

**MINUTES
PLANNING COMMISSION
CITY OF MONTEREY**

**April 26, 2022
4:00 PM – 6:30 PM**

**COUNCIL CHAMBER AND ZOOMGOV TELECONFERENCE
MONTEREY, CALIFORNIA**

Commissioners Present: Freeman, Reed*, Brassfield*, Dawson, Fletcher*, Latasa, Millich*
* Participated remotely by videoconference

Commissioners Absent: None

Staff Members Present: Community Development Director Cole, City Attorney Davi,
Administrative Assistant Cleary

This meeting was held with a combination of in-person and teleconference attendance, pursuant to the Ralph M. Brown Act, Calif. Government Code section 54953(e)(1)(C) and Resolution No. 22-026 C.S.

CALL TO ORDER

Chair Freeman called the meeting to order at 4:00 p.m. and Administrative Assistant Cleary provided information to the public on how to participate and provide public comment during the meeting.

1. Meeting Procedures

CONSENT ITEMS

Approval of Minutes

2. April 12, 2022

ACTION: *Approved as submitted.*

Commissioner Dawson made a motion to approve the minutes as submitted. Commissioner Latasa seconded the motion. Vice Chair Reed said he missed the evening session of April 12, 2022, but will vote to approve the minutes as he was present for the afternoon session.

On a motion by Commissioner Dawson, seconded by Commissioner Latasa, and carried by the following vote, the Planning Commission approved the April 12, 2022 minutes as submitted:

AYES:	7	COMMISSIONERS:	Freeman, Reed, Brassfield, Dawson, Fletcher, Latasa, Millich
NOES:	0	COMMISSIONERS:	None
ABSENT:	0	COMMISSIONERS:	None
ABSTAIN:	0	COMMISSIONERS:	None
RECUSED:	0	COMMISSIONERS:	None

*****End of Consent Agenda*****

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PUBLIC COMMENTS

Nina Beety shared concerns that meetings on important matters are scheduled for the afternoon, barring attendance of full-time workers, and the City's Compatible Use Plan was initiated without transparency. Ms. Beety asked the Planning Commission to act on these concerns as they limit confidence in the City following rules and respecting the public while conducting their business.

PUBLIC HEARING

3. **Consider Recommending an Ordinance to the City Council Amending City Code Chapter 38 Article 17 Section 112.4 Related to Wireless Communication Facilities (Exempt from CEQA Article 19, Sections 15305 and 15308, Classes 5 and 8)**

ACTION: Continued to June 28, 2022.

Staff Presentation/Commissioner Questions

Community Development Director Cole presented the Agenda Report and answered Commissioner questions. Ms. Cole added suggested continuance of the item to address concerns raised through a high number of public comments. City Attorney Davi was also present and answered Commissioners' questions.

Responding to Vice Chair Reed's question, Ms. Cole said mock-ups were proposed to be installed on the subject building or in a cordoned-off area so the public could see the impact, but staff did not recommend this going forward.

Responding to Chair Freeman's question, City Attorney Davi said School Districts can exempt themselves from City regulations and the City also does not have jurisdiction on Federal land.

Regarding Commissioner Latasa's question, Ms. Cole said wireless facility applications are treated the same as Major Use Permits, which require a \$4,000 deposit to cover costs of staff time, specialized engineers, and outside consultants. In response to Commissioner Latasa's question about the "shot clock" and Americans with Disabilities Act (ADA), Ms. Davi affirmed these items do not need to be recodified in the City's Wireless Ordinance as they are already codified at the State and Federal level. To Commissioner Latasa's question regarding noticing, Ms. Cole replied that applicants can either contact the City for a property owner notice list or utilize a private title company. In response to Commissioner Latasa's question regarding mock-ups and Draft Ordinance, Kim said the Ordinance provides opportunity for pre-approval of certain types of projects and mock-ups may be necessary to show their designs.

Commissioner Dawson said public comments received from Andrew Campanelli and Verizon conflict and asked how to resolve this issue since they are both considered experts in the field. Ms. Cole said the City uses legal staff specializing in telecommunication laws to provide independent advice to the City on these issues.

To Commissioner Millich's question about the Radio Frequency (RF) Compliance Report, Ms. Cole confirmed the Federal Communications Commission (FCC) standard is the standard cellular providers must meet.

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The Planning Commission requested staff review the following items on the Draft Wireless Ordinance (Exhibit A to Draft Resolution):

- **Page 4, Section 3** – The abbreviations “ALUC” and “FAA” should be mentioned as “Airport Land Use Commission” and “Federal Aviation Administration” the first time referenced and abbreviated in subsequent references.
- **Page 4, Section 3.b-3.d** – Consider rewording “The City shall refer objects...to the ALUC and FAA” for clarity.
- **Page 5, Section D.2.a** – Consider specifying “appropriate engineer” since there are three types of engineers discussed in the text.
- **Page 7, Section E.3.d** – Paragraph title is missing.
- **Page 7, Section E.3.e.iv** – Consider language outlining what will be done to address aging camouflage and colors changing from exposure to the elements.
- **Page 7, Section E.3.f** – This section is not formatted in a sentence and other sections include sentences.
- **Page 9, Section E.3.m.i** – Consider rewording the last sentence of paragraph for clarity.
- **Page 9, Section E.3.m.ii.d** – Consider specifying who sworn statements are from.
- **Page 10, Section E.3.p** – Consider clarifying the statement “Information regarding the radio units that will be installed at the site, including the manufacturer’s name and manufacturer’s specifications...” as equipment make and model could change.
- **Page 11, Section E.3.u** – Consider rewording “a permit must issue” for clarity.
- **Page 11, Section E.3.u.v** – Consider specifying that coverage maps must include areas outside the City.
- **Page 11, Section E.3.u.v** – Regarding service coverage maps, consider that if certain areas show need for increased service capability, a wireless facility could be placed on another political entity’s land instead of under City jurisdiction.
- **Page 13, Section 4.d** – Title uses phrase – Facilities Should Permit Collocation. Is the word should needed?
- **Pages 15-16, Section E.5.b** – Text uses the word “unless” in regard to denial. Consider changing to reflect approval or denial.
- **Page 16, Section E.5.c** – Consider rewording for clarity so meaning is more definitive.
- **Page 17, Section E.7.c** – Consider specifying who makes the consideration and what guidelines the decision is based on.
- **Page 18, Section E.7.g.ii** – Clarify that the 50-inch maximum height refers to height of equipment and not height off the ground.
- **Page 18, Section E.7.g.ii** – Consider starting with a requirement that the equipment is “the smallest size possible” as some other approved sites are substantial in size.
- **Page 20, Section 7.I** – Consider ADA (sidewalk width)
- **Page 21, Section F.8.a** – Is attractive nuisance the correct word?
- **Page 21, Section F.9.a** – Consider rewording the first sentence for clarity.
- **Page 30, Section P** – Consider specifying “*shall*” and “*must*” are equivalent in meaning.
- Provide information about how a coverage gap affects the right for poles.
- Consider setbacks such as Calabasas Ordinance
- **Entire Draft Ordinance** – Includes the word “*should*” 18 times and “*encourages*” three times. Consider changing to stronger language.
- **Entire Draft Ordinance** – Find the word “*may*” or “*may not*” and change to be stronger.

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- **Mock up** – Consider requiring mock-ups but they do not have to be installed in the field on a building or pole.

Public Comments

Former Wireless Subcommittee Member Susan Nine expressed concern with the number of changes in the Draft Ordinance as the City Council said the Subcommittee's work would last. She requested that mock-ups, community noticing, wind testing, and regulating facility co-location be included in the Ordinance and suggested changing "should" to "shall" throughout.

Monterey resident Ray Meyers spoke of electromagnetic radiation and said he had reviewed wireless applications that were misleading and lacking information. He suggested applications be required to contain complete information and be reviewed by an independent RF engineer.

Monterey resident Gina Jett said the proposed Ordinance is weak and more information is available regarding rules for cell towers in residential areas. She spoke of attorney Andrew Campanelli and the need for an iron-clad Wireless Ordinance, and recommended that the City of Monterey follow the City of Carmel's lead and hire Mr. Campanelli for Draft Ordinance review.

Pat Venza, Monterey Vista Neighborhood resident, said when 13 wireless facilities were previously proposed for the Monterey Vista Neighborhood, drive-by testing was done to confirm wireless coverage in the area. She suggested this requirement be added to the Ordinance so the City would not have to rely on potentially inaccurate computer-generated maps.

Laurie Putnam said she lives in Monterey directly across from a cell tower permitted and she suggested the Ordinance include requirements for monitoring Conditions of Approval. It is an undue burden for residents to do the monitoring.

Daniel Dotterrer, Monterey Vista Neighborhood resident and member of the Monterey Vista Neighborhood Association (MVNA), spoke of the 13 previously proposed Extenet wireless facilities, suggesting he supports everything included in the Association's public comment. Mr. Dotterrer suggested utilizing as strong as possible local control and input from the community.

Hans Jannasch, Monterey Vista Neighborhood resident and MVNA member, also spoke of the Extenet wireless facilities and said it is important to require mock-ups, even if not on the structure itself. Mr. Jannasch also said it is important to mark each pole where a facility will be added and suggested further examination of the City of Calabasas's setback requirements.

Monterey Vista resident Jean Rasch showed appreciation for the advanced Agenda Packet publication. She said the neighborhood is still less represented in the Ordinance than preferred and suggested it be as restrictive as possible for time, place, manner, and aesthetics. Ms. Rasch said 1,000-foot setbacks, notice of temporary cell facilities, and correct scientific documents should all be required. She also suggested that the City utilize Mr. Campanelli and his team.

Monterey Resident Nina Beety said all residents including renters and business owners should be notified of wireless applications instead of only property owners and suggested the notice radius be increased to 500-1,000 feet. She also said it is helpful when reading an Ordinance to have all the laws included even if they are already codified elsewhere. Ms. Beety suggested generic poles can be erected on City property allowing companies to post mock-up equipment.

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She also said the Draft Ordinance presented is not the Subcommittee's draft, but rather Staff's draft, and that the Subcommittee's draft should be brought back.

Marcello Cosentino, Monterey Vista Neighborhood resident, said he is opposed to having small cell towers in the neighborhood littering the scenic vistas and suggested small cell towers are dangerous for humans and wildlife. Mr. Cosentino suggested all projects with view, noise, or environmental impacts undergo California Environmental Quality Act (CEQA) review.

Commissioner Comments

Ms. Davi announced that Joseph Van Eaton and Gail Karish of Best, Best, and Krieger have significant expertise and were present to answer questions.

Commissioner Dawson said the Wireless Subcommittee was disbanded a year and a half ago and a lot has happened around small cell towers since then. He asked Mr. Van Eaton and Ms. Karish if they could summarize those changes. Mr. Van Eaton said one of the largest issues is the FCC's decision that a significant gap in coverage and least intrusive alternatives are no longer the test to determine cell tower location. He also said another issue is the number of changes the FCC made to provisions relating to concealment versus stealth, meaning an operator may be able to ignore an adopted concealment condition unless clear Conditions of Approval with timelines are set forth and made obvious for each project. Ms. Karish added that implementation has moved to litigation, so there are more areas where the laws or FCC orders are not entirely clear and are subject to different interpretations. She also said there is starting to be more litigation to resolve ambiguities in the law, but that is at a very early stage.

Commissioner Millich said it is important to get as much protection as possible for the residential areas and suggested the Commission concentrate on making clear what is and is not allowed.

Commissioner Brassfield said he is gratified to hear what Mr. Van Eaton had to say and he is glad people went to the meeting to discuss the matter. He noted that there is only a certain amount of time to address these issues and he appreciates everyone's efforts.

Vice Chair Reed said he feels mock-ups are a necessary part of the Ordinance, even if it is a small mock-up that can be done in a way that makes sense and is not regressive to the applicant. He stated he did not review the video suggested by public commenters because as a Planning Commissioner he believes it best to listen to advice given by the City Attorney and attorneys provided by the City. He also recommended that a new single-color redline version of the Draft Ordinance be prepared and circulated for clarity. Vice Chair Reed agreed that something must be done to protect the citizens and that the public comments are helpful, but suggested it is necessary to listen to guidance of the experts being provided.

Commissioner Fletcher said a tremendous amount of work went into the Draft Ordinance over the past few years and he appreciates everyone's efforts. He said he also appreciates all the comments submitted and said they have been helpful in considering the issues.

Commissioner Latasa said the shot clock is unreasonable and unrealistic and asked if any municipalities have tried to challenge it. Mr. Van Eaton said the issue was raised unsuccessfully twice by a group of municipalities, including the City of Monterey, before the Ninth Circuit Court. Commissioner Latasa asked about the City of Calabasas's setbacks and Mr. Van Eaton said creating setbacks could leave the City with no areas for wireless facilities, making it easy for

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cellular carriers to win in Court. Ms. Karish said setbacks are challenging because when carriers look at the rules they examine the cumulative impact of all the rules. Commissioner Latasa concurred with Vice Chair Reed that a model should be required to help the public understand how proposed facilities will look.

Chair Freeman said many of the submitted comment letters had overarching opinions and some had specific recommendations. She said that as the specific suggestions seem simple it may be easy to determine feasibility. Chair Freeman also suggested that in lieu of a mock-up it may be appropriate to have applicants give an address of an existing installment similar to their proposal. She noted satellites will supersede wireless in the future, rendering cell towers pointless, but agreed the Ordinance should be as tight as possible to protect neighborhoods and schools.

Vice Chair Reed motioned to continue the item to May 24, 2022. Commissioner Fletcher seconded the motion. The Planning Commission discussed their planned absences over the next scheduled meetings and decided by consensus to continue the item to June 28, 2022, allowing all Commissioners to attend. Vice Chair Reed amended the motion and moved to continue the item to June 28, 2022. Commissioner Fletcher seconded the amended motion.

On a motion by Vice Chair Reed, seconded by Commissioner Fletcher and carried by the following vote, the Planning Commission continued the item to June 28, 2022:

AYES:	7	COMMISSIONERS:	Freeman, Reed, Brassfield, Dawson, Fletcher, Latasa, Millich
NOES:	0	COMMISSIONERS:	None
ABSENT:	0	COMMISSIONERS:	None
ABSTAIN:	0	COMMISSIONERS:	None
RECUSED:	0	COMMISSIONERS:	None

COMMISSIONER COMMENTS

None.

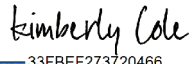
INFORMATIONAL REPORTS & STAFF COMMENTS**4. Planning Office Update**

Update received.

ADJOURNMENT

There being no further business, the meeting adjourned at 6:32 p.m.

Respectfully Submitted,

DocuSigned by:

 33FBFEF273720466...
 Kimberly Cole
 Community Development Director

Approved,

DocuSigned by:

 9332A63CDEF241E...
 Chair
 Planning Commission

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