffic or disrupt the use and enjoyment of adjoining properties;
 - iii. There is an appropriate plan for removal of the facility and restoration of property affected by it; and
 - iv. Except in the case of an emergency, the temporary wireless communications facility is not proposed for a residential zoning district

(i.e., R-E, R-1, R-2, R-3 and any PC Zone not governed by a Specific Plan).

- c. Conditions. Each permit for a temporary wireless communications facility shall be granted for the shortest period of time consistent with it will take to achieve the purpose~~s~~ for which it ~~wa~~is installed. The permittee's period for removal and restoration shall be based upon the work required to remove the facility and restore affected property, and shall not exceed ten (10) days except for good cause shown as determined by the Director. Any, and shall ensure that if the facility that is not removed from private property, by the date specified in the permit is hereby declared a public nuisance, which may be remedied pursuant to Monterey City Code Chapter 22, Article 4 and any other remedy allowed by law. Any facility that is not removed from City property by the date specified in the permit may be removed by the City and the . and affected property restored within a period specified in the permit, City may remove the facility, restore affected property, and charge the permittee the costs thereof. The permittee's period for removal and restoration shall be based upon the work required to remove the facility and restore affected property, and shall not exceed ten (10) days except for good cause shown as determined by the Director.
- d. Emergency Installation. A permit shall be obtained before a facility is installed except: (1) in the case of an emergency declared by federal, state, regional, or local officials; (2) responsible for emergency response, or whenwhen e it is necessary to install a facility to immediately to address an unanticipated service outage~~s~~; or (3) when immediate action by a person or agency performing a public service is required to protect life or property in response to an emergency. re delay in installation may present a risk to persons or property. In the case of emergencies such cases, an application shall be submitted within five three one business day~~s~~ after the date of installation~~s~~, or on the earliest date that an appointment for receiving an application may be scheduled; provided that the time for filing may be extended by the Director as needed where justified based on under the circumstances giving rise to the need for the temporary placement. If an application is not timely filed, or is denied, in addition to being subject to any other remedy available at law or equity, the temporary wireless communications facility will constitute a public nuisance, which on private property may be remedied pursuant to Monterey City Code Chapter 22, Article 4. Without limiting the foregoing, if If an application is not timely filed, or is denied, the temporary wireless facility is on public property, and a timely application is not filed, or is denied, the facility shall be removed within twenty four (24) hours of failure to timely file, or the denial, as applicable, unless the Director specifies a later, alternative time for removal and restoration. or alternative period as specified by the Director, and, if not removed, shall be removed within 24 hours, or such other period as the City may direct, and if not removed, If the facility is not removed and property restored as required, the City may remove the facility,

and restore the property, and charge for costs associated with the same removal of the facility and restoration of property damaged by the facility.

- ~~d. Except in the case of permits issues pursuant to subsection d., within ten (10) days of filing of an application for a temporary wireless facility, notice that an application for a temporary wireless facility has been filed, the location and duration proposed for the facility and how the application may be viewed shall be mailed to owners of property that would be entitled to notice under provided consistent with Monterey City Code Section 38-159 based upon the location of their properties., but the permits are not subject to hearing or appeal.~~

E. Applications and Submittals

1. This section establishes minimum application requirements for wireless communications facilities other than eligible facilities requests, for which applications shall be submitted and reviewed as provided in Section 38-112.4(G).
2. ~~Application Required. Content. Each application for a permit under this Section shall be submitted on a form prescribed by the Director, in an electronic searchable format, and accompanied by a fee in the amount set by resolution. The Director may amend the submittal form and requirements as the Director deems appropriate to achieve the purposes of this Section. Each applicant must provide the information required by this section, and any additional information that may be required by the Director as part of the application, or in connection with the review of the application. If there are forms prescribed for submission, an applicant must use those forms. Each application must include the fees required by City, and the fee paid shall be nonrefundable unless specifically provided otherwise in a resolution by the City Council. In addition to complying with other submission requirements established by the Director, the applicant shall provide an electronic copy of all materials in a searchable format that can be posted online.~~
- 3.
4. ~~The Director shall develop, maintain, and amend as necessary, detailed application submittal forms and requirements, which shall require the information specified in this ordinance and may require other information necessary to the review of wireless applications. The submittal forms and requirements shall be subject to review and oversight by the The Planning Commission may at any time review and recommend changes to the submittal forms and requirements consistent with its powers under Section 2-3.01 of the Monterey City Code.~~

Application Content. Each application shall be ~~submitted and~~ signed by the owner of the wireless communications facility. If the applicant is not a provider of wireless services, it shall provide a letter from each wireless service provider that will use the facility affirming: it will use the facility proposed, if approved; that it will make available such information as the City may require to act upon the application, either directly or through applicant; and will ensure that any representations made to the City regarding the services it will provide, or

equipment it will use, ~~are~~ true, accurate, and complete. Each application shall include at least the following:

- a. Written Authorizations. A written authorization signed by the owner(s) of the property and supporting structure ~~on which the wireless communications facility will be placed,~~ consenting to the placement of the wireless communications facility as proposed. An authorization is not required as part of the application for placement on City-owned or controlled property~~,~~ but appropriate consents and contracts must be obtained before a permit may issue.
- b. Licenses. Evidence that the applicant and operator hold all current licenses and registrations from the FCC and California Secretary of State~~any other regulatory bodies,~~ where such license(s) or registration(s) are necessary to provide wireless services using the proposed wireless communications facility.
- ~~e.~~ c. Notice and Proof of Service of Notice. Applicant shall ~~provide mail~~ notice of the application to all persons entitled to notice under Section 38-~~159~~112.4.H.1a ~~In addition to providing the information required by Section 38-159(D), the~~ which notice ~~shall must state that the applicant is filing an application for a wireless communications facility;~~ provide a brief description of the wireless communications facility and its location; identify what entities will own or operate any part of the wireless communications facility; ~~state that the application may be reviewed online as posted by the Planning Department; and state that comments may be submitted to the Planning Department.~~ The notice ~~shall must~~ be mailed by the applicant on the ~~no later than the~~ day the application is filed and and a proof of service on a form provided by the City shall be mailing to all persons entitled to notice must be provided with the application. ~~in accordance with standards specified in the application form. Proof of notice shall be provided as part of the application in compliance City Code section 38-159.~~
- d. To the extent that filing of the wireless application would establish a deadline for action on any other permit, agreement, or other authorization that may be required in connection with the wireless communications facility, the application shall include complete copies of applications for every such required permit, including without limitation, electrical permits, building permits, traffic control permits, and excavation permits, with all engineering completed, and with all fees associated with each permit. Provided, such additional applications are not required if applicant agrees, in the application for the wireless communication facility~~a form acceptable to the City Attorney,~~ that any such deadline will not begin to run until a separate and complete application for those permits is submitted.
- e. Project Description Letter. A full written description of the proposed facility and the work that will be required to install or modify it, which description ~~must~~ shall include whether:
 - i. ~~a description as to whether~~ the facility will be on a new, existing, or replacement supporting structure;

- ii. ~~a description of any excavation work that will be required in connection with the installation or modification (and where that it will occur);~~
- iii. ~~a description of any~~ foundational work ~~that~~ will be required; and
- iv. if the application is for a modification to an existing wireless communications facility, or a support structure, the application shall ~~should~~ identify whether if the existing wireless facility or support structure ~~was installed pursuant to a permit and if so;~~ provide the original permit and any permit modifications; describe any camouflage and concealment elements, and describe how the modifications to the facility or proposed support structure will maintain the concealment elements, and how it will preserve other requirements intended to camouflage or otherwise limit the visual impacts of a wireless communications facility, or support structure. ~~.~~

f. Equipment Specifications. Specifications that show the dimensions (height, width, depth, ~~weight,~~ and cubic feet) for all components of all elements of the proposed wireless communications facility and the support structure, and the weight of all components of the wireless communications facility and any replacement or new support structure. If the wireless communications facility will be placed on an existing or ~~on a~~ replacement support structure, the specifications must include:

- i. a clear description ~~and the dimensions~~ of all components ~~elements~~ of the existing support structure, and how it is anchored/supported;
- ii. a clear description ~~of and the dimensions of~~ all attachments ~~to on~~ the existing support structure and their dimensions; and
- iii. a description of changes that will be made in connection with an attachment to, or replacement of, the existing structure, including but not limited to, steps that may be taken to strengthen or secure the supporting structure.

g. Lease Area. If the wireless communication facility will be installed pursuant to a lease or license, a plan depicting the leased or licensed area in relationship to the proposed facility.

~~Legal Description. A legal description of the property where the wireless facility is to be located.~~

~~d. Proof of service with a List of Property Owners provided notice.~~

h. Plot Plan. A plot plan of the lot, premises, or parcel of land showing the exact location of the proposed wireless facility (including all related equipment

and cables), exact location and dimensions of all buildings, parking lots, walkways, property lines ~~and pertaining to~~ the area leased or otherwise dedicated to the use of the wireless communications facility. For freestanding facilities, the plans should indicate surrounding grade, structures, and landscaping from all sides.

i. Elevations and Roof Plan. Building elevations and roof plan including exact location and dimensions of equipment proposed. For freestanding facilities, the plans should indicate surrounding grades, structures, and landscaping from all sides.

j. Screening. Proposed landscaping and maintenance plan for the life of the facility and/or non-vegetative screening (including required safety fencing) plan for all aspects of the facility.

k. Manufacturer's Updated Specification. Manufacturer's specifications, including installation and maintenance specifications, exact location of cables, wiring, materials, color, and any support devices that may be required.

l. Photographs and Photo Simulations. Accurate color pPhotographs and photo simulations that show the proposed facility in context of the site from reasonable line-of-sight locations from public streets or other adjacent viewpoints, together with a map that shows the photo location of each view angle.

m. Hazard Compliance Certification. For placement of wireless communications facilities on utility poles, street light poles, or towers in the public rights-of-way, as part of the safety certification required by Section ~~E.5.e below~~38-112.4(E)(5)(k):

~~i.~~i. If the application is for a wireless communications facility in a "High Hazard Zone" ("HHZ") (as demarcated on the current version of the California Public Utility Commission Fire-Threat Map) on a supporting structure that applicant contends is or will be under the jurisdiction of General Order ("GO") 95 ("GO 95"), or GO 165, or GO 166, the applicant shall submit documentation showing the in which specific HHZ where the wireless communications facility will be located; whether the supporting structure has been inspected and when; whether the structure, any existing facilities, and planned structures and facilities would comply with standards for placement on structures in a an HHZ; and whether all required Fire Prevention Plans are in place. If existing or proposed structures or facilities are or will be non-compliant in any respect, the application shall identify what applicant will do to ensure the structure and existing and proposed facilities are compliant. ~~The documentation shall be supported by sworn statements attesting that the facility as installed will comply with applicable law.~~

- ii. If the application is for a wireless communications facility in a~~n~~ HHZ on a supporting structure or tower that applicant contends is not under the jurisdiction of GO 95, GO 165, and GO 166, the applicant shall submit documentation showing:
 - a. The specific HHZ in which the wireless communications facilities will be located, as demarcated on the current version of the California Public Utility Commission Fire-Threat Map;
 - b. A description of the steps the applicant has taken to reduce hazards to public safety, including fire safety hazards, that may be caused by the proposed wireless communications facility or any supporting structure; and
 - c. —What applicant will do to inspect and maintain the safety of the wireless communications facility, or any supporting structure which steps shall be at least as rigorous as if GO 95, 165, and GO 166 applied.
 - d. The documentation shall be supported by sworn statements attesting that the wireless communications facility and any supporting structure as installed will comply with applicable law, and be as safe as facilities and structures which are subject to the General Orders.
- n. Safety Certification. Applicant shall submit structural analyses~~a documentation certification prepared by a qualified~~ a licensed or registered California engineer or engineers qualified to attest to the facts licensed in California showing that the portions of the wireless communications facility placed on or within the tower or supporting structures will be safely supported by the tower, or supporting structure, and also showing that on which the wireless communications facility will be placed can safely support the facility and that all components of the structure and the wireless communication facility that the structure on which the wireless communications facility will be placed can safely support the wireless communications facility; and that all elements of the wireless communications facility comply with applicable safety standards. ~~standards by certified or registered professionals. The safety certification shall include a wind load analysis.~~
- o. Noise study. A noise study ~~prepared and~~ certified by an acoustical engineer licensed by the State of California for the proposed facility and all associated equipment including ~~all~~ environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators, demonstrating that the facility will comply with the city's noise regulations when fully operational. For example, if a wireless communications facility is planned to include multiple cooling units, the noise study will be performed assuming that all

the units will be in place and operational. The noise study must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. A study is not required if the proposed facility does not contain equipment that generates noise. It shall be a condition of any permit that no modification may be made to a facility or associated equipment that adds equipment that generates noise without preparation and submission of an acoustical study as required herein, and no modification will be approved unless the study demonstrates that the facility will comply with the city's noise regulations when fully operational.

- p. Radio/antenna detail. Information regarding the radio units that will be installed at the site, including the manufacturer's name and ~~manufacturer's~~ specifications, ; and the actual frequencies and power levels (in watts effective radio power [ERP]) for the proposed wireless communications facility and for any existing wireless communications facility ~~that at or within proximity to the site that~~ must be considered in determining compliance with FCC RF standards.
- q. Radio Frequency (RF) Compliance Report. Applicant shall submit a RF exposure compliance report prepared by a RF licensed engineer. ~~shall be submitted.~~ The report shall include a certification by the engineer that the facility complies with FCC RF standards, be prepared in accordance with FCC guidelines, and include the calculations and information on which the engineer relied. The report shall clearly identify any areas where exposure would exceed occupational or general FCC exposure limits, vertically and horizontally, and shall include drawings that show those areas in relation to the proposed structure, adjoining buildings, and property lines. The report shall clearly identify any measures that must be taken to ensure compliance with FCC rules. The report's analysis will be based on a "worst case" scenario, and assuming all antennas are operating at maximum output.
- r. Underground vault and venting plans, if any element of the wireless communications facility will be placed underground. The underground vault and venting plans shall include ~~ing~~ manufacturer's specifications for cover, color, materials, dimensions, and reveal at the sidewalk, and evidence that all enclosures will comply with California Public Utilities Code standards for underground utility enclosures.
- s. Master Plan. A master plan which identifies the location of the proposed facility in relation to all existing wireless communications facilities used by the wireless service providers that will use the facility; and if the facility proposed is part of a planned network, the approximate location of other planned facilities.

~~s.t. For any wireless communications facilities located within an airport safety zone as defined by the ALUC, or an airspace protection zone as defined by the FAA, applicant shall: submit a certification that it has reviewed the current Airport Land Use Compatibility Plan issued by the ALUC; attest whether the proposed project complies with applicable standards for development; attest whether the proposed project requires FAA or ALUC review and the reason why review is or is not required; state whether required notices have been provided and provide copies of any notices; and provide copies of any applications filed, and any determinations made by the ALUC or FAA. Monterey Regional Airport Land Use Compatibility Plan Conformance. For proposed facilities located within an airport safety zone, submit certification from the FAA confirming the structure does not conflict with airspace height or other safety requirements.~~

~~t.u. Construct Mock-Up of Proposed Facility. Except where it is unnecessary to provide the community a fair opportunity to assess the impact of the facility, or not possible to do so, applicant shall construct a mock-up of each wireless communications facility proposed at a location accessible to the public in accordance with standards specified in the application form. Installation of a mockup can occur prior to submittal of an application provided that the Director has reviewed the plans for the mock-up and grants approval of any required permit. At least 48 hours Prior prior to installation of a mock-up, the applicant shall provide notice to all homeowners that, by virtue of the location of their property would be entitled to notice under 38-159.C.1, in compliance with Section 38-159 of the proposed mock-up at least 48 hours in advance, and shall provide proof of notice to the Director. The notice and proof of notice must be provided no later than the date the application is filed. If no permits are required for the mock-up, the mock-up must be installed no later than one week after submission of the application. than the same time the application is completed; if permits are required, the permits must be requested at the same time the application is submitted, and work on the mock-up completed within one week of approval of the permits. Proof of completion must be provided to the director. Nothing herein prevents an applicant from providing notice and proof of notice and installing a mock-up prior to submission of an application, and nothing shall be read to require an applicant from providing the same prior to submission of an application.~~

u. If applicant contends that denial of the application would result in an effective prohibition under federal law, or otherwise violate federal law such that a permit must issue, it must provide all facts that it relies upon for that claim. Applicant is not entitled to later supplement its effective prohibition showing except as the Director may permit, and the failure to submit information because applicant believes it may not be required to do so does not excuse the inadequacy of a showing. Where the applicant is not a wireless service provider, the information must be provided for the affected wireless service providers. Any affected wireless service provider must also have submitted a letter as required by

~~subsection 38-112.4.E.4.~~ Applicants who claim that denial would be a “prohibition” or “effective prohibition” are encouraged to address at least the following:

- i. ~~Without limitation, if~~ it is contended that compliance with an aesthetic standard is not reasonable, ~~the application must~~ explain why in detail, and describe alternatives considered in determining whether service objectives for the wireless service provider could be reasonably satisfied by other means.
- ii. ~~The application should~~ What existing or planned personal wireless services the affected wireless service provider would be effectively prohibited from providing if the application is denied.
- iii. ~~The application should s~~ The factual basis for any claim that denial ~~will~~ substantially impair a wireless service provider’s ability to provide a personal wireless service, and the information relied upon in support of that claim.
- ~~iii.iv.~~ The factual basis for any claim Applicant should show that denial would result in a prohibition or effective prohibition under applicable precedent in the United States Court of Appeals for the Ninth Circuit Court of Appeals, and the information relied upon in support of that claim.
- ~~iv.v.~~ Current signal coverage, by providing maps showing existing coverage in the area to be serviced by the proposed facilities ~~should be submitted.~~ In order to be treated as probative, Maps maps must shall ~~shall~~ be dated, and based on data collected within the prior six months or less, to reflect all facilities installed inside and outside of the City as of the date of the application that may affect coverage. ~~and must be dated. If any new facilities inside or outside the city have been installed after the maps were generated, that may affect coverage, new maps must be provided to reflect impacts on existing coverage.~~
- vi. ~~The application should include maps for each affected wireless service provider, describing the~~ The exact geographic area that would be served by the proposed facility, using coverage maps that describe the distances between the proposed and existing sites that show and describes how the proposed service area fits into and is necessary ~~for to the each affected~~ wireless service provider’s network provision of personal wireless services given existing facilities, and planned or pending modifications or additions to those facilities that that may affect the provision of services;

~~v. and which identifies any potential consolidation opportunities.~~

~~vi-vii. The application should include a~~ Alternatives considered prior to the submission of the application, including alternatives that take advantage of software capabilities or reconfiguration of existing sites; the reason the alternative chosen was selected, and the reason other alternatives were not selected; and why applicant contends existing sites could not be used to provide service.

~~5.4.~~ Presubmittal Conference. Before application submittal, applicants are strongly encouraged to schedule and attend a voluntary presubmittal conference with City staff for all wireless communications facilities applications. The presubmittal conference is intended to foster cooperative discussion between applicants and staff, identify potential avoidable issues, and generally streamline the application review process to occur after the applicant formally submits its application. ~~City staff will endeavor to provide applicants with an appointment between approximately five and fifteen (15) working days after a written request for an appointment is received.~~

~~6.5.~~ Application Submittal Appointment. All applications for wireless communications facilities use permits shall be submitted to the City at a prescheduled appointment with the Director. During the application submittal appointment, or thereafter, the Director shall review the application materials and determine whether the application is complete. If the application is found to be complete, the Director will refer the application to the Planning Commission. If the application is not complete, the Director shall issue in writing a denial of the application without prejudice to refiling, specifying the reasons for denial, unless ~~the omissions are corrected at the prescheduled appointment, or the Director determines that permitting submission of additional materials will not prevent the City from conducting, or the public from participating, in a timely review of the application. If the wireless application is incomplete, all applications for permits that must be acted upon by the same date as that application will also be deemed denied. Complete applications and fees associated with any permit that must be acted upon by the same date as the wireless application shall be filed on the same date as the application for a wireless permit, and if any is not included, or the application for that permit is incomplete and denied, both it and the wireless application shall be denied, without prejudice for refiling, unless the omissions are corrected at the prescheduled appointment, or the Director determines that permitting submission of additional materials will not prevent the City from conducting, or the public from participating, in a timely review of the application.~~ A denial may be appealed to the Planning Commission, but the appeal is limited to consideration of whether the application was properly denied for incompleteness.

~~6.~~ Applications Available Online. ~~The City shall cause to~~ Except where good cause has been shown, as determined by the Director, applications will be posted on the City website all complete applications within five three working days of upon filing or as soon

thereafter as practical, along with ~~and~~ communications between the City and the applicant regarding those filings (including additions and modifications to the filing). The City shall post notice promptly when the application is deemed “complete.” The City’s failure to post the applications by the time required shall not affect the validity of any application submitted under this Section.

~~7. Public Notification. Pending permit applications shall be posted to the City website within 10 calendar days of receipt, excluding City holidays.~~

F. Location, Design and Development Standards.

1. This section establishes design and development standards for wireless communications facilities and supporting structures, other than wireless communications facilities and supporting structures modified as part of an eligible facilities request.
2. Overall Goals. It is the overall goal of the City to minimize the visual impact of wireless facilities; to minimize the number and height of supporting structures that may intrude upon view sheds; to maintain the overall visual character of individual neighborhoods, to encourage placement away from residential units; to minimize the number of structures in the public rights-of-way and prevent interference with the other uses of the public rights-of-way.
3. General Principle for All Locations. The proposed wireless communications facility, and ~~any~~its supporting structure (to the extent installation requires installation of a new or replacement supporting structure, or any change in the height of an existing supporting structure) must be of the minimum size necessary to serve the defined service objectives of the wireless service provider(s) that will be using the facility.
 - a. Exception. ~~except wSection f.2XXXX~~ does not apply when here a larger facility is consistent with a stealth design approved by the City, or appropriate as part of the incorporation of a wireless communications facility into a structure such as a street light, where the facility must mimic the height of existing street lights.
- ~~3.4.~~ Design Standards for Facilities Off the Public Rights-of-Way- - General Design and Aesthetic Standards. All new facilities and changes to existing facilities shall conform to the standards in this section.
 - a. Concealment. Wireless communications facilities shall incorporate concealment elementsmeasures sufficient to render the facility ~~either camouflaged or~~ stealth,

as appropriate for the proposed location and design, or otherwise incorporate elements that will camouflage or limit the visual impacts of a wireless communications facility as well or better than a stealth facility. ~~–All facilities shall be designed to visually blend into the surrounding area and should be compatible with the character of the area in which they are located, as described in the General Plan and provisions governing development of particular areas–.~~

- b. Height. Wireless communications facilities, and any supporting structure shall not exceed the applicable height limit for structures in the applicable zoning district.
- c. Setbacks. Wireless communications facilities may not encroach into any applicable setback for structures in the applicable zoning district.
- d. Facilities Should Permit Collocation. Applicants shall design wireless communications facilities to accommodate future collocated facilities to the extent feasible, and to the extent consistent with the other provisions of this Code.
- e. Noise. A wireless communications facility shall comply with the noise standards in the City Code. ~~The approval authority body may require the a~~Applicant may be required to install noise attenuating or baffling materials and/or other measures, including but not limited to walls or landscape features, as the approval authority deems ~~eds~~ necessary or appropriate to ensure compliance with noise limits.
- f. Lights. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and shall install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need, or applicant shows that the light's effect is negligible. All aircraft warning lighting shall use lighting enclosures that avoid illumination impacts to properties in the City to the maximum extent feasible. This section does not apply to designs that are intended to mimic or to be incorporated within lighting structures on the property where the facility will be located.
- g. Signs. No wireless communications facility may display any signage or advertisements unless expressly allowed by the City in a written approval, recommended under FCC regulations, or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner, provides the facility owner's unique site number, and a local or toll-

free telephone number to contact the facility owner's operations center. "Signage" does not include approved banners or directional signage used to conceal a or camouflage a wireless communications facility.

- h. Fencing or Enclosures. Any fencing or enclosures proposed in connection with a wireless communications facility shall blend with the natural and/or manmade surroundings. Additional landscape features may be required to screen fences. Barbed wire, razor ribbon, electrified fences and similar measures for securing a wireless communications facility are not permitted~~appropriate~~.
- i. Landscaping. Landscaping may be required to visually screen facilities from adjacent properties or public view or to provide a backdrop to conceal the facilities. All proposed landscaping is subject to architectural review approval by the Director, unless the Director refers the landscaping plan to the Architectural Review Committee. Landscaping may be required for the purposes that include, but are not limited to, the following:
 - i. To preserve existing on-site and associated access way vegetation and trees to the extent feasible at all times before, during and after construction.
 - ii. To minimize disturbance of the existing topography.
 - iii. To provide screening of wireless communications facilities and access roads appurtenant to the wireless communications facility which screening may require planting of additional trees and other vegetation around the facility, and along access roads.
- j. Applicants must use flat rate electric metering, if available, so that no meter is required. If a ground-mounted or pole-mounted meter is used, applicant will provide information as to available form factors and show how those can be incorporated into the design to minimize visual impacts and, where possible, make the installation meter stealth.
- k. Ground-Mounted Equipment. Where above-ground, ground-mounted facilities are permitted, in locations visible or accessible to the public, applicants shall conceal outdoor ground-mounted equipment, with opaque fences or landscape features that mimic the adjacent structure(s) (including, but not limited to, dumpster corrals and other accessory structures).

4-5. Building-Mounted Facilities. These requirements are in addition to design standards in Section 112.4(F)(4)(a)-(g) and (k)~~subsection 3(a)-(g) and (k).~~

- a. General Design Preferences. Building-mounted wireless communications facilities shall be one of the following, in this order of preference; provided that ~~in historic districts, a historic structure may not be modified as provided in subsection (ii), and any change to any building within the National Historic Landmark Districts, local historic district (H-D) or any change to individually zoned historic property (H-1 and H-2) a historic district and any wireless communications facility in that district~~ must be fully consistent with design requirements and limitations on modifications to historic properties and buildings ~~within the historic district:~~
 - i. The wireless communications facilities must be completely concealed and architecturally integrated into the facade or rooftop-mounted base stations with no visible impacts (including shadowing) from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials, provided such replacement is consistent with the historic preservation of a structure); then
 - ii. Wireless communications facilities may be completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks), subject to height limits applicable to the area where the facility is located, and subject to standards that apply for similar modifications that do not involve wireless communications facilities.
- b. Rooftop-Mounted Equipment. Consistent with subsection 4.a.i, and subject to Section 112.4(F)(5)(a)(i), and subject to Section 112.4(F)(4)(a), 3-a. the City will not may approve unscreened rooftop wireless communications facilities if the applicant has the right to increase the facility height so that the equipment would become visible to public view ~~only if the wireless communications facility is of low enough height and setback from the roofline so that the equipment is and throughout the permit term will be effectively concealed from public view~~ from ground level on adjoining properties or from the public rights-of-way, or unless the applicant shows that because of the design proposed, or the location, approval of a different design will be no more intrusive and consistent with the goals of the ordinance.

- c. Facade-Mounted Equipment. Applicants shall conceal all facade-mounted transmission equipment behind screen walls as flush to the facade as practicable. The City may not approve any “pop-out” screen boxes unless such design is architecturally consistent with the original support structure. The City may not approve any exposed facade-mounted antennas, which includes exposed antennas painted to match the façade, unless the applicant shows that because of the design proposed, or the location approval, of a different design will be no more intrusive and consistent with the goals of the ordinance.

5-6. Freestanding Towers Outside of Rights-of-Way. In addition to satisfying the requirements of Section 112.4(F)(3)subsection 3(a)-(j):

- a. General Design Preferences. All applicants shall, to the extent feasible and appropriate for the proposed location, design wireless communications facilities on new towers according to the following preferences, ordered from most preferred to least preferred:
 - i. Faux architectural stealth structures including, but not limited to, sculptures, clock towers, and flagpoles of a size, type and proportions, and with design features consistent with the neighborhood and adjacent structures; then
 - ii. Faux trees in a stealth design of a size, type and proportions consistent with nearby trees, and landscaped and located near other vegetation to blend in and appear part of the natural environment.
- b. Tower-Mounted Equipment. All tower-mounted equipment shall be mounted as close to the tower vertical support structure as possible, or integrated within it to reduce its visual profile. Applicants shall mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes) directly behind the antennas to the maximum extent feasible, and to the extent not inconsistent with a design under Section 112.4(F)(6)(a) 5-a.i or a.ii.
- c. Ground-Mounted Equipment. All equipment should generally be incorporated into the design of a tower proposed pursuant to Section 112.4(F)(6)(a)(i)-(ii) 5-a.i or a.ii. Where that is not technically feasible, and unless undergrounded, applicants shall use a stealth design or may be permitted to conceal ground-mounted equipment with opaque fences or other opaque enclosures, consistent with Section 3-a, 112.4(F)(3)(a) provided that the concealment can be maintained throughout the term of the permit. ~~or the ground-mounted equipment shall incorporate other stealth designs appropriate to the neighborhood and to the overall design of the wireless communications facility.~~ The City shall require, as a condition of approval, design and/or landscape features in addition to other concealment when necessary to blend the equipment or enclosure into the surrounding environment.

6-7. Public Rights-of-Way Facilities.

- a. Limitation on facilities permitted. The only wireless communications facilities permitted in the public rights-of-way are:

i. Modified facilities which must be permitted pursuant to an eligible facilities request, or

ii. Wireless communications facilities used in the provision of personal wireless services, which, absent a showing of effective prohibition, must be small wireless facilities~~communications~~; or

iii. ~~w~~Wireless communications facilities, or other wireless equipment or structures that the City must permit a person holding a state or local franchise to install pursuant to that franchise.

- b. Structure Preference. The City's preference for wireless communications facilities in the public right-of-way in order of preference is as follows:

i. Locate antennas on existing or replacement light poles and other vertical structures owned or controlled by City that City chooses to make available for placement of wireless communications facilities; then

ii. Locate antennas on existing or replacement supporting structures~~utility poles~~; then

iii. New support structures or towers in the public rights-of-way.

- c. Open Space Option. If the facility must be located near a residential or historic district, open space areas can be considered if the facility will be farther away from residences.

- d. Wireless communications facilities in the public rights-of-way shall be designed in compliance with ~~subsection 3~~Section 112(4)(F), except,

i. ~~setbacks~~ requirements applicable to private property do not apply (requirements for setbacks from curbs and walkways applicable to users of the public rights-of-way, as well as sight line requirements do apply);

ii. Wireless communications facilities and any support structure must satisfy the height requirements of this subsection ~~876~~;

iii. Fencing and enclosure requirements applicable to private property do not apply (requirements related to fencing required to prevent hazards to pedestrians or vehicles, as may be required by applicable design manuals, do apply).

- e. Undergrounded Equipment. Applicants shall comply with applicable undergrounding requirements, including the requirements of Section 32-08.03-04. ~~Where there are existing aboveground supporting structures, antennas may be aboveground on those structures and meters and disconnects (if required) may be aboveground as required by applicable law. Other facilities may be placed aboveground as part of an approved stealth facility, for example, if integrated into a design for a street light pole or other vertical structure, which design conforms to and is consistent with the design of those structures.~~ Vaults must be installed as if the same were subject to regulation by the California Public Utilities Commission, and must satisfy that agency's safety standards.
- f. Ground-Mounted Equipment. To the extent that the applicant qualifies for a deviation or exception from an undergrounding requirement, applicants shall only install the antenna and wiring on the support structure, or tower and all other equipment must be ground-mounted, unless:
- i. ground-mounted equipment cannot be installed consistent with other applicable requirements, including the encroachment conditions; or
 - ii. where part of an approved stealth facility, or if integrated into a design for a street light pole or other vertical structure which design conforms to, and is consistent with the design of those facilities; or
 - iii. based on the permitted location, and available designs, placement of equipment on the support structure or tower ~~pole~~ will have a lesser overall impact on properties affected by the placement, and on pedestrian or vehicular use of the public right-of-way.
- g. In the event that the City approves ground-mounted equipment, the applicant shall conform to the following requirements:
- i. Self-Contained Cabinet or Shroud. City may require placement of the equipment in a cabinet or shroud to conceal equipment, or where appropriate to protect persons or property. The equipment shroud or cabinet shall contain all the equipment associated with the facility other

than the antenna, or the meter, if one is required and cannot be integrated into the cabinet. All cables and conduits associated with the equipment shall be undergrounded to the supporting structure or tower.

- ii. Size. The equipment ~~cabinet~~, excluding the meter and disconnect and including the cabinet, should be no larger than 16 cu. ft., and no higher than 50 inches, except that a larger size may be approved as part of a stealth design. Electrical meters, if required, and disconnects shall be the smallest possible size available.
 - iii. Stealth Design and Concealment. The City may require the applicant to incorporate concealment elements into the proposed design, including but not limited to public art displayed on the cabinet, or to otherwise take steps to camouflage or minimize the visual impacts of the proposed design, including strategic placement in less obtrusive locations and placement within existing or replacement street furniture, or integration into the base of an existing or replacement supporting structure.
- h. Pole-Mounted Equipment. Other than antennas, equipment mounted on the exterior of an existing or replacement support structure (referred to herein as “pole-mounted equipment”) is permitted if an applicant shows it is not required to install the equipment underground; that ground-mounted equipment is not required, or cannot be installed at a proposed location in a manner that complies with the requirements of this Code; and applicant cannot integrate the equipment within an existing or replacement supporting structure approved by City. Pole-mounted equipment other than antennas shall be installed as close to the support structure pole as technically and legally feasible to minimize impacts to the visual profile, and positioned on one side of the pole to minimize visibility. If a facility must be permitted in a residential area, the wireless communications facility must be placed to minimize visibility from doors and windows of the residential properties closest to the wireless communications facility, and subject to other provisions of this Code, to mimic other structures commonly mounted on utility poles. All required or permitted signage in the public rights-of-way shall face toward the street or otherwise be placed to minimize visibility from adjacent sidewalks and structures, except as inconsistent with the encroachment conditions in Chapter 32. All conduits, conduit attachments, cables, wires and other connectors shall be concealed from public view to the greatest extent feasible.
- i. Antennas. Antennas should be placed in a radome at top of the pole, so that the antenna appears to be an extension of, or a design element integral to, the supporting structure or tower, and so that the cable connections, antenna mount and other hardware are concealed. The total

volume of the antennas should not exceed 3 cu. ft., not including the connector to the supporting structure. GPS antennas shall be placed within the radome or directly above the radome not to exceed six inches.

j. Extensions of structures and antenna height. To maintain consistency with the height of other, similar structures in the public rights-of-way, and as means of reducing and concealing the placement of an antenna, an antenna added to an existing supporting structure, or tower, including any extensions of that supporting structure or tower; or a replacement for an existing supporting structure or tower, may cumulatively add no more than four feet to the height of the existing structure, or the minimum amount required to obtain separation from electrical facilities on the pole. Provided that, City may permit a greater extension to street lights poles or other vertical structures that it owns or controls where that extension is consistent with the design of the supporting structures, and can be installed without adversely affecting the overall design of similar facilities in the same corridor.

k. Pole-Mounted Equipment Cabinets. Except when integrated within a supporting structure or tower, all equipment other than the antenna(s) and disconnect switch shall be concealed within an equipment housing. Generally, all equipment other than the meter or disconnect associated with a wireless communications facility should be enclosed in a single equipment housing, unless applicant demonstrates that an alternative design will be less visible and more consistent with other pole-mounted equipment in the same portion of the public right-of-way. The equipment housing on the exterior of any supporting structure must be centered and placed on a single side of the structure. Equipment housing mounted on the pole should be no greater than 15 inches wide and 15 inches deep so that the housing is not readily visible to a casual reasonable observer on the opposite side of the pole. Wider equipment housing units are permitted where, consistent with a stealth design, with appropriate concealment, such as signage placed at an appropriate height (a stop sign, for example), ~~the equipment housing is hidden~~. Equipment housing should be of a uniform depth, not exceeding 15" from the pole to which it is attached so that it appears, as far as possible, like part of the pole. All pole-mounted equipment shall be installed as flush to the pole as possible. Any standoff mount for the equipment cage may not exceed four inches and shall include metal flaps (or "wings") to conceal the space between the cage and the pole. Sizes are intended to be cumulative, reflecting the sizes of the equipment housings for all wireless facilities installed on a particular supporting structure. Total volume of all equipment housing on any support structure and strand within 20 feet of the attachment should not exceed 16 cu. ft.

- l. Exterior mounted equipment housing shall be placed to avoid interfering or creating any hazard to any other use of the public rights-of-way, and with the lowest edge of any exterior mounted equipment at least eight feet above ground level. Equipment should not project over any street unless above the level approved for placement of wires across streets.
- m. Decorative Light Poles. Pole-mounted facilities are prohibited on decorative light pole fixtures where the height of the existing structure is 20 feet or less.
- n. Towers or New Supporting Structures. If a new supporting structure is permitted:
- ii. City may require or approve installation of a light pole of a stealth design and consistent in height and appearance to other light poles in the corridor, provided that the lighting is consistent with lighting plans for the area; and alternatively, the City may require or approve installation of a structure no higher than utility poles in the corridor in which it will be located, and if none, no higher than 35 feet.
 - iii. Unless a stealth design can be reasonably used at the proposed location, the new support structure must be a hollow, non-wood pole, in which all elements of the wireless communications facility other than antennas, undergrounded equipment, or equipment in approved ground-mounted facilities may be concealed. It must be colored and incorporate other concealment elements, including camouflage and landscaping if appropriate at the location proposed, to minimize its visual impact.
 - iv. City must be permitted, at no charge, to attach and maintain traffic or similar signage or other devices; and City may require, as a condition of approval, sharing of the facility with others to minimize the need for additional facilities in the public rights-of-way.
- o. Strand mounting. Wireless communications facilities requiring a permit under this ordinance may not be mounted on strand.
- p. Non-reflective Finishes. All above-ground or pole-mounted equipment in the rights-of-way shall be finished with non-reflective materials, colored or painted to match the structure to which it is attached, or as consistent with the concealment element for the facility.
- 7.8. General Conditions. In addition to the foregoing:

- a. A wireless communications facility shall ~~be~~ be designed to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous conditions, visual blight or attractive nuisances.
- b. The wireless communications facility shall not unreasonably impair or diminish views of and vistas from adjacent properties and designated scenic corridors.
- c. The design of the facility should be compatible with the neighborhood or community in which it is located. The City may consider factors that take into account the proposed facility in the context of its proposed location, which may include, but shall not be limited to, the proportionality and scale of the facility relative to the surrounding natural and/or ~~manmade~~ constructed environment, the proximity of the facility to residential structures, the compatibility of the facility with uses on adjacent and nearby properties, and the effect, if any, on surrounding properties, the surrounding topography, the surrounding tree coverage and foliage, and the compatibility with the values and objectives expressed in the General Plan and any applicable specific plan.

~~8-9.~~ Placement Preferences. Taking into account the size and nature of wireless communications facilities that have been proposed in the City and in neighboring communities, the City has the following preferences. ~~-with respect to design, in the following order:- An applicant should first seek to place a preferred design in a preferred geographic area, going from most preferred to least preferred geographic area. If a preferred geographic placement is not proposed, the design shall be consistent with the design preferences. Design options 8.b.vi-vii; except that a new wireless facility on a new support structure that is not a stealth facility shall be utilized only if there is no geographic area where a no more preferred other design can be used, in any other district.~~ An applicant's project plan ~~shall~~ should show that it took these preferences into account, and explain why a preferred placement or design was not used; or may show that because of the design proposed, its design and geographic placement will be more consistent with the overall goals of the ordinance. A preferred design shall also be consistent with the other requirements of the Code.

a.—Aa. Preferences Preferred geographic placements.

~~City-owned or controlled parcels outside of open space districts, residential district residential zoning districts (R-E, R-1, R-2, R-3 and PC zones not governed by a Specific Plan) or the H-1, H-2, H-D, D-1 overlay zones; and other City-owned properties identified by the City as preferred by resolution. Within this area, preferred designs in order of preference are:~~ a. Placement on existing towers off the public rights-of-way or on similar, large vertical structures, such as water towers; or within or upon existing supporting structures, other than

buildings, in a stealth configuration; b. Building-mounted facilities with rooftop mounted antennas; c. Building-mounted facilities with façade-mounted antennas; d. New towers or supporting structures in a stealth design; e. Existing or replacement supporting structures (other than buildings) where the wireless facility can be camouflaged; f. Placement on existing or replacement supporting structures (other than buildings) where the wireless communications facility is not stealth or camouflaged or a new non-stealth small wireless facility whose height above ground level is the lower of 35' or the height of the closest utility poles. The design choice between existing, replacement or new structures will be based on the overall visual impact of the facility on adjacent properties.

- b. Parcels and public rights-of-way in industrial districts. Within this area, preferred designs in order of preference are: a. Placement on existing towers off the public rights-of-way or on similar, large vertical structures, such as water towers; or within or upon existing supporting structures (other than buildings) in a stealth configuration; b. Building-mounted facilities with rooftop mounted antennas; c. Building-mounted facilities with façade-mounted antennas; d. New towers or supporting structures in a stealth design; e. Existing or replacement supporting structures (other than buildings) on private property (including easements), or in the public rights-of-way where the wireless facility can be camouflaged; f. Placement on existing or replacement supporting structures (other than buildings) where the wireless communications facility is not stealth or camouflaged or a new non-stealth small wireless facility whose height above ground level is the lower of 35' or the height of the closest utility poles. The design choice between existing, replacement or new structures will be based on the overall visual impact of the facility on adjacent properties.
- c. Parcels and public rights-of-way in commercial districts. Within this area, preferred designs in order of preference are: a. Placement on existing towers off the public rights-of-way or on similar, large vertical structures, such as water towers; or within or upon existing supporting structures (other than buildings) in a stealth configuration; b. Building-mounted facilities with rooftop mounted antennas; c. Building-mounted facilities with façade-mounted antennas; d. New towers or supporting structures in a stealth design; e. Existing or replacement supporting structures (other than buildings) on private property (including easements), or in the public rights-of-way where the wireless facility can be camouflaged; f. Placement on existing or replacement supporting structures (other than buildings) where the wireless communications facility is not stealth or camouflaged or a new non-stealth small wireless facility whose height above ground level is the lower of 35' or the height of the closest utility poles. The design choice between existing, replacement or new structures will be based on the overall visual impact of the facility on adjacent properties.; then
- d. City-owned or controlled parcels other than those listed in [Section 112.4\(F\)\(9\)\(a4\)](#) a.i. Within this area, preferred designs in order of preference

are: a. Placement on existing towers or on similar, large vertical structures, such as water towers; or within or upon existing supporting structures (other than buildings) in a stealth configuration; b. Building-mounted facilities with rooftop mounted antennas; c. Building-mounted facilities with façade-mounted antennas; d. New towers or supporting structures in a stealth design; e. Existing or replacement supporting structures (other than buildings) where the wireless facility can be camouflaged; f. Placement on existing or replacement supporting structures (other than buildings) where the wireless communications facility is not stealth or camouflaged or a new non-stealth small wireless facility whose height above ground level is the lower of 35' or the height of the closest utility poles. The design choice between existing, replacement or new structures will be based on the overall visual impact of the facility on adjacent properties.

- e. If the provider shows it must be permitted to place the wireless communications facility in a non-preferred area, the preferred designs in order of preference: a. Placement on existing towers off the public rights-of-way or on similar, large vertical structures, such as water towers; or within or upon existing structures in a stealth configuration; b. Non-residential building-mounted facilities with rooftop mounted antennas; c. Non-residential building-mounted facilities with façade-mounted antennas; d. Existing or replacement supporting structures (other than buildings) on private property (including easements), or in the public rights-of-way where the wireless facility can be camouflaged; e. New towers or supporting structures in a stealth design; f. Placement on existing or replacement supporting structures (other than buildings) where the wireless communications facility is not stealth or camouflaged or a new non-stealth small wireless facility whose height above ground level is the lower of 35' or the height of the closest utility poles. The design choice between existing, replacement or new structures will be based on the overall visual impact of the facility on adjacent properties.

~~b. Preferred designs:~~

- ~~i. Placement on existing towers off the rights of way or on similar, large vertical structures, such as water towers; or within or upon existing structures in a stealth configuration that otherwise complies with the City Code; then~~
- ~~ii. —~~
- ~~iii. Excluding single-family homes, building-mounted facilities with rooftop-mounted antennas; then~~
- ~~iv. Excluding single-family homes, building-mounted facilities with facade-mounted antennas; then~~

- v. ~~Wireless communications facilities on new Outside of parcels in residential districts used for residential purposes, new towers or supporting structures in a stealth design;~~ then
- vi. ~~Placement on existing or replacement vertical supporting structures (other than buildings) on private property (including easements), or in the public rights-of-way where the wireless facility can be concealed or integrated into the structure, but the facility is not a stealth facility, such as a light standard in a parking lot;~~ then
- vii. ~~Placement on existing or replacement vertical supporting structures (other than buildings) on private property (including easements), or in the public rights-of-way in public rights-of-way on private property (including easements), where the wireless communications facility is not stealth and cannot be concealed or integrated into the structure;~~ or
- viii. ~~A new non-stealth small wireless facility whose height above ground level is the lower of 35' or, the height of the closest utility poles, with the choice between designs (vi) and (vii) being made based on the overall impact of the facility on adjacent properties.~~

9-10. Special Considerations for Certain Districts: In addition to satisfying the standards in this ordinance, in certain districts and at certain locations, an applicant must show that denial of an application will result in an effective prohibition or otherwise violate federal law such that a permit must issue, and show that the design used and the placement will minimize the impact of granting the permit (these showings are referred to as an “effective prohibition showing”):

- a. In H-1, ~~and H-2 and H-D~~, overlay zones, any wireless communications facility must be either a stealth facility, or a facility that is not visible to the general public (a rooftop facility, for example), and is subject to conditions that would prevent it from becoming visible to the general public as a matter of right. Any other placement requires an effective prohibition showing.
- b. In any ~~residential district residential zoning district~~ (R-E, R-1, R-2, R-3, and PC zones not governed by a Specific Plan) on a parcel being used for residential purposes, placement of a wireless communications facility ~~off the rights-of-way~~ requires an effective prohibition showing.
- c. In any portion of any district where there are no utility lines aboveground in the public rights-of-way, and no street lights or traffic signals, placement of a wireless communications facility ~~in the right-of-way will incommode the public,~~ and requires an effective prohibition showing.

- d. ~~For wireless communications facilities proposed for the public rights-of-way in any portion of any district (other than residential district residential zoning districts – R-E, R-1, R-2, R-3 and PC zones not covered by a Specific Plan) with aboveground street lights or traffic signals in the public rights-of-way, but no aboveground utility poles, an effective prohibition showing is required unless the City determines that the wireless communications facility will be in the right-of-way must be integrated into those street lights or traffic signals in a manner consistent with the requirements of this Code. such a manner that the placement does not incommode the public.; any other placement in the right-of-way would incommode the public and requires an effective prohibition showing.~~

~~In any residential district residential zoning district an effective prohibition showing is required for placement in the rights of way.~~

- e. Notwithstanding ~~the foregoing, subsection (e), with respect to wireless communications facilities proposed for the public rights-of-way,~~ an application may be granted if applicant shows that issuance of a permit is required by state law. To the extent applicant claims that its proposed facility would not incommode the public, City will consider factors relevant to that determination under state law, including whether it diminishes public use or enjoyment, either visual or physical, of the public right of way, or of adjoining properties.

G. Eligible Facilities Requests. This section applies to eligible facilities requests, as that term is defined under federal law and applicable regulations.

1. Applications. Applications for eligible facilities requests must contain the information required by ~~Section 112.4(E)(3)(a)-(r) E-45(a)-(es)~~, and must be submitted in the manner required for all other applications.
2. Justification. Without limiting the foregoing, the project plan for an eligible facilities request must specifically list every element that must be satisfied in order for a request to be an eligible facilities request under federal law, and must show that each element is satisfied.
3. If an application submitted as an eligible facilities request is not an eligible facilities request, it shall be denied, and no further action taken on the application until information required for other wireless applications is submitted.

H. Abandoned or Decommissioned Facilities ~~– Transfer of Ownership.~~

1. Procedures for Abandoned or Discontinued Facilities.
 - a. To promote the public health, safety and welfare, the Director may declare a facility abandoned or discontinued when:
 - i. The permittee notifies the Director that it abandoned or discontinued the use of a facility for a continuous period of 90 days; or

- ii. The permittee fails to respond within 30 days to a written notice sent by certified U.S. Mail, return receipt requested, from the Director that states the basis for the Director's belief that the facility has been abandoned or discontinued for a continuous period of 90 days; or
 - iii. The permit expires, in the case where the permittee has failed to file a timely application for renewal.
- b. ~~If~~ After the Director declares a facility abandoned or discontinued, Director shall mail a notice of declaration to the last known address of permittee and the permittee shall have 90 days from the date of the ~~noticed~~declaration (or longer time as the Director may approve in writing as reasonably necessary) to:
- i. ~~Reactivate the use of the abandoned or discontinued facility subject to the provisions of this chapter and all conditions of approval;~~
 - ii. ~~Transfer its rights to use the facility, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences use of the abandoned or discontinued facility; or~~
 - ~~R~~emove the facility and all improvements installed solely in connection with the facility, and restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area.
- ~~c.~~ c. If the permittee fails to remove the facility as required act as required in by Section 112.4(H), subsection (H)(1)(b) of this section within the prescribed time period, the City may shall exercise any rights or remedies to abate the public nuisance the Director shall issue a Compliance Order pursuant to City Code chapter 22, Article 4, and exercise any other remedy allowed by law.. City Council may deem the facility abandoned at a noticed public meeting. The Director shall send written notice by certified U.S. mail, return receipt requested, to the last known permittee or real property owner that provides 30 days (or longer time as the Director may approve in writing as reasonably necessary) from the notice date to:
- d. ~~Reactivate the use of the abandoned or discontinued facility subject to the provisions of this chapter and all conditions of approval;~~
 - e. ~~Transfer its rights to use the facility, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences use of the abandoned or discontinued facility; or~~
 - f. ~~Remove the facility and all improvements installed solely in connection with the facility (including but not limited to a supporting structure, or an extension to a supporting structure), and restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area.~~
 - g. ~~If the permittee fails to act as required in subsection (H)(1)(c) of this section within the prescribed time period, the City may remove the abandoned facility,~~

~~restore the site to a condition compliant with all applicable codes and consistent with the then existing surrounding area, and repair any and all damages that occurred in connection with such removal and restoration work. The City may, but shall not be obligated to, store the removed facility or any part thereof, and may use, sell or otherwise dispose of it in any manner the City deems appropriate. The last known permittee or its successor in interest and, if on private property, the real property owner shall be jointly liable for all costs incurred by the City in connection with its removal, restoration, repair and storage, and shall promptly reimburse the City upon receipt of a written demand, including any interest on the balance owing at the maximum lawful rate. The City may, but shall not be obligated to, use any financial security required in connection with the granting of the facility permit to recover its costs and interest. Until the costs are paid in full, a lien shall be placed on the facility, all related personal property in connection with the facility and, if applicable, the real private property on which the facility was located for the full amount of all costs for removal, restoration, repair and storage. The City Clerk shall cause the lien to be recorded with the County of Monterey Recorder's Office. Within 60 days after the lien amount is fully satisfied including costs and interest, the City Clerk shall cause the lien to be released with the County of Monterey Recorder's Office.~~

I. Transfer of Ownership. Within 30 days after a permittee transfers any interest in the facility or permit(s) in connection with the facility, the permittee shall deliver written notice to the City. Failure to submit the notice required herein shall be a cause for the City to revoke the applicable permits pursuant to Section 38-221, and to exercise any other remedy allowed by law. The written notice required in this section shall include:

~~(1a)~~ the transferee's legal name; ~~(b)~~

~~2.)~~ the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address; and ~~(c)~~

~~3.~~ a statement signed by the transferee that the transferee shall accept all permit terms and conditions. Failure to submit the notice required herein shall be a cause for the City to revoke the applicable permits pursuant to and following the procedure set out in Section 38-221.

J. Notices—Findings—Decisions.

1. Notice.

Notice Required for a Use Permit. The Planning Commission shall conduct a noticed public hearing in accordance with Section 38-159. All pending applications shall be posted to the Planning Department's website.

2. Use Permit Findings. In addition to the findings required by Section 38-161, the Planning Commission may approve an application for a use permit if, based on the record, it finds:
 - a. The facility will comply with subsection C, General Requirements; and
 - b. The facility satisfies the applicable design standards set forth herein; or
 - c. The applicant proves that denial would result in an actual or effective prohibition or otherwise violate applicable law, such that the City is required to permit applicant to install a wireless communications facility, and the wireless communications facility adheres to the design standards except to the minimum extent necessary to avoid an effective prohibition. By way of example, and not limitation, if applicant shows a larger antenna is required than is permitted under the design standards, application of this section would permit a larger antenna, but not placement of cabinets aboveground.
3. Written Decision. The reviewing authority shall provide the applicant written notice that contains both the decision and the findings for the decision.
4. Appeals. Any interested party may appeal an action of the approval authority in accordance with Chapter 38, Article 27.

K. Independent Consultant Review.

- ~~1. Authorization. The City Council authorizes the City Manager or designee to, in their discretion, select and retain an independent consultant with expertise in telecommunications satisfactory to the City Manager or designee in connection with any permit application.~~
- ~~2. Scope. The City Manager or designee may request an appropriate consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Such issues may include, but are not limited to:

 - ~~a. Permit application completeness or accuracy;~~
 - ~~b. Planned compliance with applicable RF exposure standards;~~
 - ~~c. Whether and where an “effective prohibition of service” would result from denial of application;~~
 - ~~d. Whether technically feasible and potentially available alternative locations, equipment and designs exist;~~~~

- e. ~~The applicability, reliability and sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and~~
- f. ~~Any other issue that requires expert or specialized knowledge identified by the City Manager or designee.~~

~~3.1.~~ 3.1. Deposit. The applicant shall pay for the cost of any independent consultant retained by the City to such review any issue in connection with the permit and for the technical consultant's testimony in any hearing as requested by the City ~~Manager or designee~~ and shall provide a reasonable advance deposit of the estimated cost of such review with the City prior to the commencement of any work by the technical consultant. Once the deposit is reduced to 50% the applicant shall restore the fund to its original amount. Promptly upon issuance of the final decision on the application, City shall issue an invoice, showing as a credit against the amount owed the amount deposited; return any amounts deposited in excess of the invoice; and bill for any expense not covered by the invoice, which invoice must be paid within thirty (30) days.

K. Additional Conditions of Approval for Wireless Use Permits.

1. Standard Conditions for Use Permits. Generally, City shall include appropriate conditions consistent with ~~with~~ other use permits it issues. ~~In addition~~

~~4.:~~

2. Permit Term. Any validly issued conditional use permit for a wireless communications facility will automatically expire at 12:01 a.m. local time exactly 10 years and one day from the issuance date, except when California Government Code section 65964(b), as may be amended, authorizes the City to issue a permit with a shorter term. Provided that:

i. Permits for eligible facilities requests shall expire on the date the underlying permit expires.

ii. Where City is required by federal law or regulation to issue a permit, and the federal law or regulation is changed, or declared invalid, it shall be a condition of the continuing validity of the permit that the City may amend the permit to include any condition that it could have included in the absence of the changed or invalid law or regulation. Alternatively, City-it may terminate the permit where the placement would not have been permitted. *Provided that*, a permittee will be provided a reasonable opportunity to show the Planning Commission that the wireless communications facility should be allowed to remain in place under then applicable laws and regulations.

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3. Ongoing Compliance. City may inspect and test wireless facilities to ensure ongoing compliance with permit conditions, and charge the cost

of the inspection to persons holding wireless permits for the facilities inspected. Testing and inspection may include, but is not limited to, testing to ensure compliance with RF exposure limits. Tests may be based on complaints received, or may be part of a regular testing and inspection program. Permittee must, within 30 days of a request therefor, provide the City with access and information ~~information~~ it may require regarding the wireless communications facility in order to inspect or conduct testing.

4. Disconnection. The permittee shall provide ~~means to~~ the City with ~~to~~ access to the facility to disconnect it from power in an emergency.

5. Maintenance of ~~Concealment~~ Elements Designed to Reduce Visual Impacts. Without limiting the general obligation to maintain the site and facility, all concealment elements shall be maintained in a manner so that the concealment elements are not defeated. By way of example, if a stealth facility is approved, it must be maintained so that color fading and damage do not result in changing the approved appearance of the facility. Likewise, requirements intended to camouflage or otherwise limit the visual impacts of a wireless communications facility, shall be maintained so that the effectiveness of the same is not diminished. By way of example and not limitation, if permittee is entitled to increase the size or number of ground cabinets, and the placement is subject to requirements designed to conceal cabinetry, the existing requirements will also be read to require concealment of the additional or larger cabinets.

6. Construction Period. Unless a permit specifically provides otherwise, in order to prevent applicants from applying for unnecessary facilities, or from stockpiling locations, it is a permit condition that a wireless communications facility must be constructed and must be in use for the provision of wireless services within twelve (12) months of issuance of the use permit. The period may be extended by the Director for good cause shown.

7. Removal upon ~~Termination~~. Upon termination of the wireless permit, unless renewed, permittee shall remove the wireless communications facility and all improvements installed ~~solely~~ in connection with the facility (including but not limited to a supporting structure, or an extension to a supporting structure), and restore the site to a condition compliant with all applicable codes and consistent with the ~~then-existing~~ surrounding area.

JM. Post Construction Reporting.

1. Permittee shall notify the City within 30 days of completion of construction of a wireless communications facility, and shall provide as-built plans showing all elements of the wireless communications facility and supporting structure as built. The plans, without limitation, must show the location of power and communication lines serving the facility,

and the location of disconnect boxes. City shall promptly inspect the facility to ensure compliance with all permit conditions, and shall charge the permittee the costs thereof.

2. Within 30 calendar days following the activation of any wireless communications facility (including a modification that affects the RF emissions patterns of the wireless communications facility), the applicant shall provide a radio frequency emissions compliance report to the city prepared and certified by an RF licensed engineer. The report must be prepared in accordance with FCC guidelines and ~~must~~shall include the calculations and information on which the engineer relied. ~~The Such~~ report ~~and certification shall include: the same information regarding radio units that was required as part of the application itself, and~~ clearly identify any differences between the facility as proposed and the facility as built, including differences in areas where RF emissions radiation exceeds the FCC's general and occupational levels, and any necessary mitigation measures. In addition, the report shall include:
 - a. A certification of compliance with ~~that~~ all mitigation measures required by the use permit have in fact been implemented, and a description of what has been done to mitigate exposures.
 - b. The date and time of the inspection, the methodology used to make the determination, including certification documents of test equipment.
 - c. The name and title of the person(s) conducting the tests.
 - d. ~~The report and certification shall also indicate~~ information on whether the levels of radio frequency emissions comply with applicable FCC standards, and identify the source or sources of any non-compliance.

3. If the report shows that FCC general and occupational exposure levels are exceeded in areas that were not reported in the application; or that necessary mitigation measures have not been implemented; the permit for any wireless communications facility that bears responsibility in whole or in part for the non-compliance will be deemed suspended pending correction. As part of the suspension, general operations must cease until the facility is brought into compliance, and mitigation measures implemented. If the City finds that the correction or mitigation either requires a change to the facility inconsistent with the use permit; or that the necessary mitigation measures would adversely affect the community in a manner not contemplated in the review of the application, it may require removal, relocation or modification of the wireless communications facility as a condition of ending the suspension, or take any other permitted enforcement action. The City may require applicant to provide additional reports, and may require additional independent technical evaluation of the wireless communications facility, at the applicant's sole cost, to ensure compliance with FCC standards and to ensure appropriate mitigation measures have been implemented.

KN. Municipally-Owned or Controlled Property and Supporting Structures.

1. ~~4.~~ Policy Statement. The City, ~~as a matter of policy, may~~ will negotiate agreements for use of city owned or controlled property and supporting structures for the placement of wireless communications facilities, including street light poles in the rights of way. ~~While the placement of wireless communications facilities may be submitted for Planning Commission review, the Planning Commission cannot grant access, and access shall only be by agreement, approved by the City Council, which agreement shall specify the designs that may be used at particular locations. City finds that it is in its interests as proprietor of these properties and supporting structures to control the design of the structures used, in the same manner as any owner of a facility, and to prevent any change in the design without its permission, even if such design is also subject to review by the Planning Commission.~~ In exercising its decision to agree to access to a City property or supporting structure, the City will generally consider factors and consider designs consistent with this ordinance. Any design must be consistent with the supporting structure to be used, and result in no uncompensated cost to City. Without limitation, for example, the design for a wireless communications facility to be attached to a street light must be consistent with designs in use along the corridor or (if more consistent with plans for the corridor) consistent with planned designs. Further, use will not be permitted if it requires the City to incur uncompensated costs, or accept risks or liability it would not otherwise face. Access will only be granted if it presents no safety issues, causes no harm to a structure, does not interfere with present or planned uses of the property or structure, and is in the City's best interests as facilities owner. Subject to lawful limits imposed by state or federal law, the agreement shall specify the compensation to the City for use of the property or structures. Except as prohibited by law, the person seeking the agreement shall additionally reimburse the city for all costs the city incurs in connection with its review of, and action upon, the person's request for an agreement.

2. Requests for Use. A request for use of a City-owned property or structure may be submitted to Community Development Director. The request can be submitted before an application is submitted to the Planning Commission, so long as the requesting party agrees that the request does not trigger any shot clock with respect to any permit that may be required for deployment of the structure. Community Development Director is authorized to negotiate agreements for use of City-owned or controlled supporting structures, and to bring those agreements to the City for approval. ~~;~~ ~~—~~ Community Development Director may also issue a written denial of access, stating reasons therefore. If City receives multiple, conflicting requests for placement of wireless communications facilities for the same location from different entities, City, may require consolidation of wireless communications facilities or, allocate sites on any basis consistent with applicable law.

3. Compliance with RF Standards. No permit and no agreement for use of city owned or controlled supporting structures utility poles or other vertical structures the City owns and controls, shall be issued or effective unless it is shown that the wireless communications facility will comply with Federal Communication Commission ("FCC") regulations

governing radio frequency (“RF”) emissions. Every wireless communications facility shall at all times comply with applicable FCC regulations governing RF emissions, and failure to comply shall be treated as a material violation of the terms of any lease agreement.

4. Non-Interference. Before a wireless communications facility is attached to city owned or controlled support~~ing~~ structure, the owner of the wireless communications facility must submit a study showing that the attachment or modification will not interfere with then-existing or planned City uses of the structure, including communications uses. Any request for use must include detailed drawings and specifications so that the City may determine whether there will be interference with City uses.

MO. Pre-Approval of Designs.

1. Alternative. A person who wishes to install a wireless communications facility with a design that does not comply with the design standards set forth in Section 38-112.4(F), but who believes that the design is fully consistent with the goals of this ordinance may submit a request for pre-approval of the design to the Planning Commission. A pre-approval request is not mandatory, and is not an application for a wireless communications facility within the meaning of this ordinance, and must be submitted with a clear statement that consideration of the request is not subject to any shot clock. The purpose of permitting the request is to encourage development of, and provide a means for public consideration of those designs.
2. Consideration. The proposed design will be publicly published, and the Planning Commission may conduct such investigations, and require the person requesting pre-approval to submit such information, and provide such mock-ups as may be necessary to evaluate the impact of the design. If, after a full opportunity for public hearing the Planning Commission finds that the design serves the goals of this ordinance, it may recommend ~~to the City Council that it find that the design serves the purposes of this ordinance, and recommend that it be~~ pre-approved to the City Council for the placement as a design permitted under ~~subsection F(1)-(8) Section 38-112.4(F)(1)-(10)~~. The recommendation may limit areas where the facility would be pre-approved for placement. ~~A facility pre-approved for an industrial area need not be pre-approved for any other area.~~ The Planning Commission may also recommend elimination or~~f~~ modification of any pre-approved design, after ~~full opportunity for a~~ public hearing where it finds that the design as adopted does not serve, ~~or no longer serves~~ the purposes of this ordinance.
3. Council Action. The Council may pre-approve the design by resolution. ~~the design as an amendment to this ordinance, and a record of the pre-approved design will be maintained by the Planning Commission, and published and made available to the public and potential applicants.~~ The design will be published. Council may also eliminate or amend-modify an pre-approval, ~~and a record of all designs whose pre-~~

~~approval has been eliminated or modified will be maintained by Planning Commission, and published and made available to the public and potential applicants.~~

~~NP. Definitions. Definitions in this section may contain quotations and/or citations to the Code of Federal Regulations (CFR). In the event that any referenced section is amended, creating a conflict between the quoted definition and the amended language of the referenced section, the definition in the referenced section, as amended, shall control.~~ Except where otherwise expressly incorporated into a provision of the Code, the following definitions only apply to this Section, 38-112.4, and shall not be construed to define the same terms found in any other section of this code.

“Accessory equipment” means any equipment associated with the installation of a wireless telecommunication facility, including but not limited to cabling, generators, fans, air conditioning unit, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.

“ALUC” means the Monterey Airport Land Use Commission or successor agency.

~~“Array” means one or more antennas mounted at approximately the same level above ground on tower or base stations.~~

“Antenna” means any system of wires, poles, rods, reflecting discs, dishes, whips or other similar devices used for transmission or receptions of electromagnetic waves. A device where the antenna is integrated with the radio unit shall be treated as an antenna.

“Base station” has the same meaning as the term used in 47 CFR Section 1.1610040004(b)(1), as may be amended, except that, to the extent not included within the FCC definition, the term includes accessory equipment.

“Camouflaged” means a wireless ~~communications facility or supporting structure tower or base station communications facility~~ to which the applicant applies some concealment techniques in order to blend ~~all or a portion of the facility or structure equipment~~ into the surrounding area or to appear to be an object that is congruent with its environment, but ~~which is the tower or base station is not designed to look like some feature other than a wireless communications facility tower or base station to a reasonable person. the equipment or the concealment technique is readily apparent to the observer.~~

~~Examples include, but are not limited to: (1) facade or rooftop-mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; or (3) faux trees either as the only tree in the vicinity or inconsistent with other tree species in the vicinity.~~

“City Manager” means the City Manager or the Manager’s designee.

“Community Development Director” or “Director” means the Community Development Director or the Director’s designee.

“CPUC” means the California Public Utilities Commission established in the California Constitution, Article XII, Section 5, or its duly appointed successor agency.

~~“Distributed antenna system” or “DAS” means a network of one or more antennas and related fiber optic nodes typically mounted to or located at streetlight poles, utility poles, sporting venues, arenas or convention centers which provide access and signal transfer for wireless service providers. A distributed antenna system also includes the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with one or more wireless service provider’s facilities to provide the signal transfer services.~~

“Eligible facilities request” means the same as defined by the FCC in 47 CFR Section 1.6100(b)(3), as may be amended. “Eligible support structure” means the same as defined by the FCC in 47 CFR Section 1.6100(b)(4), as may be amended.

“FAA” means the Federal Aviation Administration or its duly appointed successor agency.

“FCC” means the Federal Communications Commission or its duly appointed successor agency.

“Modification” means a change to an existing [wireless communications](#) facility that involves a change to the size, physical configuration, appearance, height, weight or structural loading of the existing [wireless communications](#) facility or its supporting structure, or which results in an increase in the noise emitted by the wireless communications facility. Modification does not include repair, replacement or maintenance if those actions do not involve a change to the size, physical configuration, appearance, height, weight or structural loading of the existing facility or its supporting structure, or result in an increase in the noise emitted by the wireless communications facility. Modification does not include removal unless the facility is replaced, and the replacement would constitute a modification.

“Mock-up” means a temporary, full-sized, structural model built to scale chiefly for study, testing, or displaying a wireless communications facility. It is nonfunctional and has no power source.

“Mounted” means attached or supported.

“Personal wireless service facilities” means the same as provided in 47 U.S.C. Section 332(c)(7)(C)(ii), as may be amended.

“Public rights-of-way” means land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved and dedicated to the general public for street, highway, alley, public utility or pedestrian walkway purposes, whether or not the land has been improved or accepted for maintenance by the City. Public right-of-way includes but is not limited to street, roadway, planter strip and sidewalk.

“Radome” means a weatherproofed enclosure (typically constructed from fiberglass or plastic material) that protects and conceals an antenna or antennas contained therein.

“RF” means “radio frequency” or electromagnetic waves between 30 kHz and 300 GHz in the electromagnetic spectrum range.

“Site” means the same as defined by the FCC in 47 CFR Section 1.6100(b)(6), as may be amended.

“Small wireless facility” means the same as defined in 47 CFR section 1.6002. , as may be amended.

“Stealth” means a wireless tower or base station designed to look like some feature other than a wireless tower or base station to a reasonable person. concealment techniques that completely screen all associated equipment from public view and are so integrated into the surrounding natural or manmade environment that a casual observer does not recognize the structure as a wireless communications facility. Examples include, but are not limited to: (1) wireless equipment placed completely within existing architectural features such that the installation causes no visible change to the underlying structure; (2) new architectural features that match the underlying building in architectural style, physical proportion and construction-materials quality; (3) flush-to-grade underground equipment vaults with flush-to-grade entry hatches, with wireless equipment placed completely within.

~~“Substantial change” means the same as defined by the FCC in 47 CFR Section 1.400016100(b)(7), as may be amended.~~

“Supporting Structure” means any structure, other than a tower, capable of supporting, or supporting a Base Station. An existing supporting structure is a structure in place at the time an application is filed; a replacement support structure is a structure that replaces an existing structure, which structure must be removed; a new support structure is a structure other than a tower, that is not in place at the time an application is filed, and that will be constructed as part of the placement of the Base Station.

“Temporary wireless communications facility” means wireless communications facilities intended or used to provide personal wireless services on a temporary or emergency basis, such as a large scale special event in which more users than usual gather in a confined location or when a disaster requires additional service capabilities. Temporary wireless communications facilities include without limitation, cells on wheels (COW), sites on wheels (SOW) and cells on light trucks (COLTs) or other similar wireless facilities: (1) that will be in place for no more than 60 days (or such other longer time as the City may allow); (2) for which required notice is provided to the FAA; (3) that do not require marking or lighting under FAA regulations; (4) that will be less than 100 feet in height; and (5) that will either involve no excavation or involve excavation only as required to safely anchor the facility, where the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet.

“Tower” means the same as defined by the FCC in 47 CFR Section 1.~~4000~~16100(b)(9), as may be amended.

“Transmission equipment” means the same as defined by the FCC in 47 CFR Section 1.~~4000~~16100(b)(8).

“Wireless” means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

“Wireless communications facility” means all elements of a facility at a fixed location used in connection with the provision of any FCC licensed or authorized wireless service to the public,

including the base station and tower, if any, but excluding the supporting structure to which the base station is attached or within which it is enclosed. Provided that, the term does not include:

- a. wireless devices entirely enclosed within an existing building outside of the rights of way, where installations does not require a modification of the exterior of the building;
- b. wireless devices attached to the exterior of a building, which would constitute an accessory use of the building permitted under this Code, and where the wireless communications facility located on the exterior is less than 3 cubic feet in size;
- c. Amateur radio antennas (including ham and shortwave).
- d. Over-the-air reception devices (“OTARDs”) as defined in 47 CFR Section 1.4000 et seq., as may be amended or superseded.
- e. Wireless communications facilities owned and operated by the City for its use, or by any governmental agency for its own or public safety uses.
- f. The exemptions under subsections (c)-(d) do not apply to the extent the facility is used for any purpose, or integrates any wireless facility such that the entire facility is not required to be treated as an “amateur radio antenna” or an OTARD under FCC rules. By way of example, if an antenna is used in the provision of personal wireless services, it is not treated as an OTARD. in the provision of personal wireless services or as a relay station or similar facility used in the provision of wireless service to the public, and the design, size, or other physical characteristics of the facility is in any respect affected by such use.
- g. The exempt facilities remain subject to other provisions of the Code. By way of example, and not limitation, a modification to an historic structure to install a wireless communications facility exempt under this provision of the Code would be subject to review under other provisions of the Code governing modifications to historic structures.

~~“Wireless communications facilities provider” means an entity utilized by a wireless service provider to construct and/or manage a wireless communications facility.~~

“Wireless service provider” means the FCC licensed or authorized entity offering wireless services to the public.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 8: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 9: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this _____ day of _____, 201_, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

APPROVED:

ATTEST:

Mayor of said City

City Clerk thereof

draft