

## Planning Commissioner Brassfield's Issues List re 8/9/22 Public Comments

No.	Comment / Issue
1.	<p data-bbox="279 302 1902 350"><b>Include the Wind Safety Test in the new ordinance.</b></p> <p data-bbox="279 358 1902 513">Both the subcommittee draft and the proposed ordinance require structural analyses by qualified and licensed engineers to be submitted as one of the application requirements. Specific mention of wind load analysis was removed in proposed ordinance because it need not be mentioned specifically. All analyses required to demonstrate that the WCF/support structure will be safe will have to be performed.</p> <p data-bbox="279 553 1902 748">[See Section 38-112.4(E)(3)(o) Safety Certification. Applicant shall submit structural analyses prepared by a licensed or registered California engineer or engineers qualified to attest to the facts 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 all components of the structure and the wireless communication facility comply with applicable safety standards.]</p>
2.	<p data-bbox="279 756 1902 829"><b>Review the option that allows noise-creating equipment to be added post application approval for a project that was initially approved without noise-creating equipment.</b></p> <p data-bbox="279 846 1902 1146">Both the subcommittee draft and the proposed ordinance require applications to include a noise study to ensure the facility will comply with the city's noise regulations. The only exception is if the proposed facility does not contain equipment that generates noise. Language was added to the 8-9 draft ordinance to clarify how the obligation to comply with the noise ordinance applies to proposed modifications of approved facilities. Once an approved facility is installed, we can expect it will change over time and the city cannot stop wireless companies from proposing to change or modify their equipment. The draft ordinance requires a permit amendment if new equipment is added or exchanged enabling public review of the proposed change through the City of Monterey Planning Commission, and the modification application must include a noise study to confirm compliance with the City's noise regulations. [See Sections 38-112.4(D)(1),38-112.4(E)(3)(p), 38-112.4(F)(3)(e)]</p>
3.	<p data-bbox="279 1154 1902 1203"><b>The RF Compliance Report requirements merit more detailed and stringent language</b></p> <p data-bbox="279 1219 1902 1404">The RF Compliance Report application submittal requirements in the proposed ordinance are the same as in the subcommittee draft, except the proposed ordinance <i>added</i> a requirement that the report be signed under penalty of perjury. This was added in response to a comment by MVNA. Verizon objected to that addition, stating that it was excessive and should be deleted because the section already requires that each report be prepared by a licensed engineer, who would affix their professional engineer stamp, which serves as a declaration that a proposed design complies with applicable regulations.</p>

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	<p>As to the content of the report, the FCC has produced guidelines for how to evaluate compliance with RF emissions exposure requirements. These are in OET Bulletin No. 65 and form the basis for the proposed report requirements. We reviewed and compared the language in the MVNA comments to the proposed ordinance and determined the MVNA language is not more stringent, and as compared to the proposed ordinance’s broad requirement to include the calculations and information on which the engineer relied, the additional detail proposed by MVNA would not materially change the report, and may actually limit its content.</p> <p>[See Section 38-112.4(E)(3)(r): Radio Frequency (RF) Compliance Report. Applicant shall submit a RF exposure compliance report prepared by a licensed RF engineer. 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 shall 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. The report shall be signed by the licensed RF engineer and include a certification, under penalty of perjury, that the content thereof is true and correct.]</p>
4.	<p><b>Add requirement that the applicant must provide Drive Test data to substantiate a claim of Prohibition/Effective Prohibition/significant coverage gap. Note that the FCC determined that Propagation Maps are inaccurate and unreliable.</b></p> <p>If an effective prohibition claim is made, the PC must make a finding whether the applicant has proved an effective prohibition based on the record. The PC weighs the probative value of presented evidence, case by case. The basis for an effective prohibition claim may vary, and so too will the evidence submitted in an attempt to support the claim. This is recognized in the subcommittee draft and the proposed ordinance which do not mandate the type of proof but rather require the applicant to “provide all facts that it relies upon for that claim.” Additionally, under federal law (Ninth Circuit decision upholding the FCC Small Cell Order on effective prohibition), an applicant for a small wireless facility may choose to submit proof of a significant coverage gap, but the City may not mandate proof of significant coverage gap for that application type. In the subcommittee draft/proposed ordinance, applicants are encouraged to provide coverage maps and other listed information.</p> <p>We assume the note on propagation maps refers to an FCC staff report that determined that some wireless carrier’s maps for mobile broadband coverage <i>overstated</i> their coverage and that drive tests could not always replicate the same high speeds that</p>

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	<p>the maps claimed existed. If coverage is being <i>overstated</i> on the maps as the FCC staff report found, one would expect drive test data to show larger or more significant gaps than the propagation maps.</p> <p>[See Section 38-112.4(E)(3)(v) If applicant contends that denial of the application would result in an effective prohibition under federal law, or otherwise violate federal law such that the application shall be approved, it shall provide all facts that it relies upon for that claim. Where the applicant is not a wireless service provider, the information shall be provided for the affected wireless service providers. Applicants who claim that denial would be a “prohibition” or “effective prohibition” are encouraged to address at least the following:</p> <ul style="list-style-type: none"> <li>i. If it is contended that compliance with an aesthetic standard is not reasonable, 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.</li> <li>ii. What existing or planned personal wireless services the affected wireless service provider would be effectively prohibited from providing if the application is denied.</li> <li>iii. 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.</li> <li>iv. The factual basis for any claim that denial would result in a prohibition or effective prohibition under applicable precedent in the United States Court of Appeals for the Ninth Circuit, and the information relied upon in support of that claim.</li> <li>v. Current signal coverage, by providing maps showing existing coverage in the area to be serviced by the proposed facilities (including areas outside the City, if applicable). In order to be treated as probative, maps 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.</li> </ul>

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	<p>vi. 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 how the proposed service area fits into and is necessary to each affected wireless service provider’s 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;</p> <p>vii. Alternatives considered within and outside the City prior to the submission of the application, including but not limited to 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 with supporting evidence; and why applicant contends existing sites could not be used to provide service.</p> <p>See also Section 38-112.4(J)(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:</p> <p>a. The facility will comply with subsection C, General Requirements; and</p> <p>b. The facility satisfies the applicable design standards set forth herein; or</p> <p>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.]</p>
5.	<p><b>That city staff post all application filings on the city website according to a specific time frame; suggesting it not be discretionary.</b></p> <p>The subcommittee draft required complete applications to be posted upon filing. This is not always possible with current City staffing levels and due to holidays and vacations. The proposed ordinance allows some flexibility in timing recognizing these practical limitations.</p>

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	<p>[See Section 38-112.4(E)(6). Applications Available Online. Except where good cause has been shown, as determined by the Director, applications will be posted on the City website within five working days of filing or as soon thereafter as practical, along with 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.]</p>
6.	<p><b>Set minimum set back requirements of facilities from residences and schools. (Other places?)</b></p> <p>The proposed ordinance already requires compliance with setbacks for placements on private property. We assume this issue relates to possibly requiring setbacks from residences and schools or other places for facilities in the public rights-of-way. For placements in the public right-of-way, setbacks from curbs and walkways and sight line requirements apply. These generally relate to safety and ADA compliance, to ensure users of the public rights-of-way can safely travel.</p> <p>Setbacks or spacing requirements cannot be used to regulate placement of wireless facilities on the basis of concerns about RF emissions to the extent that such facilities comply with the FCC’s regulations concerning such emissions. However, the FCC has recognized that spacing and setbacks based on a concern about aesthetics may be justified if they are reasonable.</p> <p>Based on the mapping analysis (see attached maps), if the city were to impose a 250 ft or greater buffer from schools and residential properties for wireless facilities in the public right-of-way, this would eliminate large portions of the city’s streets from any wireless placements even in areas where placement in the public right-of-way is otherwise preferred (See ranking in Section 38-112.4(F)(9). That could pose legal risks to city.</p> <p>[See Section 38-112.4(F)(4)(c) Setbacks. Wireless communications facilities may not encroach into any applicable setback for structures in the applicable zoning district.</p> <p>See also Section 38-112.4(F)(7)(c) Wireless communications facilities in the public rights-of-way shall be designed in compliance with Section 112.4(F), except,</p> <ul style="list-style-type: none"> <li>i. Setback 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)]</li> </ul>
7.	<p><b>Staff lessened the design element requirement of facilities for public right-of-way locations from what is in the current ordinance.</b></p>



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	<p>Significant changes to the design requirements for facilities in the public right-of-way were made in the subcommittee draft and kept with some minimal edits in the proposed ordinance. The requirements were developed based on current technology, current law and CPUC regulations, and public and industry feedback. Overall, the design requirements have been significantly strengthened.</p> <p><b>The current ordinance states:</b></p> <p><i>6. Public Rights-of-Way Facilities.</i></p> <p>a. <i>Impact on Public Use.</i> The City shall not approve any facilities, or any equipment or improvements in connection with a facility, in the rights-of-way that unreasonably subject the public use to inconvenience, discomfort, trouble, annoyance, hindrance, impediment or obstruction. As used in this subsection (F)(6)(a), the term “public use” includes physical travel and occupancy as well as social, expressive, and aesthetic functions.</p> <p>b. <i>Concealment.</i> All facilities in the rights-of-way shall be concealed to the extent feasible with design elements and techniques that blend with the underlying support structure, surrounding environment and adjacent uses.</p> <p>c. <i>Undergrounded Equipment.</i> To conceal the nonantenna equipment, applicants shall install all nonantenna equipment underground when proposed in an area where utilities or other equipment or in the right-of-way is primarily located underground. In all other areas, applicants shall underground their nonantenna equipment to the extent feasible, subject to the City’s standard archaeological sensitivity practices. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services. Nothing in this subsection (F)(6)(c) is intended to require the applicant to install any electric meter required by the applicant’s electrical service provider underground.</p> <p>d. <i>Ground-Mounted Equipment.</i> To the extent that the equipment cannot be placed underground as required, applicants shall install ground-mounted equipment in the location so that it does not obstruct pedestrian or vehicular traffic. The City may require landscaping as a condition of approval to conceal ground-mounted equipment. Ground-mounted equipment shall not be permitted in connection with a street light, traffic signal, utility pole or other similar infrastructure in the public right-of-</p>

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	<p>way. In the event that the City approves ground-mounted equipment, the applicant shall conform to the following requirements:</p> <p>(i) <i>Self-Contained Cabinet or Shroud.</i> The equipment shroud or cabinet shall contain all the equipment associated with the facility other than the antenna. All cables and conduits associated with the equipment shall be concealed from view.</p> <p>(ii) <i>Concealment.</i> 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, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.</p> <p>e. <i>Pole-Mounted Equipment.</i> All pole-mounted equipment shall be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile. All required or permitted signage in the rights-of-way shall face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures. All conduits, conduit attachments, cables, wires and other connectors shall be concealed from public view to the extent feasible.</p> <p>(i) <i>Antennas.</i> The City prefers compact radomes at top of the pole, preferably flush with the pole, rather than equipment that creates arms or hanging appendages. The antenna shall be top-mounted and concealed within a radome that also conceals the cable connections, antenna mount and other hardware. A side-mounted antenna may be approved if the City determines that the side-mounted antenna would be more appropriate given the built environment, neighborhood character, and overall site appearance. GPS antennas shall be placed within the radome or directly above the radome not to exceed six inches. Pole-mounted antennas shall not increase the pole height by more than two feet and generally shall not exceed the diameter of the pole.</p> <p>(ii) <i>Pole-Mounted Equipment Cabinets.</i> When pole-mounted equipment is either permitted or required, all equipment other than the antenna(s), electric meter and disconnect switch shall be concealed within an equipment cage not extending more than 10 inches beyond the pole centerline on either side. The equipment cage shall be nonreflective and painted, wrapped or otherwise colored to match the existing 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.</p>

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	<p>(iii) <i>New and Replacement Poles.</i> If an applicant proposes a new facility in the public rights-of-way, then the applicant shall use existing above-ground structures. Replacement of utility poles to support pole-mounted equipment shall be placed as close to the edge of the lot as possible and the centerline of the new pole shall be aligned with the centerlines of existing poles within the right-of-way. New poles within the right-of-way, such as monopoles, new street lights and/or faux flag poles, are discouraged, especially where the appearance would be out of character with the surrounding area, and will be permitted only when the applicant demonstrates that no existing or replacement above-ground structures are available. If permitted, new poles shall utilize materials and colors similar to and compatible with existing streetlight or utility poles in the area so as to not be visually obtrusive. In addition, the approval authority may require the applicant to install a decorative or integrated pole designed to conceal the equipment.</p> <p>(iv) <i>Decorative Light Poles.</i> Pole-mounted facilities are prohibited on decorative light pole fixtures.</p> <p>f. <i>Nonreflective Finishes.</i> All above-ground or pole-mounted equipment in the rights-of-way shall not be finished with reflective materials as approved by the approval authority.</p> <p><b>The draft ordinance (Section 38-112.4(F)(7)) contains the following detailed requirements for public rights-of-way:</b></p> <ol style="list-style-type: none"> <li>1. Public Rights-of-Way Facilities.       <ol style="list-style-type: none"> <li>a. Limitation on facilities permitted. The only wireless communications facilities permitted in the public rights-of-way are:           <ol style="list-style-type: none"> <li>i. Modified facilities which shall be permitted pursuant to an eligible facilities request, or</li> <li>ii. Wireless communications facilities used in the provision of personal wireless services, which, absent a showing of effective prohibition, shall be small wireless facilities; or</li> <li>iii. Wireless communications facilities, or other wireless equipment or structures that the City shall permit a person holding a state or local franchise to install pursuant to that franchise.</li> </ol> </li> </ol> </li> </ol>



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	<p>b. Structure Preference. The City’s preference for wireless communications facilities in the public right-of-way in order of preference is as follows:</p> <ul style="list-style-type: none"> <li>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</li> <li>ii. Locate antennas on existing or replacement supporting structures; then</li> <li>iii. New support structures or towers in the public rights-of-way.</li> </ul> <p>c. Wireless communications facilities in the public rights-of-way shall be designed in compliance with Section 112(4)(F), except,</p> <ul style="list-style-type: none"> <li>i. Setback 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);</li> <li>ii. Wireless communications facilities and any support structure shall satisfy the height requirements of this subsection 7;</li> <li>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).</li> </ul> <p>d. Undergrounded Equipment. Applicants shall comply with applicable undergrounding requirements, including the requirements of Section 32-08.03-04. Vaults shall be installed as if the same were subject to regulation by the California Public Utilities Commission, and shall satisfy that agency’s safety standards.</p>

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	<p>e. 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 shall be ground-mounted, unless:</p> <ul style="list-style-type: none"> <li>i. ground-mounted equipment cannot be installed consistent with other applicable requirements, including the encroachment conditions; or</li> <li>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</li> <li>iii. based on the permitted location, and available designs, placement of equipment on the support structure or tower will have a lesser overall impact on properties affected by the placement, and on pedestrian or vehicular use of the public right-of-way.</li> </ul> <p>f. In the event that the City approves ground-mounted equipment, the applicant shall conform to the following requirements:</p> <ul style="list-style-type: none"> <li>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.</li> <li>ii. Size. The equipment, excluding the meter and disconnect and including the cabinet, shall be the smallest size feasible but no larger than 16 cu. ft., and no higher than 50 inches above ground level, 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.</li> </ul>

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	<ul style="list-style-type: none"><li data-bbox="514 337 1906 532">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.</li><li data-bbox="430 576 1906 1122">g. 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 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 shall be permitted in a residential area, the wireless communications facility shall 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.</li><li data-bbox="430 1170 1906 1360">h. Antennas. Antennas shall 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, with cut-outs if required for signal propagation. The total volume of each antenna shall 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.</li></ul>

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	<ul style="list-style-type: none"> <li data-bbox="428 302 1898 610">i. 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.</li> <li data-bbox="428 656 1898 1279">j. 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 shall 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 shall be centered and placed on a single side of the structure. Equipment housing mounted on the pole shall be no greater than 15 inches wide and 15 inches deep so that the housing is not readily visible to a reasonable observer on the opposite side of the pole. Wider equipment housing units are permitted where, consistent with a stealth design, such as signage placed at an appropriate height (a stop sign, for example). Equipment housing shall 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 shall not exceed 16 cu. ft.</li> <li data-bbox="380 1325 1898 1393">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</li> </ul>

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	<p>ground level. Equipment shall not project over any street unless above the level approved for placement of wires across streets.</p> <p>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.</p> <p>n. Towers or New Supporting Structures. If a new supporting structure is permitted:</p> <ul style="list-style-type: none"> <li>i. 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.</li> <li>ii. Unless a stealth design can be reasonably used at the proposed location, the new support structure shall 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 shall be colored and incorporate other elements, including camouflage and landscaping if appropriate at the location proposed, to minimize its visual impact.</li> <li>iii. City shall 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.</li> </ul> <p>o. Strand mounting. Wireless communications facilities requiring a permit under this Section may not be mounted on strand.</p> <p>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.</p>

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8.	<p><b>Reexamine all mock-up requirements.</b></p> <p>The subcommittee draft required mock-ups. However, the difficulties in implementing the mock-up requirement outweigh any perceived benefits to project evaluation, and so the proposed ordinance allows mock-ups but does not mandate them. All applications require that visual simulations be submitted to evaluate aesthetic and other impacts of proposed facilities.</p> <p>As an illustration of the difficulties of an on-site mock-up, for one site where this was attempted, a complete building permit and structural drawings were required to ensure the mock-up did not fail and cause injury to the public. This option is not practical to apply. It requires design, engineering, building permits and inspections for the mock-up at a level tantamount to those required for the application for the actual proposed facility.</p> <p>At the Planning Commission hearing, it was suggested that the mock-ups be installed somewhere in the City and placed on the ground in an enclosure. Staff also does not find this as a feasible alternative. Equipment ranges in size from smaller antennas to large equipment boxes. This would mean that potentially large mockups would have to be constructed and transported to a suitable site for public viewing. It is unlikely that suitable viewing sites exist within the city. Assuming one could be found, adequate security measures would have to be implemented, such as fencing, to secure the location. Further, viewing the mock-up out of context (that is, not in the location where the actual facility is proposed to be placed) adds little meaningful input to the visual analysis. Other practical concerns also exist, such as the need to go into the field and hand measure all the mockups to ensure that they match the drawings. The technical and administrative impacts would be significant. For these reasons, the City of Monterey staff does not recommend mock-ups.</p>
9.	<p><b>Reexamine and add ordinance legal, technical, and acronyms not readily understood by the public as requested.</b></p> <p>We reviewed the definitions submitted by MVNA. There were legal concerns about the accuracy of some of the definitions and others were considered unnecessary.</p>
10.	<p><b>Reexamine the requirement that applicants must demonstrate the non-existence of less invasive alternative locations.</b></p> <p>See the discussion of effective prohibition under item no. 4.</p>
11.	<p><b>Concern about staff changes made after the April meeting in regards to "significant coverage gap" and "least invasive alternatives showings."</b></p>



CITY OF MONTEREY WIRELESS ORDINANCE

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	See the discussion of effective prohibition under item no. 4.
12.	<p data-bbox="285 362 1812 467"><b>That a review of a YouTube made by attorney Andrew Campanelli be made for issues on this topic and that this attorney review the completed ordinance. And RF Compliance Report requirements merit more detailed and stringent language provided by this attorney.</b></p> <p data-bbox="285 488 1896 630">The YouTube was viewed. Mr. Campanelli’s advice on significant gap test is principally directed to jurisdictions in the Second Circuit and is not pertinent to jurisdictions in the Ninth Circuit (which includes California) where the court upheld the FCC’s interpretation of effective prohibition in the FCC Small Cell Order. No other topics Mr. Campanelli discussed merited changes to the proposed ordinance. Regarding RF Compliance Report, see the discussion under item no. 3.</p>
13.	<p data-bbox="285 654 1818 719"><b>"Property law gives a land owner the right to the full use and enjoyment of his property, without any substantial interference of others, under reasonable circumstances" should be the aim of this ordinance.</b></p> <p data-bbox="285 740 1871 846">The ordinance does not impede property owners’ rights to full use and enjoyment of their property. A wireless provider will need to obtain property owner consent to install a facility on their property (in addition to permits from the city). The application requirements include proof that the property owner consents to the use. See Section 38-112.4(E)(3)(a).</p> <p data-bbox="285 867 1864 1008">If the intent of the comment is to suggest that an adjacent property owner’s enjoyment may be compromised, the aesthetic rules in the ordinance are intended to ensure that there is not substantial interference with aesthetic values consistent with state and federal law. As another example, the ordinance’s requirements for compliance with RF emissions exposure limits, noise ordinances and state and federal law further ensures full use and enjoyment of neighboring property.</p>
14.	<p data-bbox="285 1036 1665 1060"><b>Besides residences and schools, setbacks between cell tower facilities (at least 300 feet up to 1000 feet).</b></p> <p data-bbox="285 1081 1877 1222">As noted in response to item no. 6, setbacks or spacing requirements cannot be used to regulate placement of wireless facilities on the basis of concerns about RF emissions to the extent that such facilities comply with the FCC’s regulations concerning such emissions. However, the FCC has recognized that spacing and setbacks based on a concern about aesthetics may be justified if they are reasonable.</p> <p data-bbox="285 1243 1818 1317">No mapping analysis was performed of the spacing <i>between</i> wireless facilities in the public right-of-way. However, the Commission may want to consider a modest spacing requirement to spread out facilities to avoid clutter.</p>
15.	<p data-bbox="285 1341 1843 1365"><b>Protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.</b></p>

## Planning Commissioner Brassfield's Issues List re 8/9/22 Public Comments

No.	Comment / Issue
	<p>If the comment refers to monopoles on private property, the proposed ordinance requires compliance with setbacks. See response to item no. 6.</p> <p>To the extent this is referring to utility poles in public rights-of-way, the subcommittee draft and the proposed ordinance favors placement on existing utility poles. These poles are subject to existing CPUC General Orders regulating the requirements for safe infrastructure deployment, which includes rules on structural integrity.</p> <p>As discussed in the response to item no. 1, all applications require a structural safety certification.</p>
16.	<p><b>That all applicants be required to complete and submit Site Survey for right-of-way facilities.</b></p> <p>Staff supports modifying the plot plan submittal requirement to specify that if new ground mounted equipment or structures (retaining walls, etc.) are proposed in the public right-of-way, a site survey with topography lines shown in 1' intervals be submitted. The survey should show all improvements in the public right of way within 10' of the proposed area of disturbance. This has been added to the 9-13 proposed ordinance (Attachment 1, Exhibit A). See Section 38-112.4(E)(3)(h).</p>
17.	<p><b>That notices be mailed to residents and businesses of any non-emergency temporary cell towers within 500 feet or more describing their purpose and duration and nonuse of generators. And concern about staff recommendation this be an "Administrative" permit.</b></p> <p>Planning staff prefers no noticing for temporary facilities for practical reasons given that the facilities will not be in place permanently. If the Planning Commission does add noticing, it should be the same as for permanent facilities for ease of administration. [See Section 38-112.4(J)(1)]. Noticing residents and businesses rather than property owners is not practical because the City doesn't have the relevant information in its database.</p>
18.	<p><b>Suggested the ordinance require "technically sufficient and conclusive proof with verifiable clear and convincing evidence" to support claims of Effective Prohibition.</b></p> <p>See the discussion of effective prohibition under item no. 4.</p>
19.	<p><b>Designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. Underground if possible.</b></p>

Planning Commissioner Brassfield’s Issues List re 8/9/22 Public Comments

No.	Comment / Issue
	<p>If this comment means require new stealth poles, this is a design option but it was not selected by the Subcommittee. The Subcommittee concluded it was better to put the facilities on existing utility poles that have by their nature more limited ability to incorporate stealth design rather than to install a new pole that may have a more stealth design. These are design alternatives that the Planning Commission needs to consider.</p>
20.	<p><b>Independent review of RF reports submitted by applicants.</b></p> <p>The existing and proposed ordinances continue to require independent review of all RF reports. (Ordinance Section 38-112.4(K)(1)).</p>
21.	<p><b>That any application for wireless facility provide verification of methods -- the radio and antenna models with specifications required to validate the safety.</b></p> <p>The submittal requirements (Section 38-112.4(E)(3)(f)) require the applicant submit specifications on the proposed equipment.</p>
22.	<p><b>That the ordinance models that graphically predict the 2D and 3D field radiation patterns and topography and elevations of the structure within these patterns so the public can visually see what levels of effective radiated power will occur at various heights and distances of the proposed antennas.</b></p> <p>The submittal requirements (Section 38-112.4(E)(4)(r)) require that the applicant graphically predict the 2D and 3D field radiation patterns. This information is transposed onto the building elevations so it is possible to see the radiation patterns with the building.</p>
23.	<p><b>That the ordinance require for an independent radio engineer review and verify all the work that the applicant has submitted, just as any building project plan check requires now.</b></p> <p>The existing and proposed ordinances continue to provide for independent consultant review. [Section 38-112.4(K)(1)]</p>
24.	<p><b>The ordinance must require some routine unannounced inspections by an independent radio engineer to further ensure actual measurement of EMF compliance.</b></p>

Planning Commissioner Brassfield’s Issues List re 8/9/22 Public Comments

No.	Comment / Issue
	The City Council could decide to create a regular CIP project for independent inspections. This requirement does not belong in the Ordinance.
25.	<p><b>Review staff recommendations on the more liberal design element requirements for public right-of-way and regarding pole height.</b></p> <p>See response to item no. 7 above.</p>
26.	<p><b>In this material and testimony taken during hearings on numerous occasions circled about our public's concern regarding health issues and dangers involving cell tower radiation. The Commission hears this at every hearing on this subject. We do not represent the US Congress or FCC. We do listen to our public. In this case, is there any legal reason why the city should or could not include a caution statement in the ordinance?</b></p> <p style="text-align: center;"><b>CAUTION STATEMENT</b></p> <p><b>The US Congress and FCC have made it clear the city may NOT consider negative health concerns in the administration of Cell Tower/wireless applications. U.S. history shows clear evidence of health concerns that our government did not listen to until the overwhelming evidence caused appropriate action. Health issue concerns regarding the use of tobacco products is a recent example. There is continuing medical evidence regarding the dangers associated with radiation from this type of equipment and the negative health impact it has on adults and children. We are hopeful that the US Congress and our state legislature reexamine the health issues and make any appropriate changes.</b></p> <p>This type of statement is not appropriate for inclusion in the ordinance itself, however, the Planning Commission may wish to recommend adoption of a statement on this topic by the City Council in the form of a resolution, similar to other policy statements adopted by resolution expressing the Council’s position on other matters such as gun control. For examples, please see the following link: <a href="https://monterey.org/city_hall/city_council/advocacy_letters.php">https://monterey.org/city_hall/city_council/advocacy_letters.php</a></p>
27.	<p><b>The PC has reviewed numerous examples of existing poles that have become rotten at their core. This is a suggested addition: All existing poles to be used for wireless equipment shall be free of serious defects in order to support existing as well as new equipment weight. All poles proposed for wireless use shall be inspected by an appropriate licensed engineer and certified for the equipment use.</b></p>




CITY OF MONTEREY WIRELESS ORDINANCE

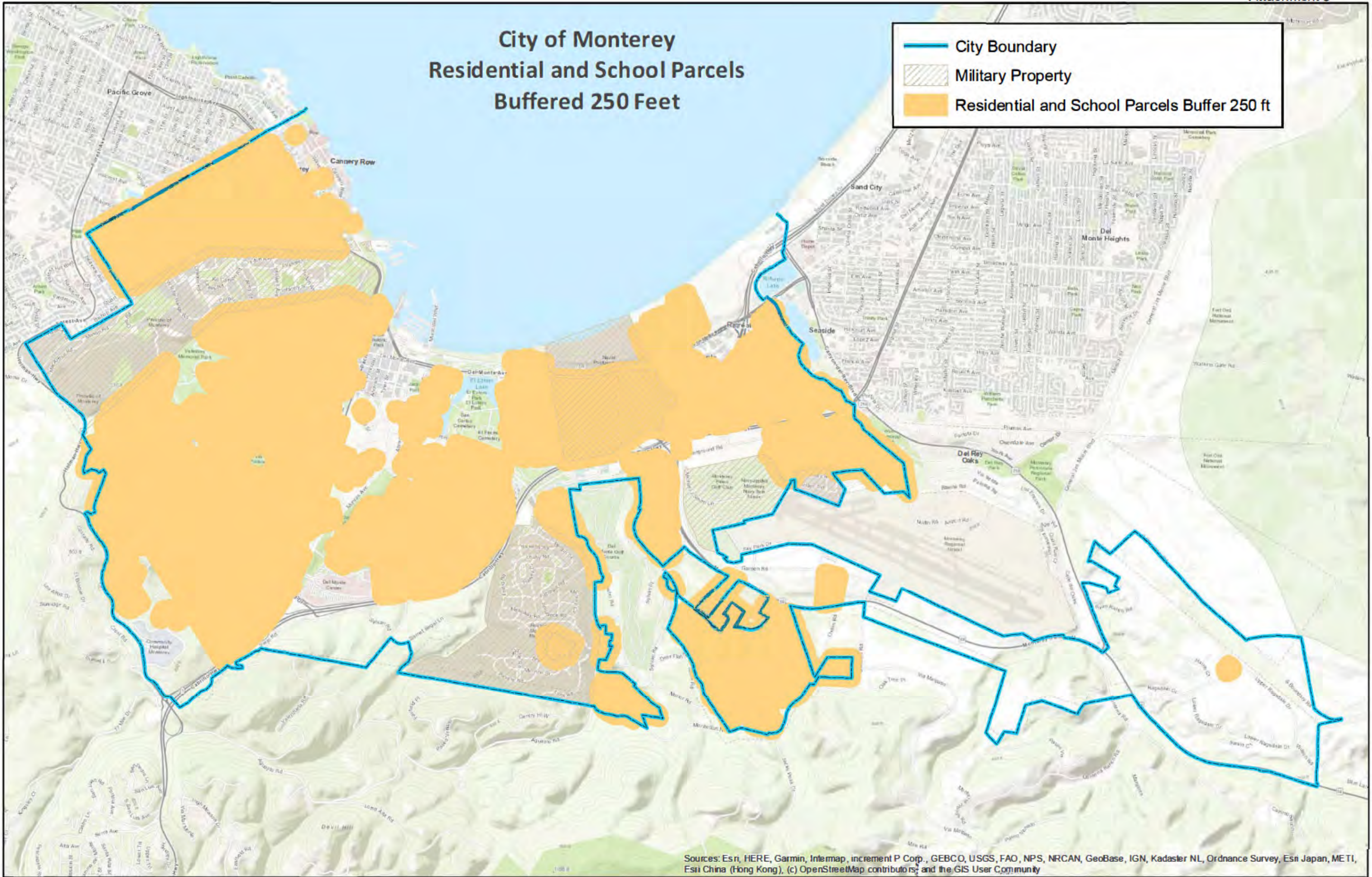
Planning Commissioner Brassfield’s Issues List re 8/9/22 Public Comments

No.	Comment / Issue
	<p>The subcommittee draft and proposed ordinances require a structural engineer to verify the pole integrity. See response to item no. 1. Further, utility pole owners and companies proposing to attach any facilities to utility poles (including wireless facilities) must comply with the detailed rules for safe construction of power and telecommunications infrastructure contained in CPUC regulations such as G.O. 95, among others. Compliance with these rules will require a pole replacement if necessary to support the proposed wireless facility.</p>
28.	<p><b>We have examples where poles do not allow sidewalk access for wheelchairs. In at least one example, the city MADE access but the property owner removed that access: Plan review must ensure that space around all wireless equipment shall comply with ADA access. (I assume this would not be in the ordinance but in the plan review process.)</b></p> <p>The ordinance requires compliance with laws, which includes ADA. Any new equipment installed in the public right-of-way will need to maintain adequate sidewalk width to maintain ADA access. If an existing pole is utilized for the wireless facility, no changes to the sidewalk are likely to be required.</p>



# City of Monterey Residential and School Parcels Buffered 250 Feet




-  City Boundary
-  Military Property
-  Residential and School Parcels Buffer 250 ft

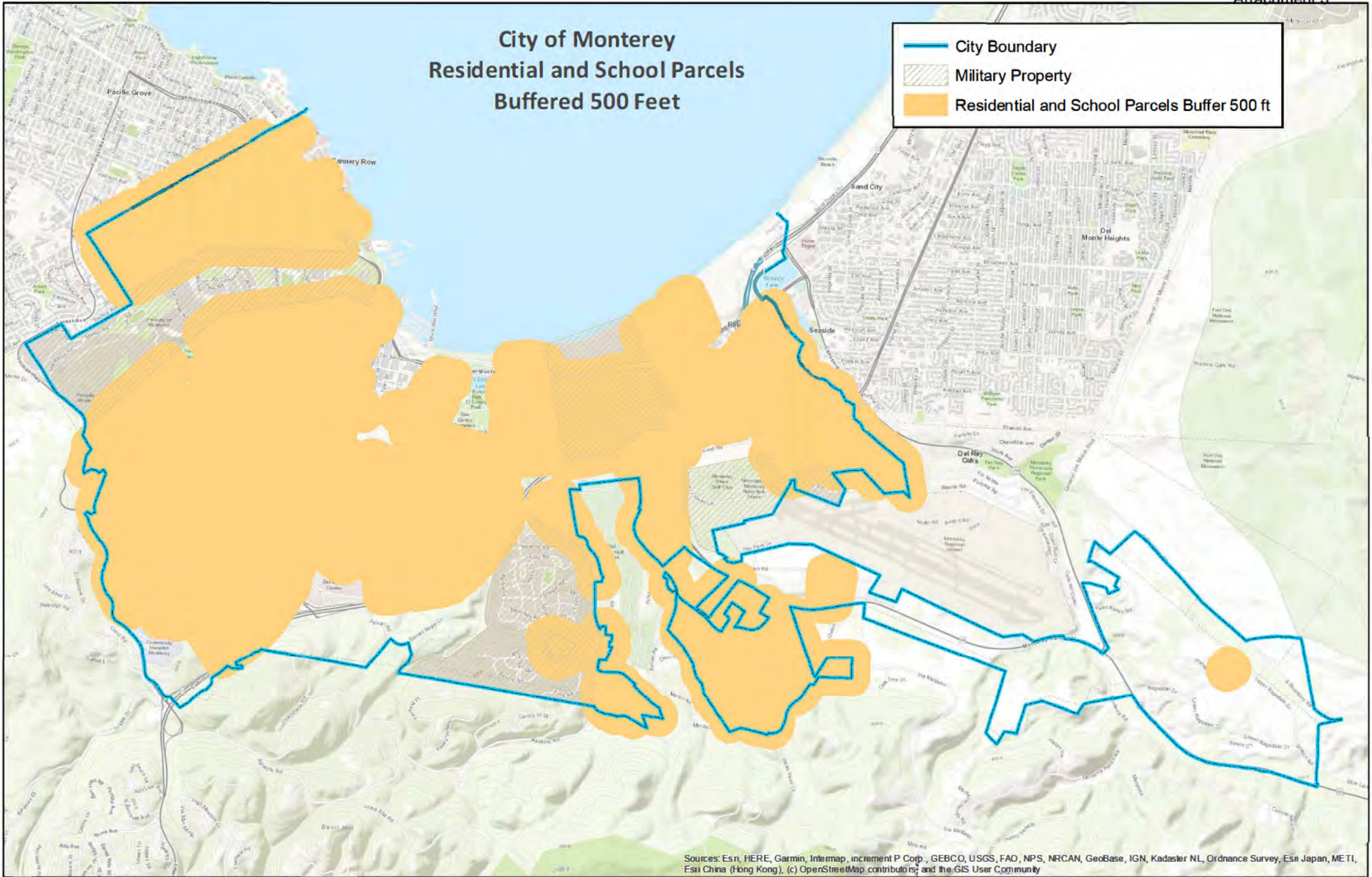


Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community



# City of Monterey Residential and School Parcels Buffered 500 Feet




-  City Boundary
-  Military Property
-  Residential and School Parcels Buffer 500 ft



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# City of Monterey Residential and School Parcels Buffered 1000 Feet

-  City Boundary
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-  Residential and School Parcels Buffer 1000 ft

