

← Attorney Andrew Campanelli 's Advice for Updating Local Wireless Ordinances, March 30, 2021 - YouTube

PV

Pat Venza [REDACTED]
Fri 4/15/2022 12:39 PM



To: Oncall Planning

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Dear Planning Commissioners: This video is a must see before your meeting on the wireless ordinance. It is 44 minutes chock full of great advice on what cities need to have in their ordinances to comply with both the FCC and the courts.

This highly respected New York telecom attorney has helped many California cities with essential elements to their wireless ordinances and this video offers excellent advice for city planners. Hope you find 44 minutes to watch as it will answer many questions and bring up other questions that you may want answers too. Thank you in advance for watching. Pat Venza

<https://www.youtube.com/watch?v=bKqB8wYY7cA>

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Attorney Andrew Campanelli 's Advice for Updating Local Wireless Ordinances, March 30, 2021

67 views
Feb 20, 2022

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Verizon Wireless Comments on Wireless Facilities Ordinance - Planning Commission Agenda Item 3, April 26 [Monterey]

Paul Albritton [REDACTED]

Thu 4/21/2022 5:08 PM

To: Oncall Planning <planning@monterey.org>

Cc: Kimberly Cole <cole@monterey.org>; CMO-City Clerk Office Employees <cityclerk@monterey.org>; Christine Davi <davi@monterey.org>

 1 attachments (225 KB)

Verizon Wireless Letter 04.21 22.pdf;

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Dear Planning Commissioners, attached please find our letter prepared on behalf of Verizon Wireless providing comment on the draft wireless facilities ordinance to be considered at your meeting next Tuesday, April 26.

We urge the Commission to direct staff to incorporate our suggested revisions prior to recommending approval of the ordinance.

Thank you.

Paul Albritton
Mackenzie & Albritton, LLP
155 Sansome Street, Suite 800
San Francisco, California 94104
[REDACTED]

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April 21, 2022

VIA EMAIL

Chair Sandra Freeman
Vice Chair Hansen Reed
Commissioners Michael Brassfield,
Michael Dawson, Daniel Fletcher,
Terry Latasa and Stephen Millich
Planning Commission
City of Monterey
580 Pacific Street
Monterey, California 93940

Re: Draft Wireless Communications Facilities Ordinance
Planning Commission Agenda Item 3, April 26, 2022

Dear Chair Freeman, Vice Chair Reed and Commissioners:

We write on behalf of Verizon Wireless regarding the draft ordinance amending Monterey City Code Section 38-112.4, which regulates wireless facilities. We have previously commented on the City's wireless ordinances, and we emphasize that several provisions continue to contradict federal and state law. In particular, certain provisions contradict Federal Communications Commission ("FCC") regulations requiring reasonable design criteria for small cell facilities and streamlined approval of "eligible facilities requests" to modify existing facilities.

Since our last comments of October 2019, Verizon Wireless has licensed new frequencies from the FCC that have changed small cell designs and location requirements. Accordingly, the Draft Ordinance should be revised to accommodate multiple types of antennas for small cells on streetlight poles and utility poles in the right-of-way. Instead of lumping private property and right-of-way location preferences together, which contradicts state law, the City should adopt a distinct list of right-of-way location preferences qualified by a 500-foot search distance for any preferred options.

Absent substantial revisions, the Draft Ordinance will be subject to immediate challenge under state and federal law if applied to wireless facility applications in the City of Monterey. We urge the Planning Commission to direct staff to make the revisions we suggest prior to recommending the Draft Ordinance to the City Council.

The FCC’s Infrastructure Order

In its 2018 Infrastructure Order, the FCC confirmed that a city’s aesthetic criteria for small cells must be “reasonable,” that is, technically feasible and meant to avoid “out-of-character” deployments, and also “published in advance.” *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088, ¶¶ 86-88 (September 27, 2018). The FCC also found that that local requirements that “materially inhibit” service improvements and new technology constitute an effective prohibition of service under the Telecommunications Act. *Id.*, ¶¶ 35-37; *see also* 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II). In 2020, the Ninth Circuit Court of Appeals upheld these FCC requirements. *See City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, 141 S.Ct. 2855 (Mem) (U.S. June 26, 2021).

Our comments are as follows. We note that several Draft Ordinance provisions would allow deviations if an applicant proves that an overly-strict standard violates state or federal law (e.g., Sections F(10)(d) and J(2)(c)). That would require applicants to wait until the decision stage for the City’s aesthetic determination on a proposed design, which would violate the FCC’s direction that small cell aesthetic standards be “published in advance.” By relying on such “exception” schemes, the City would concede that its standards are unreasonable and preempted. Instead, the City should ensure that the Draft Ordinance designs standards are reasonable prior to adoption. Verizon Wireless does not consider certain infeasible standards to be reasonable as drafted. While Verizon Wireless welcomes the concept of pre-approved designs, that cannot be a substitute for adopting technically feasible, reasonable design standards that are “published in advance” in the ordinance.

§ 38-112.4 – Wireless Communications Facilities

D(1). Use permit review. This provision requires a use permit for “eligible facilities requests” to modify existing facilities, but that is inappropriate. For eligible facilities requests, federal law requires approval if a proposed modification does not exceed the FCC’s six “substantial change” thresholds. 47 U.S.C. § 1455(a); 47 C.F.R. § 1.6100(b)(7). The City may not consider other factors, such as subjective use permit findings or public objections. Therefore, a use permit is excessive because it involves preempted findings, public notice, a hearing, and a potential appeal, none of which are necessary to evaluate the “substantial change” thresholds. Further, the City must approve eligible facilities requests within 60 days. *We suggest that eligible facilities requests receive a simple administrative approval.*

We note that requiring a use permit for small cells, for which the FCC imposed a 60- or 90-day Shot Clock, would likely be unachievable where appeal rights are available. Many cities have developed special streamlined permits for wireless facilities in the right-of-way, such as San Francisco and San Mateo.

E(3)(s). Master plan. For small cells, the City cannot require a master plan of existing and planned facilities. Such information regarding evaluation of the need for a new small cell contradicts California Public Utilities Code Section 7901, which grants telephone corporations such as Verizon Wireless a statewide right to place their equipment along any right-of-way. Further, the FCC determined that small cells are needed to densify networks, enhance existing service, and introduce new services, which are Verizon Wireless’s objectives in placing small cells in Monterey. Infrastructure Order, ¶ 37. A master plan addressing other network facilities is irrelevant to a pending application; each facility must be evaluated on its own merits. *This submittal requirement should be deleted.*

E(3)(u). Information supporting a claim that denial would violate federal law. While not required unless an applicant “contends that denial of the application would result in an effective prohibition under federal law,” we note that this also contradicts the FCC’s determinations regarding the need for small cells. Information such as “signal coverage maps,” “geographic area that would be served,” and review of alternatives is not pertinent to the FCC’s finding that small cells are needed to densify networks and enhance service. Standards that result in unreasonable denials would “materially inhibit” service improvements, which the FCC found constitutes a prohibition of service. The FCC also disfavored dated service standards for small cells based on “coverage gaps” and the like, so the service area information sought by this provision is preempted. Infrastructure Order, ¶¶ 37-40.

City officials should not be making judicial determinations regarding the federal prohibition of service standard. Instead, the City should ensure that its small cell standards are reasonable at the outset, as required by the FCC. This would avoid legal disputes.

E(5). Application submittal appointment. This provision allows the Director to deny applications that they deem incomplete during a submittal meeting, but that directly contradicts the FCC’s “Shot Clock” rules. Instead of instant denial, the Director must issue a written notice of incomplete application (“NOI”) specifying any missing information. A timely NOI pauses the Shot Clock, which then resumes when an applicant responds. 47 C.F.R. § 1.6003(d). The Director would lack substantial evidence to automatically deny an application at intake, in violation of the federal Telecommunications Act. 47 U.S.C. § 332(c)(7)(B)(iii). *Instead of allowing a potential instant denial, this provision should be completely revised to incorporate the FCC’s Shot Clock rules codified at 47 C.F.R. § 1.6003.*

F(3). General principle for all locations. Requiring facilities to be the “minimum size necessary to serve the defined service objectives” places the City in the position to dictate the technology used by wireless carriers. However, that would intrude on the exclusive federal authority over the technical and operational aspects of wireless technology. *See New York SMSA Ltd. Partnership v. Town of Clarkstown*, 612 F.3d 97, 105-106 (2nd Cir. 2010). The “minimum size” standard disregards the equipment volume allowances in the

FCC's definition of small cell, which are up to three cubic feet for each antenna, and up to 28 cubic feet for associated equipment. 47 C.F.R. § 1.6002(l). *This provision should be deleted.*

F(4)(b), F(5)(a)(ii). Height (private property sites). These would limit wireless facilities on private property to zone height limits, but the City should allow a modest increase consistent with Code Section 38-106, which provides height exceptions for various structures. These include church spires and electric towers. *We suggest allowing a 10-foot increase over zone height limits for rooftop facilities or freestanding stealth facilities.*

F(7)(b). Structure preferences (right-of-way). If strictly applied, the top preference for City-owned poles would contradict California Government Code Section 65964(c), which bars local governments from limiting wireless facilities to sites owned by particular parties. Verizon Wireless has the right to place its telephone equipment on joint utility poles as a member of the Northern California Joint Pole Authority. Small cell equipment is not "out-of-character" on utility poles, given existing utility lines and other infrastructure, and structure preferences used to deny this option would be unreasonable. *We suggest that the right-of-way structure preferences simply favor existing/replacement poles over new poles.*

To provide clear direction to applicants, the City should specify a reasonable search distance for any existing/replacement structure. *Applicants should be allowed to place a new pole if there is no feasible existing/replacement pole option within 500 feet along the right-of-way.*

F(7)(e), (f). Equipment underground or in ground-mounted cabinet. These provisions would require undergrounding of small cell associated (non-antenna) equipment unless a facility meets the strict requirements of referenced Code Section 32-08.04, that a facility be "stealth" or "integrated," or that undergrounding is infeasible. Otherwise, equipment must be placed in a ground cabinet, with only limited exceptions that are not based on reasonable dimension thresholds.

Both provisions contradict the FCC's requirement for "reasonable" small cell standards because small pole-mounted equipment components are not "out-of-character" among other right-of-way infrastructure. Utility poles commonly support electric transformers and other utility equipment. Further, undergrounding small cell computer equipment is generally infeasible due to utility lines already routed underground and the space required for active cooling/dewatering equipment. *We suggest that the City allow up to five cubic feet of associated equipment on a streetlight pole, or 16 cubic feet on a utility pole (consistent with Section F(7)(k)), before undergrounding is considered.*

F(7)(i). All antennas in pole-top radome. To be reasonable per the FCC's Infrastructure Order, the City's antenna standards must be technically feasible for new and emerging technologies, accommodating the antenna and radio models available from

manufacturers. In addition to the low-band frequencies currently in use, Verizon Wireless recently licensed mid-band and high-band frequencies from the FCC. These require different antennas. Accordingly, some small cells may involve several types of antennas, and up to three of each, facing different directions where they provide service.

This provision must be revised to accommodate multiple types of antennas on a streetlight pole or utility pole. For streetlight poles, Verizon Wireless may place a cylindrical “cantenna” that is already manufactured in its own sleek radome, along with small panel antennas underneath that cannot be covered in a radome because that impedes propagation of their higher-frequency signal.

For utility poles, Verizon Wireless may place antennas above and/or on the side of a pole. For side-mounted antennas, state safety regulations require at least two feet of horizontal separation from the pole centerline. Public Utilities Commission 95, Rule 94.4(E). Accordingly, Verizon Wireless may place one to three antennas on a cross-arm, facing different directions where they provide service. As noted above, some mid- and high-band antennas cannot be shrouded as that impedes signal propagation.

Given the above design requirements, this provision requiring all antennas within a single pole-top radome is technically infeasible and unreasonable. Some installations would be prohibited by the strict total volume limit of three cubic feet. (The FCC defined “small wireless facility” to include antennas up to three cubic feet *each*, 47 C.F.R. § 1.6002(l)). *This provision should be deleted. Instead, the City should provide for multiple antennas above or on the side of a pole, as described. Verizon Wireless would be pleased to provide examples of its small cell designs to serve as the basis for reasonable antenna standards.*

F(7)(k). Pole-mounted equipment cabinets. For utility poles, we suggest a modest expansion of the dimensions for pole-mounted equipment housing. On utility poles, equipment must be placed on a four-inch stand-off bracket that allows utility workers to safely climb the pole. The housing also must accommodate required radio units and cables while providing for air circulation. These factors require more width and protrusion than allowed by the Draft Ordinance, which imposes technically infeasible size constraints on pole-mounted equipment housing. *The allowed width, depth and total protrusion of equipment housing should be increased from 15 to 22 inches.*

F(7)(n). New support structures. Section (ii) implies that equipment must be placed inside a pole, which would need to be of wide diameter to enclose required radio units, leading to an awkward appearance. Instead, the City should allow the new pole design that Verizon Wireless has installed in various California cities, with radios and other non-antenna gear concealed in a base shroud. Because Public Utilities Code Section 7901 grants telephone corporations a statewide right to place and own their own poles along any right-of-way, the City cannot require a light fixture or City signage because they bear no relation to wireless service. However, Verizon Wireless may be willing to allow these

by mutual agreement. *The City should allow a new pole with a base shroud up to 20 inches square and four feet tall to conceal radios and associated network components.*

F(9)(a). Preference for City-owned or -controlled parcels. As noted above, Government Code Section 65964(c) bars cities from limiting wireless facilities to sites owned by particular parties. *This provision directly contradicts this state law, and it should be deleted.*

F(9)(b), (c), (e). Preference for private property over right-of-way. These provisions prefer private property sites (e.g., towers and buildings) over the right-of-way. However, because Section 7901 grants telephone corporations a statewide right to use any right-of-way, the City cannot redirect a proposed right-of-way facility to private property. To that end, the City should develop a distinct list of location preferences for the right-of-way. As noted above, the City should provide clear guidance by adopting a reasonable search distance of 500 feet for any preferred options, a practice adopted by many California cities. *The City should adopt new location preferences for the right-of-way, preferring industrial and commercial areas over residential and historic areas, while allowing a less-preferred location if there is no feasible preferred option within 500 feet.*

F(10). Special considerations (required effective prohibition showing for certain areas). The City cannot require Verizon Wireless to prove an effective prohibition of service to place small cells in certain areas, such as residential zones. As noted, the FCC found that small cells are needed to densify networks and enhance existing service. The extra hurdle of demonstrating an effective prohibition would “materially inhibit” these goals. *For small cells, the City should adopt the location preferences and 500-foot search distance suggested above, without requiring an “effective prohibition” showing.*

G(1). Applications for eligible facilities requests. For eligible facilities requests, the FCC allows cities to request only that information pertinent to determining if a proposed modification would fall under the FCC’s “substantial change thresholds.” 47 C.F.R. § 1.6100(c)(1). Some of the application submittals of referenced Draft Ordinance Section 38-112.4(E)(3)(a)-(r) are irrelevant: (c) public notice materials, (j) screening/landscaping information, and (r) undergrounding information. The City cannot require new landscaping or undergrounding of equipment as a condition of approving a qualifying eligible facilities request. *The list should be revised to exclude items (c), (j), and (r).*

J(2)(c). Finding that denial would result in actual or effective prohibition. As noted, City officials should not be making such judicial determinations, which could “materially inhibit” service improvements if applied to small cells. *This finding should be deleted.*

L(2)(i). Curtailed permit term for eligible facilities requests. The City cannot require that the permit term of an approved eligible facilities request expire on the same date as the prior permit for a facility. That would contradict Government Code Section 65964(b) that allows a 10-year term for wireless facility permits absent a substantial land use

Monterey Planning Commission

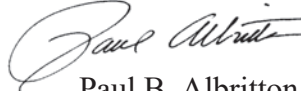
April 21, 2022

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reason. Modifications that result in no “substantial change” do not create a substantial land use impact. *This provision should be deleted.*

Verizon Wireless appreciates the opportunity to provide comment on the Draft Ordinance. We encourage the Commission to direct staff to make the revisions we suggest prior to recommending approval.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Albritton", written in a cursive style.

Paul B. Albritton

cc: Christine Davi, Esq.
Kimberly Cole

From: Pat Venza [REDACTED]
Sent: Thursday, April 21, 2022 10:32 AM
To: Clementine Bonner Klein <bonner@monterey.org>
Subject: Comments for Item #3 on April 26 Planning Commission Agenda

Attachment 4

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Dear Planning Commissioners: Having been the VP and then President of the Monterey Vista Neighborhood Association at the time of the Extenet application, some 5 or so years ago, I remember a couple of things that I feel have to be emphasized in the new wireless ordinance.

The first is in Applications and Submittals (E.3.u.). Not only from our experience during the Extenet application, but also after watching the You Tube video of telecom attorney Andrew Campanelli, it is so important that "proof of gap" in service or "prohibition" be very specific. In the subsection iii or in v. the ordinance needs to specifically say that drive by test is required for this proof. "Providing maps" that are computer generated is not proof. It wasn't until the City of Monterey hired an outside company to do "drive by testing" was there proof of "no gap in service" within our neighborhood. Request that "drive by testing" be added to subsection iii or v.

Another way, that Mr. Campanelli suggested, is for the City to have on file a yearly "drive-by" test done by the City or City hired contractor. Why wait for each applicant to come in pleading that there is a gap when a drive-by test can be pulled out at the very beginning of the application process to show that there is no gap or where there is gaps. The City should be pro-active in the process.

The second concern I have is about "mock-ups". In the "Planning Commission Agenda Report", Key takeaways include, it says, "One of the key changes between the subcommittee draft and proposed

ordinance is the elimination of the mock-up installations. It has been determined to be infeasible to meet this requirement with extensive engineering, permitting and installation requirements.” But then in section titled, Consideration, (O.2.) it does say: “...and provide such mock-ups as may be necessary to evaluate the impact of the design.” I remember that the MVNA mock-up, of all the devices that were going to be on the pole, was very powerful to the Commission, the audience and the newspapers. A visual is what most people understand. I hope that the commission will question the difference between what is said in the Planning Commission Agenda Report and what is in “O.2.” for clarification. We need mock-ups to talk to most of us who rely heavily on visuals. This is especially important since aesthetics is still in the control of the cities. I agree that a “mock-up” at each location would be too much to ask, but “A Mock-up” of the exact size, look, etc. is a reasonable request.

I want to thank the members of the Wireless Ordinance Subcommittee for all the work they did to improve this ordinance. None of the work they did should be deleted, or watered-down. It is important to all the people who fought so hard against Extenet that the City follow through with the direction from the Wireless Ordinance Subcommittee.

Thank you, Pat Venza
Monterey Vista Neighborhood Association member

From: [Paula O'Connor](#)
To: [Oncall Planning](#)
Subject: Old Town neighbor
Date: Saturday, April 23, 2022 3:42:55 PM

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We are property owners and long time residents and we do not support the cell towers near any school or residential neighborhood. Thank you, Mike and Paula O'Connor

Sent from Paola's I Pad

TO: Planning Commission-City of Monterey
FROM: City of Monterey resident, Jeana M. Jett
CC: City Council
RE: Wireless Communication Ordinance Update-2022
DATE: April 22, 2022

Why is it so difficult for appointed commissioners—and, in fact, elected council members—to understand and act upon the fact that the City of Monterey Residents do not want cell towers in their neighborhoods for many reasons?

The City of Monterey’s proposed Wireless Communications Ordinance—as developed by the well-intentioned, well-represented, and tireless Draft Committee—falls short of protecting residents from the effects of cell towers installed in residential areas. It also falls short of protecting the City of Monterey from protracted lawsuits.

Sophisticated local governments rely on Smart Planning Objectives grounded in factual determinations as to whether wireless applicants have provided iron-clad, stringently researched, evidence-based data.

Sophisticated local governments incorporate procedural, factual guidelines into their written Wireless Communications Ordinances, thusly, protecting residents and minimizing lawsuits.

Note the following:

1. The Federal Telecommunications Act of 1996 states that local government has the right to regulate.

The City of Monterey should not fear lawsuits if its Ordinance designates and incorporates strong evidentiary standards (excluding “propagation maps” now judged in the 9th Circuit Court to be unreliable in field tests, and confusing due to reliance on proprietary software) and the specific factual evidence on which decisions are based. The FCC makes it clear that it does not wish to play a zoning arbitrator role when municipalities fail to designate specific criteria and evidentiary guidelines in their ordinances.

2. The City of Monterey Staff and the City “Director” as designated in the Wireless Communications Ordinance must themselves handle the applications rather than outsource this responsibility to consultants who may/may not have vested and/or monetary interests in the outcomes.

Staff and the “Director” must take responsibility for the content of reports and the required research.

3. If the City of Monterey considers hiring wireless communication consultants, Residents must be notified. Administrative decision-making must be eliminated from the Ordinance.

Please do not give away the City’s powers of local control.
Strengthen the Wireless Communication Ordinance.

Thank you for your attention.

Jeana M. Jett, Resident of Monterey

From: [Katalin Markus](#)
To: [Oncall Planning](#)
Subject: Cell Towers
Date: Monday, April 25, 2022 11:07:23 AM

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Dear Planning Commissioners,

Please do not give permits to build dangerous cell towers near residential areas and schools in Monterey!
I'm a grandma and I want to save the furniture generation.
As you know cell towers pulsating microwave radiation.
A healthy life is more important than a profit for cell companies.

Thanks for understanding
Katalin Markus

Sent from my iPhone



4/22/2022

Dear Planning Commissioners,

Protecting the City, the residents and the businesses of Monterey from the unreasonable proliferation of wireless facilities throughout our small town will require the strongest and most protective language permissible under the law. Not incorporating similar provisions has been the undoing of many once beautiful coastal communities too numerous to mention. Avoiding the Visual blight and the out of character placement of industrial looking wireless facilities is essential to the quality of life of everyone.

When exercising the City's constitutionally guaranteed right to regulate placement of such facilities, great care must be taken to preserve aesthetic beauty, historic character, and the aesthetic beauty that draws people here and supports our local economy and enhances property values. In doing so, it is important to keep in mind the non discrimination clause in the Federal Telecommunications Act which means every approval sets an access precedent for all companies licensed to build similar facilities, not just AT&T, Verizon and T Mobile. Once built, other federal laws demand no more than administrative approval for collocation of additional antennas and radio equipment added to the bulk, height and unsightliness of the original facility design.

MVNA learned a great deal about telecommunications laws and cases during the assault on our beautiful, historic neighborhood when threatened by a proposed densified network of thirteen cell towers; most embedded closely adjacent to homes, in high hazard zones, with no setback limitations, which, if allowed, would have threatened the aesthetics, safety and desirability of our neighborhood and set a precedent for all residential neighborhoods. With the help of attorneys, scientists and engineers living in our neighborhood some of us read every applicable state and federal law and binding interpretations of those laws in cases brought before state and federal appellate judges which then become binding precedent unless overturned by state and federal Supreme Courts. We came before the Commission and testified that the claimed effective prohibition was bogus supported by the testimony of hundreds of satisfied Verizon customers within the area proposed to be served. This was further confirmed by the CTC drive by test that technically proved 100% coverage. Seaside and Carmel also denied applications over false claims of coverage gaps based on presented propagation maps. It is standard procedure for applicants to try to avoid local codes and ordinances if they can, by false and self serving claims of effective prohibition. These maps which the Ninth Circuit has referred to as "confusing and unclear" are not probative, especially when contradicted by customer testimony, field testing and the carriers own published coverage maps.

Additional proof that these maps do not accurately prove prohibition is born out by the fact that years later, with no new residential towers, no Monterey, Seaside or Carmel residents within the proposed area to be served have witnessed a reduction in the quality or coverage of their service years after unanimous denials from their Planning Commissions and City Councils. It is also telling that after denial, there was no follow up on less invasive alternative commercial locations a few blocks away.

Interestingly in Carmel, Verizon claimed a less invasive alternative location studied in a non residential area could not fill its service gap, then came back two years later applying for a facility in the exact location to serve the same claimed need, saying they “made a mistake” the first time they denied its viability.

There must be strong language in ordinances that assures that applicants can prove by clear and convincing evidence that less invasive options are unavailable and that denial would actually result in a prohibition of telecom services by applicant, especially when the applicants are not service providers themselves, but are simply building as many facilities as possible as cheaply as possible to make as much money as possible leasing them to actual service providers.

The requirement for “Current signal coverage by providing maps showing existing coverage in the area to be serviced by the proposed facilities” is not the best way or even a reliable test of coverage. These maps are generated by the carrier’s proprietary software with whatever data the programmer enters and is not independently verifiable without access to this data and software. There is a simple and inexpensive test for specifically and reliably testing wireless coverage, namely a drive by test such as that conducted by CTC hired by the City previously. This test conducted independently can and should be required by any applicant claiming coverage issues or gaps in coverage. In our neighborhood over a thousand points throughout the neighborhood were tested that showed 100% connectivity at every point with no dropped calls. The staff’s draft ordinance stated, “In order to be treated as probative, maps shall be dated and based on data collected within the prior six months.” That is a good requirement for any maps submitted as evidence, but these propagation maps should never be referred to as “probative” for reasons stated above. This language was not in the Subcommittee approved draft. Please note that if the claimed prohibition of services could be proved by such maps, denial years ago in Monte Vista, Seaside and Carmel where all such maps claimed significant gaps, should have resulted in problematic or less than adequate service in the areas claimed to have such gaps. Years after denial, the same reliable levels of service have remained consistent.

From the Calabasas Ordinance:

“ ‘Significant gap’ as applied to an applicant's personal communication service or the coverage of its personal telecommunication facilities is intended to be defined in this chapter consistently with the use of that term in the Telecommunications Act of 1996 and case law construing that statute. Provided that neither the Act nor case law construing it requires otherwise, the following guidelines shall be used to identify such a significant gap:

A significant gap may be demonstrated by in kind call testing. [Drive By Testing]

The commission shall accept evidence of call testing by the applicant and any other interested person and shall not give greater weight to such evidence based on the identity of the person who provides it but shall consider (i) the number of calls conducted in the call test, (ii) whether the calls were taken on multiple days, at various times, and under differing weather and vehicular traffic conditions, and (iii) whether calls could be successfully initiated, received and maintained in the area within which a significant gap is claimed.

A significant gap may be measured by:

The number of people affected by the asserted gap in service;

Whether a wireless communication facility is needed to merely improve weak signals or to fill a complete void in coverage;”

We would recommend a requirement for applicants to submit all approved, existing or planned locations for applicant carrier’s or other carriers’ facilities that could impact signal as well as help determine whether collocation on any existing or planned facility of any carrier might be a possible collocation site by applicant carrier.

MVNA agrees with a preference for undergrounding all equipment that can be.

The strongest possible ordinances such as those adopted in Calabasas, Petaluma and Costa Mesa must have reasonable setback requirements from peoples’ homes and schools and between facilities. There are none mentioned in the proposed draft. Here are some examples taken as examples from other California City ordinances we would like to see setback requirements in place here as well. We would like to suggest two setback requirements we found in the Calabasas Ordinance. The first is to keep facilities out of the fall zone of any structure designed for human occupancy:

“A freestanding telecommunications tower or monopole shall be setback a distance of at least one hundred fifty percent of the height of the nearest structure designed for occupancy.”

The second setback requirement applies to homes and more. Here are the setback requirements in the Calabasas Ordinance for example:

“All new wireless telecommunications facilities subject to a Tier 2 wireless telecommunication facility permit, shall be set back at least one thousand feet from schools, dwelling units, and parks, as measured from the closest point of the wireless telecommunication facility (including accessory

equipment) to the applicable property line, unless an applicant establishes that a lesser setback is necessary to close a significant gap in the applicant’s personal communication service, and the proposed wireless telecommunications is the least intrusive means of doing so...”

In the Calabasas ordinance “Prohibited Locations” includes Ridgelines, Residential Zones, including parks and playgrounds, and Open Space. Applicants are required to present, “technically sufficient and conclusive proof that the proposed location is necessary for provision of wireless services to substantial areas of the city, that it is necessary to close a significant gap in the operator’s coverage and that there are no less intrusive alternative means to close that significant gap.”

Using appropriate post Portland V. US terminology if significant gap is not the current standard, we want to see setback requirements to homes and schools included in our local ordinance of at least 300 up to 1000 feet, with the added effective prohibition language preemption to allow for less of a setback only if required if applicant proves (not shows) this would result in an effective prohibition.

We would like our city to adopt stricter requirements than the language used in the submitted draft which requires “a showing”. The phrase “technically sufficient and conclusive proof” is much more in line with ninth circuit decisions which requires the evidentiary standard of “clear and convincing evidence” which goes well beyond a mere “showing” or the substantial evidence test which only requires a “scintilla” of evidence. While the City must only present substantial evidence to justify their denial, an applicant must prove by clear and convincing evidence that its application was illegally denied.

MVNA would like the applicant’s for wireless facilities especially in the rights of way, to be required to provide a site survey which we fail to find in the draft ordinance but existing in many if not most ordinances as an application requirement.. Here is suggested language which we believe will not only benefit the City in evaluating the project but help the public study the impacts of the proposed facility on surrounding structures, vegetation, streets, sidewalks, etc. The language below would provide a wealth of information and is a reasonable requirement. As mentioned before, the Ninth Circuit in the Portland case vacated the FCC requirement that wireless facilities should not be held to a different standard than other industrial type equipment in the rights of way as over broad. Cities can and should regulate telecommunications facilities differently under this decision in part, the decision declared, because other utilities such as cable and electric operate under City paid franchise while telecommunications facilities operate under a State franchise with no local fees. Site Survey. Here is the recommended Site Survey requirement as worded in the Calabasas ordinance:

“For any new wireless telecommunication facilities proposed to be located within the public right of way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer or surveyor. The survey shall identify and depict all existing boundaries, encroachments and other structures within two hundred fifty (250) feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks, and other street furniture; and (viii) existing trees, oak trees, planters and other landscaping features;”

Another requirement we would like to see that we have found in multiple California ordinances is a maximum height limit increase of two feet (24”) above the current pole height to

accommodate top mounted antennas on existing or replacement poles, rather than the proposed 4 foot limit. This draft section also allows the height to be raised even higher if necessary or maintaining clearance from wires. We would like to see height increases more tightly regulated to avoid making equipment more visible, less stable and more likely to be seen in view sheds as well as putting them more out of alignment with neighboring poles.

As a final aside, but an important one, it is important that decision makers understand the City is protected from lawsuits for damages, or plaintiff attorney fees by the *Rancho Palos Verdes v. Abrams* US Supreme Court ruling that the only remedy available to denied telecom applications is that stated in the Federal Telecommunications Act, namely an expedited hearing before a court of competent jurisdiction and declaratory relief being an injunction for the City to issue the permit. It's also important to note that courts are generally very deferential to upholding such denials as long as they were based on upholding the City's reasonable adopted code requirements. It has become a standard scare tactic to make vague references to threatened law suits when the City's ordinance results in a denial or makes more expensive alternatives necessary but available such as building mounted in preferred areas that require more expense and annual leases to property owners. These threats are without merits.

Yours truly,
Jean Rasch, President
Monterey Vista Neighborhood Association

Dear Planning Commissioners,

As you may recall, I was one of the representatives chosen by the City Council to serve on their Wireless Ordinance Subcommittee. I did so because the Council assured the Committee they would do the drafting a decision making that would then be sent to the PC as written. We spent over a year in meetings looking at various Ordinances, getting Joseph Van Eaton's input and that of City Staff every step of the way. He was there telephonically or in person for many if not most of the meetings. He conducted legal review of the final version before we disbanded. The process took so long that we lost two members living in the Monterey Vista Neighborhood, one due to a stroke at one of our meetings, and one who sold her house and moved to Oregon. The Director, Kim Cole was at each meeting and often Christine Davi.

In reviewing the proposed ordinance, I found it best to read the marked up version. Every cross out, and there are many, represents a staff decision to eliminate much of the original Subcommittee ordinance. Every colored text, and there is much of it, is new language added by the staff. The magnitude of changes, including many parts that have been unaffected by any intervening court decisions or changes in the law, have been changed or deleted from the Subcommittee's draft. At the City Council meeting when representatives were appointed, the directions were clear. The Subcommittee was to do the work, and make the decisions as to what would go into the ordinance that would then go to you, the Planning Commission for final tweaking and recommendation. The Staff were to be made available to make sure we complied with the Brown Act and answer the Committee's questions, but not make independent decisions regarding content. We understood that before a final draft was completed, our work would be subject to legal review which was done by Mr. Van Eaton before we disbanded. Paramount in the City Council's directive was that we create the strongest possible ordinance.

Our MVNA President, Jean Rasch, has already sent you a fairly detailed list of those items removed from the Committee's draft we would like to have reinstated as well as a few new items omitted from both the staff's and Subcommittee's drafts that we would urge the Commissioners to consider adding to application and other requirements that other California City's have added to their ordinances in the several years since the Subcommittee completed their draft. I will refer you to MVNA's letter rather than presenting a list of my own.

We noted entire paragraphs that were removed as well as small but important details within paragraphs. The Subcommittee worked long and hard on the mock up requirements, for example. This whole section is simply deleted. I am sure the staff have their reasons, but staff was present at all our meetings and voiced no objections to the final version. I would like to see this requirement in place, at least as it pertains to rights of way applications which could be easily accomplished by erecting a faux utility pole on City land, publicly accessible to view as a mock up upon which to place scale models of proposed equipment. It is more reasonable to ask applicant to provide scale model boxes and cylinders than force residents to do so and drag them into chambers and reassemble them as we had to do at the hearing for the proposed wireless facilities in our neighborhood. Most of this equipment are, after all, simple rectangular boxes and cylinders not difficult or expensive for applicants to cobble together in order to give public and decision makers an accurate approximation of visual impacts in the same vein as story poles and/or balloons are useful.

There is much if not most that can be retained in the staff's draft, and no one is expecting a start from scratch approach. But please consider the noted changes in the MVNA President's letter that we hope you to restore or changes/additions made we urge you to delete. Before this goes to Council for final review, please take your time do what you can to insure statutorily, the strongest possible local regulatory control over siting, design, construction and operational regulation of wireless facilities so that unbridled proliferation doesn't have its way with our fair and historic City and its neighborhoods. An option after you have made any changes, is that Andrew Campanelli's telecom specialty law firm, for a modest \$8500. will review a proposed ordinance and give his expert recommendations for additional language to assure it is the strongest possible under current statutory and case law. This is also who the residents' group in Carmel is using to help them advise the City. His

recommendations are just that, the City can choose to adopt them or not. But he has done this for California Cities with strong language. This would be well worth the small expense to confidently assure the City decision makers, the staff and Monterey residents that we have included everything possible to protect and preserve our unique City.

Thank you,
Susan Nine, MVNA Board Member and Homeowner

From: [susan.nine](#)
To: [Oncall Planning](#)
Subject: Corrected letter to PC re: wireless ordinance
Date: Tuesday, April 26, 2022 12:15:31 PM
Attachments: [susan's comment letter.pdf](#)

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Dear Jennifer, my hastily written letter sent yesterday contained typos and incorrectly identified me as a “former” MVNA Board Member. I meant to say, “Former MVNA President and current Board Member. Can you replace this corrected draft for the one sent yesterday in haste?

Thanks, Susan Nine

Sent from my iPad

4/26/22

Dear Commissioners,

I have already sent you written comment and agree with everything on the MVNA list of important changes to consider. But I would like to add a couple of additional considerations as you work on refining the ordinance. The current draft does not prohibit wireless facilities in Historic Overlay districts nor on historic building. It does require they not be visible at ground level but that allows visibility from higher elevations or taller buildings. Our precious adobes and other structures are listed as national historic resources, and wireless facilities affecting them should require CEQA review under CEQA laws. The ordinance should reflect the need for CEQA review prior to any facilities being placed near or upon historic resources.

Also, due to the permissibility of collocation (6409) requirements, there are no guarantees that an originally stealth facility will remain so after more equipment and bulk is added and the City lacks the authority to say no to these collocation so long as they stay within the definition. This is true on historic resources and districts, but is also true of facilities in the rights of way where they are not only visible to residents but to pedestrian, bicycle and auto traffic. It isn't enough to just consider the aesthetic impacts of the initial project, decision makers must also take into account the possibility if not likelihood that attempts to render these facilities camouflaged or stealth can be easily defeated by future collocation with no ability or power to deny, so long as the added equipment stay within the maximum volume to render it as a collocation, which can not only raise the height, but length breadth and overall visual impact and appearance of the permitted original facility to which equipment such as more antennas and radios may be added as 6409 collocated changes. This can defeat the purpose of concealment..

Recently, in over 800 pieces of public comment were received against a highly visible rights of way facility immediately adjacent to homes and the historic LaPlaya hotel in Carmel with no CEQA review.. What was remarkable about this was not only the inappropriate placement, but also the fact that none of the residents contacted received a mailed or hand delivered notice which Verizon was required to do and attest to before the first Planning Commission hearing. Well known telecom lawyer Andrew Campanelli who has written and reviewed many wireless ordinances in California and elsewhere and who has been retained by the Carmel residents group for help with Carmel's ordinance, strongly recommends that the notice required by applicant be by certified Mail. This should be required in our ordinance as well.

I urge you to keep mock up's and site surveys required for rights of way applications. Most important of all are stated requirement that applicants seeking preemption from code provisions because of a claimed effective prohibition be required to not only provide "technically sufficient and conclusive proof" with "clear and convincing evidence" rather than the language in the draft which refers to their burden for preemption to be a mere "showing". Language regarding determination of whether applicants have met their burden should include studies of less invasive alternatives and make clear that decision makers will also to give weight to contradictory evidence provided by the public or independent field testing, that the applicant has not met its burden of proof.

Sincerely,

Susan Nine, City Council Wireless Subcommittee Member

From: [Ron Beck](#)
To: [Oncall Planning](#)
Subject: Wireless Ordinance 4/26 hearing
Date: Monday, April 25, 2022 10:45:20 PM

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1. We want required setbacks (distance) from homes and schools as well as between facilities (at least 300 feet or more). Calabasas, CA requires 1000 feet.
2. We want protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.
3. We want all applicants to be required to complete and submit a Site Survey for rights-of-way facilities.
4. We want mailed notices to residents and businesses of any non-emergency temporary cell towers within 500 ft or more describing their purpose and duration and nonuse of generators.
5. Applicants often make false claims of effective prohibition and coverage gaps to get around code requirements and into neighborhoods. The ordinance needs to require "technically sufficient and conclusive proof with verifiable clear and convincing evidence" to support their claims of an effective prohibition. The ordinance should give weight to customer evidence and testimony of reliable service, carrier's online and in-store coverage maps, dropped call data, study of alternative less invasive locations, drive test data, etc. instead of just taking the word of the applicant based on their confusing, unclear and easily-manipulated self-generated propagation maps using their "proprietary software."
6. We want only designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. We want all equipment that can be put underground to be there.
7. We want independent review of RF reports submitted by applicants.

Additionally, residents in the City of Carmel are asking their city to hire telecom expert Andrew Campanelli's law firm to review their own proposed ordinance to make sure it is as strong as possible. Campanelli's fee is very reasonable for this sort of review and Carmel residents are so eager to hire him that they want to pay for it if their city doesn't. We think Monterey should do the same to make sure our ordinance retains as much local control as is legally possible.

Thank you for all your efforts!

Stop Dangerous Residential Cell Towers

From: [Ron Beck](#)
To: [Oncall Planning](#)
Subject: Wireless Ordinance 4/26 hearing
Date: Monday, April 25, 2022 10:45:20 PM

You don't often get email from [REDACTED]. [Learn why this is important](#)

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Additionally, residents in the City of Carmel are asking their city to hire telecom expert Andrew Campanelli's law firm to review their own proposed ordinance to make sure it is as strong as possible. Campanelli's fee is very reasonable for this sort of review and Carmel residents are so eager to hire him that they want to pay for it if their city doesn't. We think Monterey should do the same to make sure our ordinance retains as much local control as is legally possible.

Thank you for all your efforts!

Stop Dangerous Residential Cell Towers

From: [chip dorey](#)
To: [Oncall Planning](#)
Subject: "Wireless Ordinance 4/26 hearing."
Date: Tuesday, April 26, 2022 9:35:31 AM

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Dear Planning Commission,

I am writing you in concern as a life long Monterey Resident that has already battled the situation of the 13 proposed cell towers. I am concerned the language in the city wireless ordinance is not strong enough to give enough local control to the residence that live and pay lots of hard earned money to live in this area. It is in your best interest to support these residence that live, work, and make this community what it is.

Below you will see a list of things that a paramount to be included in the city ordinance.

1. We want required setbacks (distance) from homes and schools as well as between facilities (at least 300 feet or more). Calabasas, CA requires 1000 feet.
2. We want protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.
3. We want all applicants to be required to complete and submit a Site Survey for rights-of-way facilities.
4. We want mailed notices to residents and businesses of any non-emergency temporary cell towers within 500 ft or more describing their purpose and duration and nonuse of generators.
5. Applicants often make false claims of effective prohibition and coverage gaps to get around code requirements and into neighborhoods. The ordinance needs to require "technically sufficient and conclusive proof with verifiable clear and convincing evidence" to support their claims of an effective prohibition. The ordinance should give weight to customer evidence and testimony of reliable service, carrier's online and in-store coverage maps, dropped call data, study of alternative less invasive locations, drive test data, etc. instead of just taking the word of the applicant based on their confusing, unclear and easily-manipulated self-generated propagation maps using their "proprietary software."
6. We want only designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. We want all equipment that can be put underground to be there.
7. We want independent review of RF reports submitted by applicants.

Thank you and I know you will do the right thing for the people you represent.

Sincerely,

Chip Dorey
[REDACTED]

From: [Kristin Dotterrer](#)
To: [Oncall Planning](#)
Subject: Apr. 26 PC Hearing: Item 3 Wireless Ordinance Update
Date: Tuesday, April 26, 2022 1:33:43 PM
Attachments: [PC letter 4.26.pdf](#)

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Dear City of Monterey Planning Commissioners:

Please see attached letter as my public comment on this agenda item for today's hearing.

Thank you very much.

Best regards, Kristin Dotterrer, Monterey Vista Resident

Kristin Dotterrer
Monterey Vista Neighborhood Homeowner/Resident

April 26, 2022

Re: Wireless Ordinance City Code Update

Dear Monterey Planning Commissioners Sandra Freeman, Hansen Reed, Michael Brassfield, Michael Dawson, Daniel Fletcher, Terry Latasa, and Stephen Millich:

In the years-long aftermath of Verizon's attempt to saturate our residential neighborhoods with ugly cell towers, the residents of Monterey Vista, Old Town, and Skyline are weary of the long process of updating the wireless ordinance. But in this moment please recognize that the impetus was a citizen-led effort to strengthen city code in order to retain as much local control of wireless facility placement as is legally permissible.

Please consider hiring the legal expert on reviewing wireless ordinances, Andrew Campanelli, who only charges a fraction of what it cost the city to consult with Van Eaton.

It is absolutely essential that the ordinance require minimum distance setbacks from homes and schools, and between facilities. The City of Calabasas requires a 1000 foot setback, for example. High-powered, high-frequency (small cell) wireless facilities do not belong in Monterey's residential areas.

This ordinance must also include the following:

- Protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.
- All applicants to be required to complete and submit a Site Survey for rights-of-way facilities.
- Mailed notices to residents and businesses of any non-emergency temporary cell towers within 500 ft or more describing their purpose and duration and nonuse of generators.
- Require "technically sufficient and conclusive proof with verifiable clear and convincing evidence" to support the applicant's claims of an effective prohibition. The ordinance should give weight to customer evidence and testimony of reliable service, carrier's online and in-store coverage maps, dropped call data, study of alternative less invasive locations, drive test data, etc. instead of just taking the word of the applicant based on their confusing, unclear and easily-manipulated self-generated propagation maps using their "proprietary software."
- Designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. We want all equipment that can be put underground to be there.
- Independent review of RF reports submitted by applicants.

Thank you for your consideration of this weighty issue. Sincerely, Kristin Dotterrer

From: [Kimberly Cole](#)
To: [Jennifer Cleary](#)
Subject: Fw: Draft Ordinance on Wireless Communication Facilities
Date: Tuesday, April 26, 2022 11:45:08 AM

From: Robert Evans [REDACTED]
Sent: Tuesday, April 26, 2022 11:37 AM
To: Kimberly Cole <cole@monterey.org>
Cc: Nat Rojanasathira <Rojanasathira@monterey.org>
Subject: Draft Ordinance on Wireless Communication Facilities

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Hi Kimberly,

I missed the Planning Commission Meeting yesterday but I thought the comments in following thread might be of interest in the long term. David participated in many of the meetings about wireless communications so I sought his input. I agree with David that Ordinances without enforcement are not very useful. I hope as the City recovers, so will enforcement.

Thanks for listening,

Bob

Begin forwarded message:

From: David Breedlove [REDACTED]
Subject: Re: April 26, 2022 Amended Planning Commission Meeting Agenda
Date: April 25, 2022 at 12:58:10 PM PDT
To: Robert Evans [REDACTED]

Have read through the draft ordinance. Without looking back to compare with the old one, I'd say this looks reasonable. No impact I can see on NM from the Airport/FAA stuff.

Main things I don't like:

1. This regulates **ONLY** wireless. Power, cable TV, and internet/fiber not included. Even though the bulk of **aesthetic impacts** are **cable**, and the bulk of **fire hazards** are **power**.
2. Where is the financial/structural guarantee that the City will **aggressively enforce** the ongoing maintenance. Look at the **cable junk** hanging on poles today, in clear violation of wording I nagged them into putting in the current ordinance. Need to get this whole topic out of Planning Commission arena; create

an enforcement arm of City government that doesn't lose interest once the permits are finished.

David Breedlove

[REDACTED]

From Moto G Power 2021

On Mon, Apr 25, 2022, 10:28 AM Robert Evans [REDACTED] wrote:

No problem! I can sympathize! I am curious about all the airport stuff and if any of that will impact New Monterey, like us sitting under the ILS approach.

Bob

> On Apr 24, 2022, at 9:07 PM, David Breedlove [REDACTED] wrote:

>

> Bob -- I'll try to wade through it tomorrow. You can no doubt understand why -- after two years and 109 hours of meetings -- I am less than enthusiastic about dealing with the City or the other participants in this ongoing nightmare/comedy.

>

> David.

From: [Bruce Hollenbeck](#)
To: [Oncall Planning](#)
Subject: Wireless Ordinance 2/26 hearing
Date: Tuesday, April 26, 2022 12:44:17 AM

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Please enter into the record

April 25, 2022

Planning Commissioners,

I really hope you will stand up for the City of Monterey and not update our codes to facilitate wireless carriers. I think the citizens of Monterey have made it very clear that we want to *strengthen* our codes to *protect* our residential neighborhoods and schools.

We desperately need to hire the most experienced cell tower attorney in the nation, Andrew Campinelli, to review our ordinance before we adopt it!

1. We want required setbacks (distance) from homes and schools as well as between facilities. Calabasas requires 1000 ft.
2. We want protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.
3. We want all applicants to be required to do and submit a Site Survey for rights of way facilities.
4. We want certified mail notices to residents and businesses of any non emergency temporary cell towers within 500 ft or more describing its purpose and duration and forbid use of gas generators.
5. Applicants often make false claims of effective prohibition and coverage gaps to get around code requirements and into neighborhoods. The ordinance needs to require "technically sufficient and conclusive proof with verifiable clear and convincing evidence" to support their claims of an effective prohibition and the ordinance should give weight to customer evidence and testimony of reliable service, carrier's published online and in store coverage maps, dropped call data, study of alternative less invasive locations, drive test data, etc. and not just take the word of the applicant based on confusing and unclear and easily manipulated self-generated propagation maps using proprietary software. Proof is what the Federal Communications Act and Ninth Circuit Case Law requires of a high order by clear and convincing evidence in order for applicant providers to get around local codes and ordinance requirements. The language in the ordinance needs to spell this out.
6. We want only designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. We want all equipment that can be put underground to be there. We want independent confirmation of rf reports submitted by applicants.

Thank you,
Christy Hollenbeck

Sent from my iPad

From: [REDACTED]
To: [Oncall Planning](#)
Subject: Wireless Facilities Ordinance Proposed Changes
Date: Monday, April 25, 2022 8:32:24 PM

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Raymond D. Meyers
[REDACTED]

April 25, 2022

Planning Commissioners:
Sandra Freeman, Chair
Hansen Reed, Vice Chair
Mike Brassfield, Mike Dawson, Daniel Fletcher
Terry Latasa and Steve Millich
580 Pacific Street
Monterey, CA 93940

Re: Planning Commission to Consider Recommending an Ordinance to the City Council Amending City Code Chapter 38 Article 17 Section 112.4 Related to Wireless Communication Facilities
Dear Commissioners:

All cellular wireless communication facilities emit EMF (electromagnetic radiation) that is always in some degree biologically dangerous – the degree that it is considered dangerous (requiring warning signs) is now determined by a combination of (ERP) effective radiated power (total energy expressed in radio watts times the gain of the antenna) and the distance you are from the antenna, due to the inverse square law of nature. The FCC safety limits must be in compliance with these standards and the applicants for wireless facilities must be able to provide substantial proof that their proposed facilities will be in compliance. Problem is that these facilities are yet to exist and models must be created to predict these potential future impacts.

Based upon my experiences in reviewing numerous applications submitted to the City of Monterey in the past for wireless communications facilities, I have found these applications to include numerous factual errors, misleading information and be woefully lacking detailed data and other information to substantiate the conclusions and statements of compliance to the FCC limits. Therefore, it is my belief that the proposed changes to City Code relating to the Wireless Communication Facilities Ordinance must include a provision to require the applicant to provide verification of methods – the actual measurements of distances from structures, antenna and building elevations, including topography maps, and both *azimuth* (horizontal) field radiation patterns, and *elevation* radiation (vertical) field radiation patterns (including consideration for antenna down tilt) in order to verify that the proposed facility is in compliance with the FCC maximum limits for safety.

I also would recommend the ordinance have a requirement for the city to have an independent radio engineer review and verify all the work that the applicant has submitted, just as any other building project permit requires now. Consider that, as the ordinance is now, it is much like a building permit plan check with no engineer's review. The city must hold public meetings and the residents are forced to appeal to the planning commissioners, who have no expertise in these matters. The city staff may have limited experience in radio engineering as well. The ordinance must specify that the applications be reviewed by a city appointed qualified radio engineer for both accuracy and verification of data.

In 2018, Extenet on behalf of Verizon Wireless, submitted to the City of Monterey, 13 applications for a densified network of cellular facilities in a very small section of the city. The city had a Public Outreach Meeting where I was able to ask questions about the sites and safety reports by the applicants. I was told by their radio engineer, that I could look up directly myself all the data that they used from the antenna and radio manufactures. He also told me that the software he used to model his data was unavailable to me, as it was proprietary.

I did as he advised and researched all the applications and data myself from each application and found that I was unable to verify his calculations, due to a critical mistake on the safety report. The antenna models specified were not as claimed (directional antenna, with direction at 260 degrees). The model specified in the safety report was actually an omnidirectional antenna which broadcasts at 360 degrees. This critical error was repeated on all 13 applications and without the correct model number, I could not verify the safety reports. Further, this pattern of errors was repeated over and over again on the Planning Commission Agenda Report and the CTC Technology and Energy Report.

Details matter in science and we rely on our public officials to know how to verify what they are allowing to be built and operated in our neighborhoods and place of business. Please consider the suggested changes I have outlined be included in the changes to the Wireless Facilities Ordinance.

Sincerely,

Raymond D. Meyers

A black rectangular redaction box covering the signature area.

Oncall Planning

From: Laurie Putnam [REDACTED]
Sent: Tuesday, April 26, 2022 3:16 PM
To: Oncall Planning
Cc: Kerry
Subject: Input on ordinance related to wireless communication facilities
Attachments: PutnamConboy_WirelessComments_26April2022.pdf

You don't often get email from [REDACTED] [Learn why this is important](#)

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Dear Planning Commission,

We would like to offer several comments on the revised ordinance based on our personal experience living across from a cell tower that was permitted, installed, and modified multiple times over the last 21 years. This is a freestanding cellular base station in a residential area that the city would now consider a nonpreferred location.

Our apologies for not submitting this input earlier. We only became aware of this meeting through last week's email newsletter from the city.

Our suggestions, in summary:

1. Consider abandoned or decommissioned *equipment* within a facility still in use.
2. Consider strengthening mechanisms for permit condition enforcement.
3. Clarify the status of permits issued before the revised ordinance.

We've elaborated on these suggestions in the attached PDF file.

Sincerely,

Laurie Putnam
Kerry Conboy
[REDACTED] Monterey

Input on ordinance related to wireless communication facilities

Putnam and Conboy

April 26, 2022

1. Consider abandoned or decommissioned *equipment* within a facility still in use.

Section H (ordinance p. 24) considers abandoned or decommissioned *facilities*. **The ordinance should also cover abandoned or discontinued equipment *within* a facility that remains in use.**

The operator of the cell tower in our neighborhood, for example, has told us that the bottom row of panels on the tower is no longer in use, but they don't bother to remove unused panels. It seems unnecessary and irresponsible to clutter our view with unused panels. A requirement to remove outdated and unused technology could be included in the ordinance.

2. Consider strengthening mechanisms for permit condition enforcement.

E3e (ordinance p. 7), the Project Description Letter of the Application Content, notes that "if the application is for a modification to an existing wireless communications facility, or a support structure, the application shall identify whether 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."

We would recommend requiring applicants to *fully document compliance with all previously established permit conditions* before granting any permits for further modifications.

L5, Maintenance of Elements Designed to Reduce Visual Impacts (ordinance p. 27), notes that "all concealment elements shall be maintained in a manner so that the concealment elements are not defeated."

L3, Ongoing Compliance (ordinance p. 26), notes that the "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."

We would suggest making regular compliance inspections *mandatory* to ensure that applicants are meeting all conditions of a permit, including the installation and maintenance of elements designed to reduce visual impacts.

In our neighborhood, the initial tower and subsequent modification permits were granted subject to many conditions. In multiple cases, the permit holder ignored the conditions for years, and it was left to the local residents to monitor the site and report noncompliance. This approach puts an undue burden on residents, who have no desire to police these sites and no power to enforce an ordinance. If the city does not have adequate staff to enforce codes, we need to find other ways to make sure permit conditions are met. The expense of monitoring and enforcing permit conditions should be passed along to the permit holder.

3. Clarify the status of permits issued before the new ordinance.

L2 (ordinance p. 26) Permit Term, notes that “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.”

Could the ordinance clarify whether the permit term applies to facilities and equipment permitted before an ordinance is revised? Are previously permitted sites exempt from later revisions to the ordinance, or does this revision mean that sites more than 10 years old can now be reviewed for compliance with the latest guidelines?

In our neighborhood, the 21-year-old cell tower would be unlikely to receive approval if the original permit were requested today: the tower is sited in a residential neighborhood, and the permit holder has been out of compliance on many permit conditions over the years. If the permit holder applies for further modifications, we would like to have the original permit reviewed.

From: [Leslie Rosenfeld](#)
To: [Oncall Planning](#)
Subject: Wireless Ordinance 4/26 hearing
Date: Tuesday, April 26, 2022 11:33:43 AM

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I am concerned about the proliferation of cell towers in our city. City residents should not be at the mercy of cell phone providers being able to put their facilities wherever they want without considering the needs and desires of the neighborhood. I would like to see required setbacks from homes and schools and all applicants should be required to submit a site survey. Applicants should also have to submit evidence of the actual need for additional antennae.

Leslie Rosenfeld

To Planning Commissioners:

The Monterey Wireless Ordinance must be strengthened to protect homes and schools. The current ordinance does not offer maximum protection to the residential zones or schools.

Here are examples on how the Monterey Planning Commission can strengthen its wireless ordinance:

1. We want required setbacks (distance) from homes and schools as well as between facilities (at least 300 feet or more) Calabasas requires 1000.
2. We want protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.
3. We want all applicants to be required to do and submit a Site Survey for rights of way facilities.
4. We want mailed notices to residents and businesses of any non-emergency temporary cell towers within 500 ft or more describing its purpose and duration and forbid use of gas generators.
5. Applicants often make false claims of effective prohibition and coverage gaps to get around code requirements and into neighborhoods. The ordinance needs to require “technically sufficient and conclusive proof with verifiable clear and convincing evidence” to support their claims of an effective prohibition and the ordinance should give weight to customer evidence and testimony of reliable service, carrier’s published online and in store coverage maps, dropped call data, study of alternative less invasive locations, drive test data, etc. and not just take the word of the applicant based on confusing and unclear and easily manipulated self-generated propagation maps using proprietary software. Proof is what the Federal Communications Act and Ninth Circuit Case Law requires of a high order by clear and convincing evidence in order for applicant providers to get around local codes and ordinance requirements. The language in the ordinance needs to spell this out.
6. We want only designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. We want all equipment that can be put underground to be there. We want independent confirmation of rf reports submitted by applicants.

Please do not leave Monterey neighborhoods and schools vulnerable,
Dr. Dylan J. Witt and Natasha Witt

From: [Tony Flores](#)
To: [Oncall Planning](#)
Subject: Stop Cell Towers Next to Monterey Homes
Date: Wednesday, April 27, 2022 7:58:38 PM

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Planning commission,

I spent 30 years in the telecom sector. I was fortunate that not only did I see major evolution in the communications world, but was actually instrumental in creating the progression that we have today. My companies were involved in the design and sales of complete communications systems, which we sold under private label to service providers worldwide. The design and development of my experience extends to the point of actually having created labs that self-certified for UL, CSA FCC etc. We stress tested and designed the products and had equipment such as anechoic chambers to measure RF emissions, amongst many types of tests. Needless to say, I have firsthand experience with emissions and radiation. In short "Transmission" is radiation, it's synonymous. Service providers will have their attorneys argue about safe levels, obviously for self-protection of their business model, but it's no different than arguing how much cigarette smoking is safe to smoke. It's harmful irrespective.

OK so the real issue at hand is our desire for services and willingness to live with harmful radiation as well as encroachment of the cell equipment of visual beauty that is around us.

To a first order "Property law gives a land owner the right to the **full use, and enjoyment of his property, without any substantial interference from others, under reasonable circumstances.** If a defendant hosts an unreasonably loud party during the work week, which disturbs the defendant's sleep, the defendant has acted negligently and created a nuisance." The same is true and much worse with radiation and visual hindrances of cell site equipment. As property owners we should have the right of full use and enjoyment of our properties and yes, we also would like the convenience of our technologies. Therefore we ask that there is a proper symbiosis with our local City, the Service Provider and the Homeowners.

Many of our neighbors have drafted the bullet items below, which in my experience are reasonable and doable. I think that cooperation from all can lead to a Win-Win-Win solution, assuming that each party is willing. Therefore I agree with the below and would like to express my request for the same.

1. We want required setbacks (distance) from homes and schools as well as between facilities (at least 300 feet or more). Calabasas, CA requires 1000 feet.
2. We want protective fall zones of at least 1.5 times the height of any monopole between facilities and any occupied structures.
3. We want all applicants to be required to complete and submit a Site Survey for rights-of-way facilities.
4. We want mailed notices to residents and businesses of any non-emergency temporary cell towers within 500 ft or more describing their purpose and duration and nonuse of generators.
5. Applicants often make false claims of effective prohibition and coverage gaps to get around code requirements

and into neighborhoods. The ordinance needs to require “technically sufficient and conclusive proof with verifiable clear and convincing evidence” to support their claims of an effective prohibition. The ordinance should give weight to customer evidence and testimony of reliable service, carrier’s online and in-store coverage maps, dropped call data, study of alternative less invasive locations, drive test data, etc. instead of just taking the word of the applicant based on their confusing, unclear and easily-manipulated self-generated propagation maps using their "proprietary software."

6. We want only designs that are stealth and do not decrease the character and beauty of our unique City and neighborhoods. We want all equipment that can be put underground to be there.

7. We want independent review of RF reports submitted by applicants.

Also would like Andrew Campanelli's law firm to review the proposed ordinance to make sure it is as strong as possible.

Thank you.

Tony Flores

[REDACTED]
[REDACTED]

Please deliver to All Planning Commissioners : Important Concern

Wed 5/4/2022 2:50 PM

1 attachments (29 KB)

Planning Commissioners. Important Concern.docx;

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May 4, 2022

To: All Planning Commissioners, City of Monterey

Sandra Freeman, Hansen Reed, Michael Brassfield, Michael Dawson, Daniel Fletcher, Terry Latasa, and Stephen Millich.

Dear Planning Commissioners of Monterey,

A few years has passed since we were present in that overly crowded City Council Chambers on March 15, 2018 with unhappy residents opposing the Verizon Cell Tower plan to threaten their neighborhood, homes, and schools. Now, with the distraction of the pandemic we are learning that the Wireless Ordinance originally drafted by the appointed Sub-Committee of selected neighbors has been re-written, changed, and weakened again with different language and will allow countless and powerful 5G cell antennas to be still installed close to our homes. With the Wireless Ordinance draft written as it is there is not even a setback of footage required on these radiation emitting antennas. .

Honorable Planning Commissioners, you must understand that the residents that fought so long for their right to choose in their own neighborhood would be completely outraged at the Wireless Ordinance being re-written, only to allow these 5G radiation antennas to be installed close to their homes, businesses, and schools.

You are aware of the vital issues, especially in our natural and sensitive environment being filled with electromagnetic waves of 5G high frequency RF radiation going 24/7. It is clear there is a threat as Hazard signs are posted on the never tested 5G radiation equipment, so it's clear why residents don't want them close to an occupied building. Also, remember what we covered before, that this radiation definitely generates extreme heat and the equipment, especially the antennas gets intently hot. Why would anyone living in an environmentally sensitive neighborhood want 5G antennas close to their homes or schools with the intense heat they generate? With global warming and intent fires on the rise why would we want these intently heated cell antennas peppered through our natural and vulnerable environment, close to our homes where we hope to sleep in safety? Remember, August 2020 was not so long ago with the lightning fire storm and Monterey was extremely fortunate to only experience a heavy blanket of other people's ashes.

This is what we the residents of Monterey are demanding for our protection and peace of mind as necessary in the Wireless Ordinance:

The Neighbors Request: We want the Wireless Ordinance to require a setback distance of these antennas from our homes and schools, and we would like to match what Calabasas, CA has demanded and achieved as a setback of 1,000 feet.

The Neighbors Request: Especially in our environmentally sensitive city of Monterey, we want all equipment that can be put underground to be placed there for aesthetics and fire prevention safety. We want only designs that are unnoticeable and concealed and do not ruin or decrease the beauty of our natural sanctuary.

The Neighbors Request: We want a protective fall zone from the height of any antenna mounted on a monopole to be at least 1.5 times the space height between the poles to an occupied building.

The Neighbors Request: For any temporary and non-emergency cell towers within 500 feet, the residents want mailed notices stating their time of use and their purpose.

The Neighbors Request: The Wireless Ordinance should give credibility to customer evidence of the residents and their testimony of reliable service, instead of just taking the word of the applicant based on their vague and confusing, statements of a coverage gap. For instance, here in Monterey one of the signers of this letter had Verizon coverage for many years and there has been absolutely no dropped calls or static or interference whatsoever and the phone reception is perfect.

The Neighbors Request: For rights-of-way facilities, we want applicants to submit for review a Site Survey for safety and consideration of the residents.

The Neighbors Request: We want an independent review of RF radiation reports submitted by the applicants.

We want to thank you Planning Commissioners for taking the extra care and time in considering the needs of the residents that live in Monterey, and for the extreme importance of the Wireless Ordinance to be written as strongly and clearly as possible to protect our health, our lives, our homes, and our unique and irreplaceable beautiful sanctuary. We remained strongly united.

Best to you for continued health and safety,

Dr. John Adamo
Catherine Adamo
Charisse Carlile

Monterey residents

Please deliver to All Planning Commissioners : Important Concern

Wed 5/4/2022 2:50 PM

1 attachments (29 KB)

Planning Commissioners. Important Concern.docx;

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Dr. John Adamo
Catherine Adamo
Charisse Carlile

Monterey residents

May 8, 2022

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Dr. John Adamo
Catherine Adamo
Charisse Carlile

Monterey residents

FW: Ordinance Definitions

[REDACTED]

Thu 5/19/2022 7:35 PM

To: Kimberly Cole <cole@monterey.org>

Cc: 'Pat Venza' [REDACTED] Hans Jannasch [REDACTED]

[NOTICE: This message originated outside of the City of Monterey mail system -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Kim: Please find attached the "Ordinance" definitions we recommend as either "Additions" or "Changes" to the current City Ordinance definitions. Note. If we do not designate Additions or Changes, then, the definitions in the City version shall remain as written and thusly incorporated in alpha order.

We suspect that this collation effort may be confusing at this time.

So, we recommend/request meeting with you in the near future and at your earliest convenience to ensure that perfectly valid City definitions and our recommended "Additions" and "Changes" are properly integrated, aligned, and accounted for.

Know that we look forward to your response, and to knowing how collectively we can further this process.

Very truly yours,

Jeana Jett

[REDACTED]

MVNA suggested changes to Wireless Ordinance

May 17th, 2022

Section	Comment add/del	Language change
38-112.4 A	add to end of section	<p>The City seeks to minimize, to the greatest extent possible, any unnecessary adverse impacts caused by the siting, placement, physical size, and/or unnecessary proliferation of, personal wireless service facilities, including, but not limited to, adverse aesthetic impacts, adverse impacts upon property values, adverse impacts upon the character of any surrounding properties and communities, adverse impacts upon historical and/or scenic properties and districts, and the exposure of persons and property to potential dangers such as structural failures, debris fall, and fire.</p> <p>The City also seeks to ensure that, in applying this section, the Planning Commission ("Commission") is vested with sufficient authority to require applicants to provide sufficient, accurate, and truthful probative evidence, to enable the Commission to render factual determinations consistent with both the provisions set forth herein below and the requirements of the TCA when rendering decisions upon such applications.</p> <p>To achieve the objectives stated herein, the City seeks to employ the "General Authority" preserved to it under Section 47 U.S.C.A. §332(c)(7)(A) of the TCA to the greatest extent which the United States Congress intended to preserve those powers to the City, while simultaneously complying with each of the substantive and procedural requirements set forth within the subsection 47 U.S.C.A. §332(c)(7)(B) of the TCA.</p>
38-112.4 D2	Comment	<p>This is creating a liability situation for the City, there are no height limits, no notification requirement (was removed by staff) nor is there any reference to requiring a liability policy, no time limit, and ten days is too long of a removal period. These towers can have significant visual and other impacts. Notification of surrounding properties should be required to be done by applicant, not City staff (restore subcommittee language regarding notification). No mention of required RF reports. Temporary cell towers only need be allowed for emergency purposes, not private events. We have not seen in any other ordinances that allow for private temporary cell towers. We are opposed to including this provision. Every carrier would have to be allowed to install if one is. There is no bond requirement to assure compliance.</p>

38-112.4 E3 after e	add	<p>A Drawn-To-Scale Depiction</p> <p>The applicant shall submit drawn-to-scale depictions of its proposed wireless support structure and all associated equipment to be mounted thereon, or to be installed as part of such facility, which shall clearly and concisely depict all equipment and the measurements of same, to enable the Director to ascertain whether the proposed facility would qualify as a small wireless facility as defined under this Chapter. If the applicant claims that its proposed installation qualifies as a small wireless facility within this Chapter, the drawn-to-scale depiction shall include complete calculations for all of the antennas and equipment of which the facility will be comprised, depicting that, when completed, the installation and equipment will meet the physical size limitations which enable the facility to qualify as a small wireless facility.</p>
38-112.4 E3 after current h	add	<p>Site Survey.</p> <p>For any new wireless telecommunication facilities proposed to be located within the public right-of-way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer or surveyor. The survey shall identify and depict all existing boundaries, encroachments and other structures within two hundred fifty (250) feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks, and other street furniture; and (viii) existing trees, oak trees, planters and other landscaping features;”</p>
38-112.4 E3I	remove	<p>Photographs and Photo Simulations. Accurate color photographs 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.</p>

"	replace with	<p>Visual Impact Analysis</p> <p>A completed visual impact analysis, which, at a minimum, shall include the following:</p> <p>(a) Small Wireless Facilities</p> <p>For applications seeking approval for the installation of a small wireless facility, the applicant shall provide a visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.</p> <p>(b) Telecommunications Towers and Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility</p> <p>For applications seeking approval for the installation of a telecommunications tower or a personal wireless service facility that does not meet the definition of a small wireless facility, the applicant shall provide:</p> <p>(i) A "Zone of Visibility Map" to determine locations from where the new facility will be seen.</p> <p>(ii) A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of</p> <p>(Restore deleted windoad study language adopted by the study committee)</p> <p>Safety certification shall include a wind load analysis.</p>
38-112.4 E3n (Hazard Cert)	add after n (safety cert)	

38-112.4 E3q

modify

Combine following **City** and **Campanelli** to create strongest language.

Applicant shall submit a RF exposure compliance report prepared by a RF licensed 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 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.

An FCC compliance report, prepared by a licensed engineer, and certified under penalties of perjury, that the content thereof is true and accurate, wherein the licensed engineer shall certify that the proposed facility will be FCC compliant as of the time of its installation, meaning that the facility will not expose members of the general public to radiation levels that exceed the permissible radiation limits which the FCC has set.

38-112.4 E3u

add

A completed alternative site analysis of all potential less intrusive alternative sites which the applicant has considered, setting forth their respective locations, elevations, and suitability or unsuitability for remedying whatever specific wireless coverage needs the respective applicant or a specific Wireless Carrier is seeking to remedy by the installation of the new facility which is the subject of the respective application for a PWSF use permit. If, and to the extent that an applicant claims that a particular alternative site is unavailable, in that the owner of an alternative site is unwilling or unable to accommodate a wireless facility upon such potential alternative site, the applicant shall provide probative evidence of such unavailability, whether in the form of communications or such other form of evidence that reasonably establishes same.

The alternative site analysis shall contain:

- (a) an inventory of all existing tall structures and existing or approved communications towers within a two-mile radius of the proposed site.
- (b) a map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, the height of the structure and/or tower, and accessory buildings on the site of the inventoried location.
- (c) an outline of opportunities for shared use of an existing wireless facility as opposed to the installation of an entirely new facility.

38-112.4 E3v

add

Effective Prohibition Claims

The City is aware that applicants seeking approvals for the installation of new wireless Facilities often assert that federal law, and more specifically the TCA, prohibits the local government from denying their respective applications.

In doing so, they assert that their desired facility is "necessary" to remedy one or more significant gaps in a carrier's personal wireless service, and they proffer computer-generated propagation maps to establish the existence of such purported gaps.

The City is additionally aware that, in August 2020, driven by a concern that propagation maps created and submitted to the FCC by wireless carriers were inaccurate, the FCC caused its staff to perform actual drive tests, wherein the FCC staff performed 24,649 -tests, driving nearly ten thousand (10,000) miles through nine (9) states, with an additional 5,916 stationary tests conducted at 42 locations situated in nine (9) states.

At the conclusion of such testing, the FCC Staff determined that the accuracy of the propagation maps submitted to the FCC by the wireless carriers had ranged from as little as 16.2% accuracy to a maximum of 64.3% accuracy.

As a result, the FCC Staff recommended that the FCC no longer accept propagation maps from wireless carriers without supporting drive test data to establish their accuracy. A copy of the FCC Staffs 66-page report is made a part of this Chapter as per <https://docs.fcc.gov/public/attachments/DOC-361165A1.pdf>. 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.

"

remove

"

remove

Applicants who claim that denial would be a "prohibition" or "effective prohibition" are encouraged to address at least the following:

- 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.
- ii. 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 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.

"... v	remove	Current signal coverage, by providing maps showing existing coverage in the area to be serviced by the proposed facilities. 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.
38-112.4 E6 (Applications Available Online)	remove	Except where good cause has been shown, as determined by the Director,
"	remove	or as soon thereafter as practical
"	Comment	Mandatory and timely posting of all applications was important to all Sub Committee representatives to allow public scrutiny and study of all PWSF applications, especially in response to shortened shot clocks. This language was changed by the staff to provide exceptions which was counter to the intent of Sub Committee and interests of the public expressed at their Sub Committee meetings.
38-112.4 F4c	add	Small Wireless Facilities (a) Within Business and Industrial Districts the minimum setback shall be fifty (50) feet, unless the facility is being installed upon a pre-existing utility pole or other utility structure. (b) Within all residentially-zoned and other districts, all small wireless facilities shall be set back a minimum of 300 feet from any residential dwelling or structure, unless the facility is being installed upon a pre-existing utility pole or is being co-located upon a pre-existing personal wireless service facility. Cell Towers and all Personal Wireless Service Facilities that do not meet the definition of a Small Wireless Facility (a) Each proposed wireless personal service facility and personal wireless service facility structure, compound, and complex shall be located on a single lot and comply with applicable setback requirements. Adequate measures shall be taken to contain on-site all debris from tower failure and preserve the privacy of any adjoining residential properties. (b) Each lot containing a wireless personal service facility and personal wireless service facility structure, compound, and complex shall have the minimum area, shape, and frontage requirements generally prevailing for the zoning district where located and such additional land if necessary to meet the setback requirements of this section. (c) Cell towers and personal wireless service facilities that do not meet the definition of a small wireless facility, shall maintain a minimum setback of a distance equal to one hundred ten (110%)
"	remove	w

38-112.4 F7d	add before i.	A 1500 ft separation shall be maintained between wireless facilities within the PROW.
38-112.4 F7f	question	What are I, ii and iii
38-112.4 J1	add after "...38-159"	<p>upon each PWSF use permit, consistent with the procedures in §38-159), except the Planning Commission shall have authority to schedule such additional or more frequent public hearings as may be necessary to comply with the applicable shot clocks imposed upon the City and the Planning Commission under the requirements of the TCA.</p> <p>Required Public Notices</p> <p>The Planning Commission shall ensure that both the public and property owners whose properties might be adversely impacted by the installation of a wireless facility receive Notice of any public hearing pertaining to same and shall ensure that they are afforded an opportunity to be heard concerning same.</p> <p>Before the date scheduled for the public hearing, the Planning Commission shall cause to be published a</p> <p>"NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY"</p> <p>Each "Notice of Public Hearing for New Wireless Facility" shall state the name or names of the respective applicant or co-applicants, provide a brief description of the personal wireless facility for which the applicant seeks a special permit, and the date, time, and location of the hearing.</p> <p>Each "Notice of Public Hearing for New Wireless Facility" shall be published both: (a) once per week for two successive weeks in the official newspaper of the Cityscape and (b) by mailing copies of such notice to property owners, as provided for herein below. The face of each envelope containing the notices of the public hearing shall state, in all bold typeface, in all capital letters, in a</p>

38-112.4 M2 add after section 1 As disclosed upon the FCC's public internet website, personal wireless services facilities erected at any height under 200 feet are not required to be registered with the FCC.

Of even greater potential concern to the City is the fact that the FCC does not enforce the RF radiation limits codified within the CFR by either: (a) testing the actual radiation emissions of wireless Facilities either at the time of their installation or at any time thereafter, or (b) requiring their owners to test them. See relevant excerpts from the FCC' s public internet website. This means that when wireless Facilities are constructed and operated within the City, the FCC will have no idea where they are located and no means of determining, much less ensuring, that they are not exposing residents within the Town and/or the general public to Illegally Excessive levels of RF Radiation.

The City deems it to be of critical importance to the health, safety, and welfare of the City, its residents, and the public at large that personal wireless service facilities do not expose members of the general public to levels of RF radiation that exceed the limits which have been deemed safe by the FCC, and/or are imposed under CFR.

In accord with the same, the City enacts the following RF Radiation testing requirements and provisions set forth herein below.

No wireless telecommunications facility shall at any time be permitted to emit illegally excessive RF Radiation as defined in §, or to produce power densities that exceed the legally permissible

38-112.4 M2	add after section above	<p>Random RF Radiofrequency Testing</p> <p>At the operator's expense, the Town may retain an engineer to conduct random unannounced RF Radiation testing of such Facilities to ensure the facility's compliance with the limits codified within 47 CFR §1.1310(e)(1) et seq.</p> <p>The Town may cause such random testing to be conducted as often as the Town may deem appropriate. However, the Town may not require the owner and/or operator to pay for more than one test per facility per calendar year unless such testing reveals that one or more of the owner and/or operator's facilities are exceeding the limits codified within 47 CFR §1.1310(e)(1) et seq., in which case the Town shall be permitted to demand that the facility be brought into compliance with such limits, and to conduct additional tests to determine if, and when, the owner and/or operator thereafter brings the respective facility and/or facilities into compliance.</p> <p>If the Town at any time finds that there is good cause to believe that a personal wireless service facility and/or one or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Planning Board at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the Town for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.</p>
Additional comments	Annual Recertification	<p>(1) each active small cell installation is covered by liability insurance in the amount of \$2,000,000 per installation, naming the City as additional insured; and (2) each active installation has been inspected for safety and found to be in sound working condition and in compliance with all federal safety regulations concerning RF exposure limits. (see Americans for Responsible Technology Model Ordinance at - https://mdsafetech.files.wordpress.com/2019/07/model-ordinance-americans-for-responsible-technology-2019.pdf)</p>
	Public Rights-of-Way Facilities	<p>Right of way rules including a 1500 ft separation between wireless facilities</p> <p>A 1500' separation shall be required between wireless facilities.</p>
	Setbacks	<p>All wireless facilities should be 50 ft from any residence and should be 500 ft from any school.</p>


Max size	Maximum equipment volume including transformers, antennae and other boxed electronics on any single pole is limited to 10 cubic feet (eg. 1 large transformer). Any equipment larger than this needs to be undergrounded.
should/shall	All instances of "should" shall be replaced with "shall".

Fw: Ordinance Definitions

Kimberly Cole <cole@monterey.org>

Fri 5/20/2022 8:20 AM

To: Jennifer Cleary <cleary@monterey.org>

 2 attachments (82 KB)
definitions.xlsx; definitions.pdf;

Please upload to the PC Comments for 6/28. Thank you, Kim

From: [REDACTED]
Sent: Thursday, May 19, 2022 7:35 PM
To: Kimberly Cole <cole@monterey.org>
Cc: 'Pat Venza' [REDACTED]; [REDACTED]; Hans Jannasch
Subject: FW: Ordinance Definitions

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Kim: Please find attached the "Ordinance" definitions we recommend as either "Additions" or "Changes" to the current City Ordinance definitions. Note. If we do not designate Additions or Changes, then, the definitions in the City version shall remain as written and thusly incorporated in alpha order. We suspect that this collation effort may be confusing at this time. So, we recommend/request meeting with you in the near future and at your earliest convenience to ensure that perfectly valid City definitions and our recommended "Additions" and "Changes" are properly integrated, aligned, and accounted for. Know that we look forward to your response, and to knowing how collectively we can further this process.

Very truly yours,
Jeana Jett

[REDACTED]

MVNA Suggested Definitions

Comment add/delete	Language change
Add	Adequate Coverage means, as determined by the Planning Commission, that a specific wireless carrier's personal wireless service coverage is such that the vast majority of its customers can successfully use the carrier's personal wireless service the vast majority of the time, in the vast majority of the geographic locations within the City, that the success rate of using their devices exceeds 97%, and that any geographic gaps in a carrier's gaps in personal wireless services are not significant gaps, based upon such factors including, but not limited to, lack of significant physical size of the gap, whether the gap is located upon a lightly traveled or lightly occupied area, whether only a small number of customers are affected by the gap, and/or whether or not the carrier's customers are affected for only limited periods of time. A wireless carrier's coverage shall not be deemed inadequate simply because the frequency or frequencies at which its customers are using its services are not the most preferred frequency of the wireless carrier.
Change	Antenna means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals or electromagnetic waves for the provision of services, including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to, directional antennas, such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and strand-mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.
Change	Base Station means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.4000(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.4000 I(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.4000I(b)(1)(i)-(ii).
Add	Building-mounted means mounted to the side or facade, but not the roof, of a building or another structure such as a water tank, pump station, church steeple, freestanding sign, or similar structure.
Add	Cellular means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.
Add	City means City of Monterey.
Add	Collocation means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless telecommunication facility installed at a single site.
Add	DBM (dBm) means decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. Signal strengths are recorded in negative numbers, and can range from approximately -30 dBm to -110 dBm. The closer the number is to 0, the stronger the cell signal.
Add	Effective Prohibition means a finding by the Planning Commission that, based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence, and the appropriate weight which the Commission deems appropriate to afford same, an applicant has established that an identified wireless carrier does not have adequate coverage as defined hereinabove, but suffers from a significant gap in its personal wireless services within the City and that a proposed installation by that applicant would be the least intrusive means of remedying that gap, such that a denial of the application to install such facility would effectively prohibit the carrier from providing personal wireless services within the City. Any determination of whether an applicant has established, or failed to establish, both the existence of a significant gap and whether its proposed installation is the least intrusive means of remedying such gap, shall be based upon substantial evidence, as is hereinafter defined.
Change	Eligible Facilities Request means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.
Add	Facility means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.
Comment	Mock-up is out of alpha order.
Add	Notice of Effective Prohibition Conditions means a written notice which is required to be provided to the City at the time of the filing of any application, by all applicants at seeking any approval, of any type, for the siting, installation and/or construction of a PWSF, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, commission or body of the City, would constitute an "effective prohibition" within the meaning of the Telecommunications Act, and concomitantly, that a denial of their respective application or request would violate Section 47 U.S.C. §332(c)(7)(B)(i)(II) of the TCA.
Add	Personal Wireless Services means the same as defined in 47 U.S.C. § 332(c)(7)(Cxi), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
Change	Personal Wireless Service Facilities means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.
Add	Pole means a single shaft of wood, steel, concrete, or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of the Mill Valley Municipal Code.
Add	Probative Evidence means evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the Planning Commission, as the finder-of-fact in determining whether to grant or deny applications for PTSW use permits under this provision of the City Code.

Change	Public Right-of-Way or Right-of-Way means any public street, public way, public alley or public place, laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of the City.
Add	Reviewing Authority means the person or body who has the authority to review and either grant or deny a wireless telecommunications facility permit pursuant to this chapter.
Add	RF Radiation means radiofrequency radiation, that being electromagnetic radiation which is a combination of electric and magnetic fields that move through space as waves, and which can include both Non-Ionizing radiation and Ionizing radiation.
Change	Roof-top mounted means mounted directly on the roof of any building or structure, above the eave line of such building or structure.
Add	Shot Clock means the applicable period which is presumed to be a reasonable period within which the Town is generally required to issue a final decision upon an application seeking special exception approval for the installation or substantial modification of a personal wireless services facility or structure, to comply with Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA.
Add	Site means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.
Change	Small Wireless Facility means a personal wireless service facility that meets all of the following criteria: (a) The facility does not extend the height of an existing structure to a total cumulative height of more than fifty (50) feet, from ground level to the top of the structure and any equipment affixed thereto; (b) Each antenna associated with the deployment is no more than three (3) cubic feet in volume; (c) All wireless equipment associated with the facility, including any pre-existing equipment and any proposed new equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume; (d) The facility is not located on tribal land; and (e) The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1).
Add	Substantial Change means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location. 1. For towers outside the public rights-of-way, a substantial change occurs when: a) the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or b) the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or c) the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or d) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site. 2. For towers in the public rights-of-way and for all base stations, a substantial change occurs when: a) the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or b) the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or c) the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or d) the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or e) the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground. 3. In addition, for all towers and base stations wherever located, a substantial change occurs when: a) the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the zoning administrator; or b) the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section. The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012-the date that Congress passed Section 6409(a).
Add	Substantial Evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.
Add	Telecommunications Tower or Tower means a freestanding mast, pole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.
Change	Transmission Equipment means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(8), as may be amended, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
Add	Utility Pole means a pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

Fw: Ordinance definitions

Kimberly Cole <cole@monterey.org>

Fri 5/20/2022 9:37 AM

To: Jennifer Cleary <cleary@monterey.org>

From: [REDACTED]
Sent: Friday, May 20, 2022 9:35 AM
To: Kimberly Cole <cole@monterey.org>
Cc: [REDACTED]; 'Pat Venza' [REDACTED]; Hans Jannasch
[REDACTED]
Subject: Ordinance definitions

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Kim: We emphasize, the Definitions section is important to the general public's ability to understand the Ordinance and its complexities. Contractors, professionals in the field, etc. already know this information, but we want to ensure that we the public have access to definitions with regard to regulations and requirements cited in the body of the Ordinance.

Thanks so much, and if you wish to discuss further, please let us know.


Jeana Jett
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Change	Base Station means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.4000(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.4000 I(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.4000I(b)(1)(i)-(ii).
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Add	Collocation means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless telecommunication facility installed at a single site.
Add	DBM (dBm) means decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. Signal strengths are recorded in negative numbers, and can range from approximately -30 dBm to -110 dBm. The closer the number is to 0, the stronger the cell signal.
Add	Effective Prohibition means a finding by the Planning Commission that, based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence, and the appropriate weight which the Commission deems appropriate to afford same, an applicant has established that an identified wireless carrier does not have adequate coverage as defined hereinabove, but suffers from a significant gap in its personal wireless services within the City and that a proposed installation by that applicant would be the least intrusive means of remedying that gap, such that a denial of the application to install such facility would effectively prohibit the carrier from providing personal wireless services within the City. Any determination of whether an applicant has established, or failed to establish, both the existence of a significant gap and whether its proposed installation is the least intrusive means of remedying such gap, shall be based upon substantial evidence, as is hereinafter defined.
Change	Eligible Facilities Request means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.
Add	Facility means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.
Comment	Mock-up is out of alpha order.
Add	Notice of Effective Prohibition Conditions means a written notice which is required to be provided to the City at the time of the filing of any application, by all applicants at seeking any approval, of any type, for the siting, installation and/or construction of a PWSF, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, commission or body of the City, would constitute an "effective prohibition" within the meaning of the Telecommunications Act, and concomitantly, that a denial of their respective application or request would violate Section 47 U.S.C. § 332(c)(7)(B)(i)(II) of the TCA.
Add	Personal Wireless Services means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
Change	Personal Wireless Service Facilities means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.
Add	Pole means a single shaft of wood, steel, concrete, or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of the Mill Valley Municipal Code.
Add	Probative Evidence means evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the Planning Commission, as the finder-of-fact in determining whether to grant or deny applications for PWSF use permits under this provision of the City Code.

Change	Public Right-of-Way or Right-of-Way means any public street, public way, public alley or public place, laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of the City.
Add	Reviewing Authority means the person or body who has the authority to review and either grant or deny a wireless telecommunications facility permit pursuant to this chapter.
Add	RF Radiation means radiofrequency radiation, that being electromagnetic radiation which is a combination of electric and magnetic fields that move through space as waves, and which can include both Non-Ionizing radiation and Ionizing radiation.
Change	Roof-top mounted means mounted directly on the roof of any building or structure, above the eave line of such building or structure.
Add	Shot Clock means the applicable period which is presumed to be a reasonable period within which the Town is generally required to issue a final decision upon an application seeking special exception approval for the installation or substantial modification of a personal wireless services facility or structure, to comply with Section 47 U.S.C. § 332(c)(7)(B)(ii) of the TCA.
Add	Site means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.
Change	Small Wireless Facility means a personal wireless service facility that meets all of the following criteria: (a) The facility does not extend the height of an existing structure to a total cumulative height of more than fifty (50) feet, from ground level to the top of the structure and any equipment affixed thereto; (b) Each antenna associated with the deployment is no more than three (3) cubic feet in volume; (c) All wireless equipment associated with the facility, including any pre-existing equipment and any proposed new equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume; (d) The facility is not located on tribal land; and (e) The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR § 1.1310(E)(1).
Add	Substantial Change means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location. 1. For towers outside the public rights-of-way, a substantial change occurs when: a) the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or b) the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or c) the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or d) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site. 2. For towers in the public rights-of-way and for all base stations, a substantial change occurs when: a) the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or b) the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or c) the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or d) the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or e) the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground. 3. In addition, for all towers and base stations wherever located, a substantial change occurs when: a) the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the zoning administrator; or b) the proposed collocation or modification violates a provision of approval, provided however that the collocation need not comply with any provision of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section. The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012-the date that Congress passed Section 6409(a).
Add	Substantial Evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.
Add	Telecommunications Tower or Tower means a freestanding mast, pole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.
Change	Transmission Equipment means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(8), as may be amended, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communication services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
Add	Utility Pole means a pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

MVNA Suggested Definitions

Comment add/delete Language change

Add	Adequate Coverage means, as determined by the Planning Commission, that a specific wireless carrier's personal wireless service coverage is such that the vast majority of its customers can successfully use the carrier's personal wireless service the vast majority of the time, in the vast majority of the geographic locations within the City, that the success rate of using their devices exceeds 97%, and that any geographic gaps in a carrier's gaps in personal wireless services are not significant gaps, based upon such factors including, but not limited to, lack of significant physical size of the gap, whether the gap is located upon a lightly traveled or lightly occupied area, whether only a small number of customers are affected by the gap, and/or whether or not the carrier's customers are affected for only limited periods of time. A wireless carrier's coverage shall not be deemed inadequate simply because the frequency or frequencies at which its customers are using its services are not the most preferred frequency of the wireless carrier.
Change	Antenna means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals or electromagnetic waves for the provision of services, including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to, directional antennas, such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and strand-mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.
Change	Base Station means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R. § 1.4000(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.4000 I(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.4000I(b)(1)(i)-(ii).
Add	Building-mounted means mounted to the side or facade, but not the roof, of a building or another structure such as a water tank, pump station, church steeple, freestanding sign or similar structure.
Add	Cellular means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.
Add	City means City of Monterey.
Add	Collocation means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless telecommunication facility installed at a single site.
Add	DBM (dBm) means decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. Signal strengths are recorded in negative numbers and can range from approximately -30 dBm to -110 dBm. The closer the number is to 0 the stronger the cell signal.
Add	Effective Prohibition means a finding by the Planning Commission that, based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence, and the appropriate weight which the Commission deems appropriate to afford same, an applicant has established that an identified wireless carrier does not have adequate coverage as defined hereinabove, but suffers from a significant gap in its personal wireless services within the City and that a proposed installation by that applicant would be the least intrusive means of remedying that gap, such that a denial of the application to install such facility would effectively prohibit the carrier from providing personal wireless services within the City. Any determination of whether an applicant has established, or failed to establish, both the existence of a significant gap and whether its proposed installation is the least intrusive means of remedying such gap, shall be based upon substantial evidence, as is hereinafter defined.
Change	Eligible Facilities Request means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.
Add	Facility means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.
Comment	Mock-up is out of alpha order.
Add	Notice of Effective Prohibition Conditions means a written notice which is required to be provided to the City at the time of the filing of any application, by all applicants at seeking any approval, of any type, for the siting, installation and/or construction of a PWSF, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, commission or body of the City, would constitute an "effective prohibition" within the meaning of the Telecommunications Act, and concomitantly, that a denial of their respective application or request would violate Section 47 U.S.C. §332(c)(7)(B)(i)(II) of the TCA.
Add	Personal Wireless Services means the same as defined in 47 U.S.C. § 332(c)(7)(CXi), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.
Change	Personal Wireless Service Facilities means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.

Add	Pole means a single shaft of wood, steel, concrete, or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of the Mill Valley Municipal Code.
Add	Probative Evidence means evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the Planning Commission, as the finder-of-fact in determining whether to grant or deny applications for PWS use permits under this provision of the City Code
Change	Public Right-of-Way or Right-of-Way means any public street, public way, public alley or public place, laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, under the jurisdiction of the City.
Add	Reviewing Authority means the person or body who has the authority to review and either grant or deny a wireless telecommunications facility permit pursuant to this chapter.
Add	RF Radiation means radiofrequency radiation, that being electromagnetic radiation which is a combination of electric and magnetic fields that move through space as waves and which can include both Non-Ionizing radiation and Ionizing radiation.
Change	Roof-top mounted means mounted directly on the roof of any building or structure, above the eave line of such building or structure.
Add	Shot Clock means the applicable period which is presumed to be a reasonable period within which the Town is generally required to issue a final decision upon an application seeking special exception approval for the installation or substantial modification of a personal wireless services facility or structure, to comply with Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA.
Add	Site means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.
Change	Small Wireless Facility means a personal wireless service facility that meets all of the following criteria: (a) The facility does not extend the height of an existing structure to a total cumulative height of more than fifty (50) feet, from ground level to the top of the structure and any equipment affixed thereto; (b) Each antenna associated with the deployment is no more than three (3) cubic feet in volume; (c) All wireless equipment associated with the facility, including any pre-existing equipment and any proposed new equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume; (d) The facility is not located on tribal land; and (e) The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1) .
Add	Substantial Change means the same as defined by the FCC in 47 C.F.R. § 1.4000(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC's criteria and thresholds for a substantial change according to the wireless facility type and location. 1. For towers outside the public rights-of-way, a substantial change occurs when: a) the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or b) the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or c) the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or d) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site. 2. For towers in the public rights-of-way and for all base stations, a substantial change occurs when: a) the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or b) the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or c) the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or d) the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or e) the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on
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Add	Telecommunications Tower or Tower means a freestanding mast, pole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.
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Add	Utility Pole means a pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

Spreadsheet of MVNA Recommendations for 6/28 PC meeting input please distribute and enter into record.

susan nine [REDACTED]

Tue 6/28/2022 2:37 PM

To:

- Oncall Planning <planning@monterey.org>

📎 1 attachments (27 KB)

MVNASuggestions.xlsx;

[**NOTICE:** This message originated outside of the City of Monterey mail system -- **DO NOT CLICK** on links or open **attachments** unless you are sure the content is safe.]

Planning Commissioners:

Here are the recommendations given to Ms. Cole from MVNA for your consideration in case you did not receive them. They are not included in the Packet for today's meeting about the Wireless ordinance.

Yours truly,
Susan Nine

Sent from my iPad

Oncall Planning

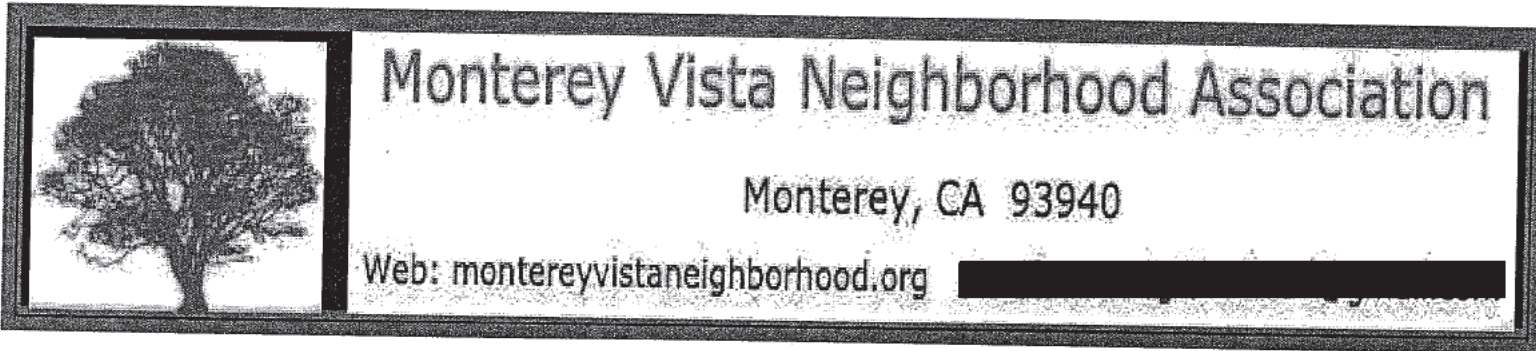
From: Jean Rasch [REDACTED]
Sent: Tuesday, June 28, 2022 2:24 PM
To: Oncall Planning; CMO-City Clerk Office Employees
Cc: [REDACTED]
Subject: Planning Commission Public Comments June 28 today 4:00
Attachments: LetterPC6-2022.pdf; MVNAsuggestions.xlsx; Carmel by the Sea Draft Ordinance 5.11.2022.pdf; tips-for-passing-strong-urgency-city-wireless-ordinance-3-pdf.pdf

[NOTICE: This message originated outside of the City of Monterey mail system -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Please share these with the Planning Commission for the 4:00 meeting

Sincerely,

Jean Rasch
President
Monterey Vista Neighborhood Association



To: Planning Commissioners
From: Monterey Vista Neighborhood Association (MVNA)
Subject: Draft Wireless Ordinance
Date: June 28, 2022


On May 17th, MVNA submitted to Kim Cole a spreadsheet of recommended additions/changes to the proposed wireless ordinance, as requested, for distribution to the Planning Commission. As we do not see a reference to this document in the agenda packet, we are submitting the MVNA spreadsheet of recommendations to you directly.

Some of these recommendations are from the Campanelli draft ordinance he prepared for Carmel residents. His ordinances are known to be the strongest enforceable ordinances adopted throughout the US.

We are also attaching a copy of the complete draft ordinance he authored for Carmel by the Sea. We request that you take these recommendations under consideration for inclusion into the Monterey ordinance. Doing so would be consistent with the City Council's stated goal of adopting the strongest and most protective ordinance that will maximize local control over wireless facility placements and deployment.

In addition, because the City is transitioning to a new consultant to replace Mr. Van Eaton, please note that Physicians For Safe Technology specifically recommends against using BB&K. Physicians for Safe Technology states: "Contact a trusted attorney who has the best interests of the residents. BB&K are very conservative and will generally not support any setbacks or restrictions on small cell towers." See attachment.

We suggest considering Jefferey Melching of Rutan and Tucker LLC, a prominent telecommunications attorney and City Attorney for Irvine. Mr. Melching co-authored the amicus brief for the California League of Cities in the pivotal CA Supreme Court Case upholding local regulation of wireless facilities, T-Mobile West LLC vs. City and County of San Francisco.

Thank you,

Jean Rasch, President, MVNA

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- §17.46.050 Shot Clock Tolls, Extensions
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§17.46 Personal Wireless Service Facilities

This Chapter §17.46 is intended to repeal and replace all previous versions of, and amendments to, Chapter §17.46 of the Carmel-by-the-Sea Municipal Code (“Municipal Code”), all of which are hereby repealed and replaced in their entirety by this Chapter §17.46 et. seq., as of the effective date hereof.

No Personal Wireless Service Facility (PWSF) shall be sited, constructed, reconstructed, installed, materially changed or altered, expanded, or used unless in conformity with this Chapter.

For the installation, construction, erection, relocation, substantial expansion, or material alteration of any PWSF, the City shall require a conditional use permit pursuant to the provisions of this Chapter, which shall be applied for in accord with the procedure set forth in Section §17.52.020, unless otherwise provided herein below.

The performance of maintenance, routine maintenance, in-kind replacement of components, and/or repairs (as defined herein) to an existing PWSF and/or existing personal wireless service equipment shall not require a conditional use permit.

Each application for a conditional use permit under this Chapter and each individual PWSF for which an application for a conditional use permit is submitted shall be considered based upon the individual characteristics of each respective installation at each proposed location as an individual case. In other words, each installation, at each proposed location, shall be reviewed and considered independently for its own characteristics and potential impacts, irrespective of whether the proposed facility is designed and intended to operate independently or whether the installation is designed and/or intended to operate jointly as part of a Distributed Antenna System.

§17.46.010 Purpose and Legislative Intent

The purpose of this section is to promote the health, safety, and general welfare of the residents of the City of Carmel-by-the-Sea, to preserve, conserve and enhance the unique natural beauty and irreplaceable natural resources of the City consistent with the general purpose of, and Section G7-1 of the City’s General Plan/Coastal Land Use Plan, while simultaneously providing standards for the safe provision, monitoring, and removal of cell towers and other personal wireless service facilities consistent with applicable federal, state and local laws and regulations.

Consistent with the balancing of interests which the United States Congress intended to embed with the federal Telecommunications Act of 1996 (hereinafter “the TCA”), Chapter 17.46 is intended to serve as a *Smart Planning Provision*, designed to achieve the four (4) simultaneous objectives of: (a) enabling personal wireless service providers to provide adequate personal

wireless services throughout the City so that City residents can enjoy the benefits of same, from any FCC-licensed wireless carrier from which they choose to obtain such services, while (b) minimizing the number of cell towers and/or other personal wireless service facilities needed to provide such coverage, (c) preventing, to the greatest extent reasonably practical, any unnecessary adverse impacts upon the City’s communities, residential areas, and individual homes, (d) subordinating business and commercial uses of property to the interests of preserving the predominantly residential nature of the City, consistent with Ordinance No. 96 adopted in 1929, and maintained through Title 17 of the Municipal Code, and (d) complying with all of the legal requirements which the TCA imposes upon the City, when the City receives, processes and determines applications seeking approvals for the siting, construction and operation of cell towers and/or other personal wireless service facilities.

The City seeks to minimize, to the greatest extent possible, any unnecessary adverse impacts caused by the siting, placement, physical size, and/or unnecessary proliferation of, personal wireless service facilities, including, but not limited to, adverse aesthetic impacts, adverse impacts upon property values, adverse impacts upon the character of any surrounding properties and communities, adverse impacts upon historical and/or scenic properties and districts, and the exposure of persons and property to potential dangers such as structural failures, ice fall, debris fall, and fire.

The City also seeks to ensure that, in applying this section, the Planning Commission (“Commission”) is vested with sufficient authority to require applicants to provide sufficient, accurate, and truthful probative evidence, to enable the Commission to render factual determinations consistent with both the provisions set forth herein below and the requirements of the TCA when rendering decisions upon such applications.

To achieve the objectives stated herein, the City seeks to employ the “General Authority” preserved to it under Section 47 U.S.C.A. §332(c)(7)(A) of the TCA to the greatest extent which the United States Congress intended to preserve those powers to the City, while simultaneously complying with each of the substantive and procedural requirements set forth within the subsection 47 U.S.C.A. §332(c)(7)(B) of the TCA.

§17.46.020 Definitions; Word Usage

For purposes of this article, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations, shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The definitions set forth herein shall supersede any definitions set forth within the Municipal Code, and the definitions set forth herein below shall control and apply to Chapter 17.46 and all subsections herein.

ACCESSORY FACILITY OR ACCESSORY STRUCTURE

A facility or structure serving or being used in conjunction with a personal wireless services facility or complex and located on the same property or lot as the personal wireless services facility or complex, or an immediately adjacent lot including, but not limited to, utility or transmission equipment storage sheds or cabinets.

ACHP

The Federal Advisory Council on Historic Preservation.

ADEQUATE COVERAGE

As determined by the Planning Commission, adequate coverage means that a specific wireless carrier's personal wireless service coverage is such that the vast majority of its customers can successfully use the carrier's personal wireless service the vast majority of the time, in the vast majority of the geographic locations within the City, that the success rate of using their devices exceeds 97%, and that any geographic gaps in a carrier's gaps in personal wireless services are not significant gaps, based upon such factors including, but not limited to, lack of significant physical size of the gap, whether the gap is located upon a lightly traveled or lightly occupied area, whether only a small number of customers are affected by the gap, and/or whether or not the carrier's customers are affected for only limited periods of time. A wireless carrier's coverage shall not be deemed inadequate simply because the frequency or frequencies at which its customers are using its services are not the most preferred frequency of the wireless carrier.

ANTENNA

An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location, for the provision of personal wireless service.

APPLICANT

Any individual, corporation, limited liability company, general partnership, limited partnership, estate, trust, joint-stock company, association of two or more persons having a joint common interest, or any other entity submitting an application for a conditional use permit, site plan approval, variance, building permit, and/or any other related approval, for the installation, operation and/or maintaining of one or more personal wireless service facilities.

APPLICATION

Refers to all necessary and required documentation and evidence that an applicant must submit to receive a conditional use permit, building permit, or other approval for personal wireless service facilities from the City.

CELL TOWER

A free-standing, guy-wired, or otherwise supported pole, tower, or other structure designed to support or employed to support, equipment and/or antennas used to provide personal wireless services, including, but not limited to, a pole, monopole, monopine, slim stick, lattice tower or other types of standing structures.

CEQ

The Council on Environmental Quality was established under NEPA.

CEQA

The California Environmental Quality Act, codified as Public Resources Code §21000, et seq., as amended.

CFR

The Code of Federal Regulations.

CITY

The City of Carmel-by-the-Sea.

COLOCATION and/or CO-LOCATE

To install, mount or add new or additional equipment to be used for the provision of personal wireless services to a pre-existing structure, facility, or complex which is already built and is currently being used to provide personal wireless services, by a different provider of such services, wireless carrier or site developer.

COMMISSION or PLANNING COMMISSION

The Planning Commission of the City of Carmel-by-the-Sea.

COMPLETE APPLICATION, COMPLETED APPLICATION

An application that contains all the necessary and required information, records, evidence, reports, and/or data necessary to enable an informed decision to be made with respect to an application. Where any information is provided pursuant to the terms of this Chapter and the Planning Commission or the City's expert or consultant or the Director determines, based upon information provided, that any additional, further or clarifying information is needed as to one or more aspects, then the application will be deemed incomplete until that further or clarifying information is provided to the satisfaction of the Planning Commission or the City's expert or consultant or the Director.

COMPLEX

The entire site or facility, including all structures and equipment, located at the site.

CONDITIONAL USE PERMIT

The official document or permit granted by the Planning Commission pursuant to which an applicant is allowed to file for and obtain a building permit to construct and use a personal wireless services facility, personal wireless service equipment, and/or any associated structures and/or equipment which are used to house, or be a part of, any such facility or complex, or to be used to provide personal wireless services.

DBM (dBm)

DBM stands for decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. Signal strengths are recorded in negative numbers, and can range from approximately -30 dBm to -110 dBm. The closer the number is to 0, the stronger the cell signal.

DEPLOYMENT

The placement, construction, or substantial modification of a personal wireless service facility.

DISTRIBUTED ANTENNA SYSTEM, DAS

A network of spatially separated antenna nodes connected to a common source via a transport medium that provides personal wireless service within a geographic area.

EFFECTIVE PROHIBITION

A finding by the Planning Commission that, based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence, and the appropriate weight which the Commission deems appropriate to afford same, an applicant has established that an identified wireless carrier does not have adequate coverage as defined hereinabove, but suffers from a significant gap in its personal wireless services within the City and that a proposed installation by that applicant would be the least intrusive means of remedying that gap, such that a denial of the application to install such facility would effectively prohibit the carrier from providing personal wireless services within the City. Any determination of whether an applicant has established, or failed to establish, both the existence of a significant gap and whether its proposed installation is the least intrusive means of remedying such gap, shall be based upon substantial evidence, as is hereinafter defined.

ELEVENTH HOUR SUBMISSIONS

An applicant's submission of new and/or additional materials in support of an application within 48 hours of the expiration of an applicable shot clock, or at an otherwise unreasonably short period of time before the expiration of the shot clock, making it impracticable for the Planning Commission to adequately review and consider such submissions due to their complexity, volume, or other factors, before the expiration of the shot clock.

ENURE

To operate or take effect. To serve to the use, benefit, or advantage of a person or party.

EPA

The United States Environmental Protection Agency.

FAA

The Federal Aviation Administration, or its duly designated and authorized successor agency.

FACILITY

A set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.

FCC

The Federal Communications Commission.

GENERAL POPULATION/UNCONTROLLED EXPOSURE LIMITS

The applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (ii), made applicable pursuant to 47 CFR §1.1310(e)(3).

HEIGHT

When referring to a tower, personal wireless service facility, or personal wireless service facility structure, the height shall mean the distance measured from the pre-existing grade level to the highest point on the tower, facility, or structure, including, but not limited to, any accessory, fitting, fitment, extension, addition, add-on, antenna, whip antenna, lightning rod or other types of lightning-protection devices attached to the top of the structure.

HISTORIC STRUCTURE

Any structure that is either listed on the National Register of Historic Places, or is eligible for inclusion in the National Register of Historic Places under 36 CFR §63.1.

ILLEGALLY EXCESSIVE RF RADIATION or ILLEGALLY EXCESSIVE RADIATION

RF radiation emissions at levels that exceed the legally permissible limits set forth within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

IN-KIND REPLACEMENT

The replacement of a malfunctioning component(s) with a properly functioning component of substantially the same weight, dimensions, and outward appearance.

MACROCELL

A cellular base station that typically sends and receives radio signals from large towers and antennas. These include traditionally recognized cell towers, which typically range from 50 to 199 feet in height.

MAINTENANCE or ROUTINE MAINTENANCE

Plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the personal wireless service facility. It is work necessary to assure that a wireless facility and/or telecommunications structure exists and operates: reliably and in a safe manner, presents no threat to persons or property, and remains compliant with the provisions of this chapter and FCC requirements.

MUNICIPAL CODE

The Municipal Code of the City of Carmel-by-the-Sea, as the term has been codified in Chapter 1.01, §1.01.010.

NECESSARY or NECESSITY or NEED

What is technologically required for the equipment to function as designed by the manufacturer, and that anything less will result in prohibiting the provision of service as intended and described in the narrative of the application. “Necessary” or “need” does not mean what may be desired, preferred, or the most cost-efficient approach and is not related to an applicant’s specific chosen design standards. Any situation involving a workable choice between or among alternatives or options is not a need or a necessity.

NEPA

The National Environmental Policy Act, 42 U.S.C. §4321 et seq.

NHPA

The National Historic Preservation Act, 54 U.S.C. 300101 et seq, and 36 CFR Part 800 et seq.

NODE, DAS NODE

A fixed antenna and related equipment installation that operates as part of a system of spatially separated antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services, as opposed to other types of personal wireless facilities, such as macrocells, which operate independently.

NOTICE ADDRESS

An address, which is required to be provided by an applicant at the time it submits an application for a conditional use permit, at which the City, Planning Commission, Director and/or any City representative can mail notice, and the mailing of any notice to such address by first-class mail shall constitute sufficient notice to any and all applicants, co-applicants, and/or their attorneys, to satisfy any notice requirements under this Chapter, as well as any notice requirements of any other local, state and/or federal law.

NOTICE OF INCOMPLETENESS, NOTICE OF INCOMPLETE APPLICATION

A written notice, mailed by first class mail, to an applicant seeking an approval for the installation of a PWSF, wherein the sender advises the applicant that its application is either

incomplete, the wrong type of application, or is otherwise defective, and setting for the reason or reasons why the application is incomplete and/or defective.

NOTICE OF EFFECTIVE PROHIBITION CONDITIONS

A written notice which is required to be provided to the City at the time of the filing of any application, by all applicants at seeking any approval, of any type, for the siting, installation and/or construction of a PWSF, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, board or body of the City, would constitute an “effective prohibition” within the meaning of the TCA, and concomitantly, that a denial of their respective application or request would violate Section 47 U.S.C. §332(c)(7)(B)(i)(II) of the TCA.

OCCUPATIONAL/CONTROLLED EXPOSURE LIMITS

The applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (i), made applicable pursuant to 47 CFR §1.1310(e)(2).

OHP

The California Office of Historic Preservation

PERSONAL WIRELESS SERVICE/PERSONAL WIRELESS SERVICES

Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, within the meaning of 47 U.S.C. §332(c)(7)(c)(i), and as defined therein.

PERSONAL WIRELESS SERVICE FACILITY, PERSONAL WIRELESS SERVICES FACILITY or PWSF

A facility or facilities used for the provision of personal wireless services, within the meaning of 47 U.S.C. §332(c)(7)(c)(ii). It means a specific location at which a structure that is designed or intended to be used to house or accommodate antennas or other transmitting or receiving equipment is located. This includes, without limitation, towers of all types and all kinds of support structures, including but not limited to buildings, church steeples, silos, water towers, signs, utility poles, or any other structure that is used or is proposed to be used as a telecommunications structure for the placement, installation and/or attachment of antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets, and other structures enabling the complex to provide personal wireless services.

PROBATIVE EVIDENCE

Evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the Planning Commission, as the finder-of-fact in determining whether to grant or deny applications for conditional use permits under this provision of the Municipal Code.

REPAIRS

The replacement or repair of any components of a wireless facility or complex where the replacement is substantially identical to the component or components being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without the addition, removal, or change of any of the physical or visually discernible components or aspects of a wireless facility or complex that will impose new visible intrusions of the facility or complex as originally permitted.

RF

Radiofrequency.

RF RADIATION

Radiofrequency radiation, that being electromagnetic radiation which is a combination of electric and magnetic fields that move through space as waves, and which can include both Non-Ionizing radiation and Ionizing radiation.

SECTION 106 REVIEW

A review under Section 106 of the National Historic Preservation Act.

SETBACK

For purposes of conditional use permit applications, a setback shall mean the distance between (a) any portion of a personal wireless facility and/or complex, including but not limited to any and all accessory facilities and/or structures, and (b) the exterior line of any parcel of real property or part thereof which is owned by, or leased by, an applicant seeking a conditional use permit to construct or install a personal wireless facility upon such real property or portion thereof. In the event that an applicant leases only a portion of real property owned by a landlord, the setback shall be measured from the facility to the line of that portion of the real property which is actually leased by the applicant, as opposed to the exterior lot line of the non-leased portion of the property owned by the landlord.

SHOT CLOCK

The applicable period which is presumed to be a reasonable period within which the City is generally required to issue a final decision upon an application seeking conditional use permit approval for the installation or substantial modification of a personal wireless services facility or structure, to comply with Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA.

SITE DEVELOPER or SITE DEVELOPERS

Individuals and/or entities engaged in the business of constructing wireless facilities and wireless facility infrastructure and leasing space and/or capacity upon, or use of, their facilities and/or infrastructure to *wireless carriers*. Unlike *wireless carriers*, site developers generally do not provide personal wireless services to end-use consumers.

SMALL CELL

A fixed cellular base station that typically sends and receives radio signals and which are mounted upon poles or support structures at substantially lower elevations than macrocell facilities.

SMALL WIRELESS FACILITY (SWF)

A personal wireless service facility that meets all of the following criteria

- (a) The facility does not extend the height of an existing structure to a total cumulative height of more than fifty (50) feet, from ground level to the top of the structure and any equipment affixed thereto;
- (b) Each antenna associated with the deployment is no more than three (3) cubic feet in volume;
- (c) All wireless equipment associated with the facility, including any pre-existing equipment and any proposed new equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume;
- (d) The facility is not located on tribal land; and
- (e) The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1).

STATE

The State of California.

STEALTH or STEALTH TECHNOLOGY

A design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and generally in the same area as the requested location of such personal wireless service facilities. This shall mean building the least visually and physically intrusive facility and complex under the facts and circumstances.

STRUCTURE

A pole, tower, base station, or other building, physical support of any form used for, or to be used for, the provision of personal wireless service.

SUBSTANTIAL EVIDENCE

Substantial Evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

TCA

The Telecommunications Act of 1996, 47 U.S.C. §332(c)

TOLLING or TOLLED

The pausing of the running of the time period permitted under the applicable shot clock for the respective type of application for a personal wireless services facility. Where a shot clock is

tolled because an application has been deemed incomplete and timely notice of incompleteness was mailed to the applicant, the submission of additional materials by the applicant to complete the application will end the tolling, thus causing the shot clock period to *resume* running, as opposed to causing the shot clock to begin running *anew*.

TOWER, TELECOMMUNICATIONS TOWER

Any structure designed primarily to support one or more antennas and/or equipment used or designed for receiving and/or transmitting a wireless signal.

UNDERTAKING

Any application for a conditional use permit seeking Commission approval for the installation of a personal wireless services facility licensed under the authority of the FCC shall constitute an undertaking within the meaning of NEPA, in accord with 42 CFR §137.289 and 36 CFR §800.16.

WIRELESS CARRIERS or CARRIER

Companies that provide Personal Wireless Services to end-use consumers.

ZONING LAW A/K/A THE ZONING ORDINANCE

The Carmel-by-the-Sea Zoning Ordinance and Coastal Zone Implementation Plan, as entitled under Chapter 17.02, §17.02.020.

§17.46.030 Application Types

There shall be four (4) specific types of applications for conditional use permits under this section,

which shall include Type I, Type II, Type III, and Type IV applications. It shall be the obligation of any applicant to explicitly and correctly identify which type of application they are filing.

1. Type I Applications Colocations of Small Wireless Facilities

Type I applications shall be limited to applications wherein an applicant seeks to co-locate a new small wireless facility, as defined in this Chapter, by installing new personal wireless service equipment upon an already existing small personal wireless services facility structure.

If the completed facility would still meet the physical limits and requirements to meet the definition

of a small wireless facility after the installation of the new equipment, then the application to install

such new equipment is a Type I application.

Type I applications for co-location of a small wireless facility in Residential District (R4), Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3),

to the extent an already existing small personal wireless services facility structure already exists in these districts, shall be a permitted use with a building permit.

Type I applications for co-location of a small wireless facility in all other districts delineated in Chapter 17.04 of the Zoning Ordinance shall require an applicant to obtain a conditional use permit from the Planning Commission.

2. Type II Applications Co-locations which do not meet the definition of a Small Wireless Facility.

Type II applications shall be limited to applications wherein an applicant is seeking to co-locate new personal wireless service equipment by installing such new wireless equipment upon an already existing personal wireless services facility structure, tower, or complex, which does not meet the definition of a small wireless facility or which will not meet the definition of a small wireless facility if and when the proposed new personal wireless service equipment is installed upon the existing facility and/or structure. Type II applications for co-location of personal wireless service facility equipment in Residential District (R4), Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3), to the extent an already existing personal wireless services facility structure already exists in these districts, shall either be a permitted use with a building permit, or a conditional use permit, as set forth below.

The co-location of personal wireless service facility equipment on an approved PWSF tower or PWSF structure on property within Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3) is a permitted use subject to the issuance of a building permit, provided that the Planning Commission determines that the proposed co-location will not:

- (a) Increase the approved height of the supporting structure by more than 15%;
- (b) Cause the original approved number of antennas to be exceeded by more than 50%;
- (c) Increase the original approved square footage of accessory buildings by more than 200 square feet;
- (d) Add new or additional microwave antenna dishes;
- (e) expand the footprint of said support structure; or
- (f) potentially cause significant adverse impacts on the existing support structure or the surrounding area.

If the Planning Commission cannot make the findings above, conditional use permit and site plan approvals will be required in accord with the provisions of the Zoning Ordinance, and the application shall be referred to the Planning Commission, where it will be subject to the terms and conditions specified in the requirements and standards in this section as part of the conditional use permit and site plan review process.

3. Type III Applications New Small Wireless Facilities

Within such Notice of Incompleteness, the Director shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Director shall toll the 60-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Director to remedy the issues the Director identified in the Notice of Incomplete Application, which he had mailed to the applicant. The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again, mail a Notice of Incompleteness within **ten (10) days** of the applicant having filed its supplemental or corrected materials to the City and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

2. Type II Applications Colocations on existing Towers, Structures or other
Facilities which do not meet the definition of a Small
Wireless Facility. Ninety (90) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Planning Commission shall issue a written decision upon a Type II application within ninety (90) days from the date when the City receives a Type II application.

Upon receipt of a Type II application, the Director shall review the application for completeness. If the Director determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within **thirty (30) days** of the City's receipt of the application, the Director, or his designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the Director shall advise the applicant, with reasonable clarity of the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Director shall toll the 90-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Director to remedy the issues the Director identified in the Notice of Incomplete Application, which he had mailed to the applicant.

The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again, mail a Notice of Incompleteness within ten (10) days of the applicant having filed its supplemental or corrected materials to the City. The shot clock shall once again be tolled, and the same procedure provided hereinabove shall be repeated.

3. Type III Applications New Small Wireless Facilities
 Ninety (90) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Planning Commission shall issue a written decision upon a Type III application within ninety (90) days from the date when the City receives a Type III application.

Upon receipt of a Type III application, the Director shall review the application for completeness. If the Director determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within **ten (10) days** of the City's receipt of the application, the Director, or his designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address which the applicant has provided.

Within such Notice of Incompleteness, the Director shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Director shall toll the 90-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Director to remedy the issues the Director identified in the Notice of Incomplete Application, which he had mailed to the applicant.

The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again, mail a Notice of Incompleteness within **ten (10) days** of the applicant having filed its supplemental or corrected materials to the City and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

4. Type IV Applications New Towers and All Other Wireless Facilities
 One Hundred Fifty (150) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Planning Commission shall issue a written decision upon a Type IV application within one hundred fifty (150) days from the date when the City receives a Type IV application.

Upon receipt of a Type IV application, the Director shall review the application for completeness. If the Director determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within **thirty (30) days** of the City's receipt of the application, the Director, or his designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the Director shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Director shall toll the 150-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Director to remedy the issues the Director identified in the Notice of Incomplete Application, which he had mailed to the applicant.

The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again, mail a Notice of Incompleteness within **ten (10) days** of the applicant having filed its supplemental or corrected materials to the City and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

§17.46.050 Shot Clock Tolls, Extensions & Reasonable Delay Periods

Consistent with the letter and intent of Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA, each of the shot clock periods set forth within Section §17.46.040 hereinabove shall generally be presumed to be sufficient periods within which the Planning Commission shall render decisions upon conditional use permit applications.

Notwithstanding same, the applicable shot clock periods may be tolled, extended by mutual agreement between any applicant and/or its representative and the Planning Commission, and the Planning Commission shall not be required to render its determination within the shot clock period, presumed to be reasonable for each type of application, where the processing of such application is reasonably delayed, as described hereinbelow.

1. Tolling of the Applicable Shot Clock Due

to Incompleteness and/or Applicant Error

As provided for within Section §17.46.040 hereinabove, in the event that the Director deems an application incomplete, the Director shall send a Notice of Incompleteness to the applicant to notify the applicant that its application is incomplete and/or contains material errors, and shall reasonably identify the missing information and/or documents and/or the error(s) in the application.

If the Director mails a Notice of Incompleteness as described hereinabove, the applicable shot clock shall automatically be tolled, meaning that the applicable shot clock period within which the Planning Commission is required to render a final decision upon the application shall immediately cease running, and shall not resume running, unless and until the City receives a responsive submission from the applicant.

If and when the applicant thereafter submits additional information in an effort to complete its application, or cure any identified defect(s), then the shot clock shall automatically *resume* running, but shall not be deemed to start running *anew*.

The applicable shot clock period shall, once again, be tolled if the Director thereafter provides a second notice that the application is still incomplete or defective, despite any additional submissions which have been received by the City, from the applicant, up to that point.

2. Shot Clock Extension by Mutual Agreement

The Planning Commission, in its sole discretion, shall be free to extend any applicable shot clock period by mutual agreement with any respective applicant. This discretion on the part of the Commission shall include the Commission's authority to request, at any time, and for any period of time the Planning Commission may deem reasonable or appropriate under the circumstances, consent from a respective applicant, to extend the applicable shot clock period, to enable the Commission, the applicant, or any relevant third party, to complete any type of Undertaking or task related to the review, analysis, processing, and determination of the particular application, which is then pending before the Commission, to the extent that any such Undertaking, task, or review is consistent with, or reasonably related to, compliance with any federal, state, or local law, and/or the requirements of any provision of the Municipal Code, including but not limited to this Chapter.

In response to any request by the Commission, the applicant, by its principal, agent, attorney, site acquisition agent, or other authorized representative can consent to any extension of any applicable shot clock, by affirmatively indicating its consent either in writing or by affirmatively indicating its consent on the record at any public hearing or public meeting. The Planning Commission shall be permitted to reasonably rely upon a representative of the applicant

indicating that they are authorized to grant such consent on behalf of the respective applicant, on whose behalf they have been addressing the Commission within the hearing process.

3. Reasonable Delay Extensions of Shot Clock Periods

The City recognizes that there may be situations wherein, due to circumstances beyond the control of the City and/or the Planning Commission, the review and issuance of a final decision upon a conditional use permit application for a personal wireless facility cannot reasonably be completed within the application shot clock periods delineated within Section §17.46.040 hereinabove.

If, despite the exercise of due diligence by the City and the Planning Commission, the determination regarding a specific application cannot reasonably be completed within the applicable shot clock period, the Commission shall be permitted to continue and complete its review, and issue its determination at a date beyond the expiration of the applicable period, if the delay of such final decision is due to circumstances including, but not limited to, those enumerated hereinbelow, each of which shall serve as a reasonable basis for a reasonable delay of the applicable shot clock period.

Reasonable delays which may constitute proper grounds for extending the presumed sufficient periods for rendering determinations under the applicable shot clock periods may include, but are not necessarily limited to, those set forth within Sections §17.46.150, §17.46.160, §17.46.170 and §17.46.180 herein below.

§17.46.060 Application Requirements

Applications for conditional use permits under this section shall be made to the Director, who shall initially determine whether or not the application is complete and/or free of defects upon receipt of the same.

If the Director determines that the application is defective or incomplete, they shall promptly mail a **Notice of Incompleteness** to the applicant, in accord with §17.46.040 to toll the applicable shot clock, to ensure that the City and the Planning Commission are afforded sufficient time to review and determine each respective application.

Each application shall include the following materials, the absence of any one of which listed hereinbelow, shall render the respective application incomplete:

1. Conditional use permit and site plan Applications

Completed applications for a conditional use permit and site plan that shall identify all applicants, co-applicants, site developer(s), and wireless carrier(s) on whose behalf the application is being submitted, as well as the property owner of the proposed site.

2. Filing Fees

The appropriate filing fees then being charged by the City for applications for conditional use applications, site plan applications, and other related applications.

3. A “Notice Address”

A “Notice Address,” that being a specific address to which the City, Planning Commission, and/or Director may mail any type of notice, and that the mailing of same to such address shall constitute sufficient notice to any applicant, co-applicant, and/or their attorney, to comply with any requirement under this section as well as any local, state and/or federal law

4. Proof of Authorization for Site Occupancy

Where an applicant is not the owner of the real property upon which it seeks to install its equipment or facility, they shall submit proof of authorization to occupy the site at issue. If the applicant is leasing all or a portion of real property upon which it intends to install its new facility or equipment, then the applicant shall provide a written copy of its lease with the owner of such property. The applicant may redact any financial terms contained within the lease, but it shall not redact any portion of the lease which details the amount of area leased nor the specific portion of the real property to which the applicant has obtained the right to occupy, access, or preclude others from entering.

Where an applicant is seeking to Co-Locate new equipment into an existing facility, it shall provide a copy of its written co-location agreement with the owner of such pre-existing facility, from which it may redact any financial terms.

5. A Drawn-To-Scale Depiction

The applicant shall submit drawn-to-scale depictions of its proposed wireless support structure and all associated equipment to be mounted thereon, or to be installed as part of such facility, which shall clearly and concisely depict all equipment and the measurements of same, to enable the Director to ascertain whether the proposed facility would qualify as a small wireless facility as defined under this Chapter.

If the applicant claims that its proposed installation qualifies as a small wireless facility within this Chapter, the drawn-to-scale depiction shall include complete calculations for all of the antennas and equipment of which the facility will be comprised, depicting that, when completed, the installation and equipment will meet the physical size limitations which enable the facility to qualify as a small wireless facility.

6. Site plan

The applicant shall submit a site plan and site plan application in accordance with the Zoning Ordinance, Chapter 17.52. The site plan shall show all existing and proposed structures and improvements, including antennas, roads, buildings, guy wires and anchors, parking, and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.

7. Engineer's Report

To the extent that an application proposes the co-location of new equipment onto an existing tower or facility, the applicant shall provide an engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure and explaining what modifications, if any, will be required in order to certify to the above.

8. Environmental Assessment Form

A completed environmental assessment form (EAF) and a completed visual EAF addendum.

9. Visual Impact Analysis

A completed visual impact analysis, which, at a minimum, shall include the following:

(a) Small Wireless Facilities

For applications seeking approval for the installation of a small wireless facility, the applicant shall provide a visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.

(b) Telecommunications Towers and Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility

For applications seeking approval for the installation of a telecommunications tower or a personal wireless service facility that does not meet the definition of a small wireless facility, the applicant shall provide:

- (i) A “Zone of Visibility Map” to determine locations from where the new facility will be seen.
- (ii) A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a “clear line of sight” between the tower location and their location.

The photographic images shall depict the height at which the proposed facility shall stand when completed, including all portions and proposed attachments to the facility, including, but not limited to, the main support structure, all antennas, transmitters, whip antennas, lightning rods, t-bars, crossbars, and cantilever attachments which shall, in whole or in part, be affixed to it, any and all surrounding equipment compound(s), fencing, cellular equipment cabinets, transformers, transformer vaults and/or cabinets, sector distribution boxes, ice bridges, backup generators, including but not limited to equipment boxes, switch boxes, backup generators, ice bridges, etc., to the extent that any of such compound and/or equipment will be visible from properties other than the property upon which the proposed tower and compound are to be installed.

The visual impact analysis shall include an assessment of alternative designs and color schemes, as well as an assessment of the visual impact of the proposed facility, taking into consideration any supporting structure which is to be constructed, as well as its base, guy wires, accessory structures, buildings, and overhead utility lines from abutting properties and streets.

10. Alternative Site Analysis

A completed alternative site analysis of all potential less intrusive alternative sites which the applicant has considered, setting forth their respective locations, elevations, and suitability or unsuitability for remedying whatever specific wireless coverage needs the respective applicant or a specific Wireless Carrier is seeking to remedy by the installation of the new facility which is the subject of the respective application for a conditional use permit.

If, and to the extent that an applicant claims that a particular alternative site is unavailable, in that the owner of an alternative site is unwilling or unable to accommodate a wireless facility upon such potential alternative site, the applicant shall provide probative evidence of such unavailability, whether in the form of communications or such other form of evidence that reasonably establishes same.

The alternative site analysis shall contain:

- (a) an inventory of all existing tall structures and existing or approved communications towers within a two-mile radius of the proposed site.
- (b) a map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, the height of the structure and/or tower, and accessory buildings on the site of the inventoried location.
- (c) an outline of opportunities for shared use of an existing wireless facility as opposed to the installation of an entirely new facility.
- (d) a demonstration of good-faith efforts to secure shared use from the owner of each potential existing tall structure and existing or approved communications tower, as well as documentation of the physical, technical, and/or financial reasons why shared usage is not practical in each case.

11. FCC Compliance Report

An FCC compliance report, prepared by a licensed engineer, and certified under penalties of perjury, that the content thereof is true and accurate, wherein the licensed engineer shall certify that the proposed facility will be FCC compliant as of the time of its installation, meaning that the facility will not expose members of the general public to radiation levels that exceed the permissible radiation limits which the FCC has set.

If it is anticipated that more than one carrier and/or user is to install transmitters into the facility that the FCC compliance report shall take into account anticipated exposure from all users on the facility and shall indicate whether or not the combined exposure levels will, or will not exceed the permissible General Population Exposure Limits, or alternatively, the occupational Exposure Limits, where applicable.

Such FCC Compliance Report shall provide the calculation or calculations with which the engineer determined the levels of RF radiation and/or emissions to which the facility will expose members of the general public.

On the cover page of the report, the report shall explicitly specify: (a) Whether the applicant and their engineer are claiming that the applicable FCC limits based upon which they are claiming FCC compliance are the *General Population Exposure Limits* or the *Occupational Exposure Limits*. If the applicant and/or their engineer are asserting that the Occupational Exposure Limits apply to the proposed installation, they shall detail a

factual basis as to why they claim that the higher set of limits is applicable, (b) The exact minimum distance factor, measured in feet, which the applicant's engineer used to calculate the level of radiation emissions to which the proposed facility will expose members of the general public. The minimum distance factor is the closest distance (i.e., the minimum distance) to which a member of the general public shall be able to gain access to the transmitting antennas mounted upon, or which shall be a part of, the proposed facility.

12. FCC License

A copy of any applicable Federal Communications Commission license possessed by any carrier named as an applicant, co-applicant, or whose equipment is proposed for installation as of the time the application is being filed with the City.

13. Effective Prohibition Claims

The City is aware that applicants seeking approvals for the installation of new wireless Facilities often assert that federal law, and more specifically the TCA, prohibits the local government from denying their respective applications.

In doing so, they assert that their desired facility is "necessary" to remedy one or more significant gaps in a carrier's personal wireless service, and they proffer computer-generated propagation maps to establish the existence of such purported gaps.

The City is additionally aware that, in August 2020, driven by a concern that propagation maps created and submitted to the FCC by wireless carriers were inaccurate, the FCC caused its staff to perform actual drive tests, wherein the FCC staff performed 24,649 tests, driving nearly ten thousand (10,000) miles through nine (9) states, with an additional 5,916 stationary tests conducted at 42 locations situated in nine (9) states.

At the conclusion of such testing, the FCC Staff determined that the accuracy of the propagation maps submitted to the FCC by the wireless carriers had ranged from as little as 16.2% accuracy to a maximum of 64.3% accuracy.¹

As a result, the FCC Staff recommended that the FCC no longer accept propagation maps from wireless carriers without supporting drive test data to establish their accuracy. The City considers it of critical import that applicants provide truthful, accurate, complete, and sufficiently reliable data to enable the Planning Commission to render determinations upon applications for new wireless Facilities consistent with both the requirements of this Chapter and the statutory requirements of the TCA.

¹ See FCC Staff Report, GN Docket No. 19-367, <https://docs.fcc.gov/public/attachments/DOC-361165A1.pdf>

Consistent with same, if, at the time of filing an application under this Chapter, an applicant intends to assert before the Planning Commission or the City that: (a) an identified wireless carrier suffers from a significant gap in its personal wireless services within the City, (b) that the applicant's proposed installation is the least intrusive means of remedying such gap in services, and/or (c) that under the circumstances pertaining to the application, a denial of the application by the Planning Commission would constitute an "effective prohibition" under Section 47 U.S.C. §332 the TCA, then, at the time of filing such application, the applicant shall be required to file a written statement which shall be entitled:

“Notice of Effective Prohibition Conditions”

If an applicant files a Notice of Effective Prohibition Conditions, then the applicant shall be required to submit Probative Evidence to enable the Planning Commission to reasonably determine: (a) whether or not the conditions alleged by the respective applicant exist, (b) whether there exists a significant gap or gaps in an identified wireless carrier's personal wireless services within the City, (c) the geographic locations of any such gaps, and (d) the geographic boundaries of such gaps, to enable the Planning Commission to determine whether granting the respective application would be consistent with the requirements of this Chapter and the legislative intent behind same, and whether or not federal law would require the Planning Commission to grant the respective application, even if it would otherwise violate the Municipal Code, including, but not limited to, this Chapter.

The additional materials which the applicant shall then be required to provide shall include the following:

(a) Drive Test Data and Maps

If, and to the extent that an applicant claims that a specific wireless carrier suffers from a significant gap in its personal wireless services within the City, the applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which the applicant is claiming such gap or gaps exist, for each frequency at which the carrier provides personal wireless services. The applicant shall provide the City and the Planning Commission with the actual drive test data recorded during such drive test, in a simple format which shall include, in table format:

- (i) the date and time for the test or test,
- (ii) the location, in longitude and latitude of each point at which signal strength was recorded and
- (iii) each signal strength recorded, measured in DBM, for each frequency.

Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers.

(iv) the applicant shall also submit drive test maps, depicting the actual signal strengths recorded during the actual drive test, for each frequency at which the carrier provides personal wireless services to its end-use customers.

If an applicant claims that it needs a “minimum” signal strength (measured in DBM) to remedy its gap or gaps in service, then for each frequency, the applicant shall provide three (3) signal strength coverage maps reflecting actual signal strengths in three (3) DBM bins, the first being at the alleged minimum signal strength, and two (2) additional three (3) DBM bin maps depicting signal strengths immediately below the alleged minimum signal strength claimed to be required.

By way of example, if the applicant claims that it needs a minimum signal strength of – 95 DBM to remedy its alleged gap in service, then the applicant shall provide maps depicting the geographic area where the gap is alleged to exist, showing the carrier’s coverage at – 95 to -98 DBM, -99 to -101 DBM and -102 to -104 DBM, for each frequency at which the carrier provides personal wireless services to its end-use customers.

(b) Denial of Service and/or Dropped Call Records

If and to the extent that an applicant claims that a specific wireless carrier suffers from a capacity deficiency, or a gap in service that renders the carrier incapable of providing adequate coverage of its personal wireless services within the City, then the applicant shall provide dropped call records and denial of service records evidencing the number and percentage of calls within which the carrier’s customers were unable to initiate, maintain and conclude the use of the carrier’s personal wireless services without actual loss of service, or interruption of service.

14. Estimate for Cost of Removal of Facility

A written estimate for the cost of the decommissioning, removal of the facility, including all equipment that comprises any portion or part of the facility, compound, and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein

15. Property Owner Consent & Liability Acknowledgement

A signed written consent from each owner of the subject real property upon which the respective applicant is seeking installation of its proposed personal wireless service facility, wherein the owner or owners, both authorize the applicant to file and pursue its conditional use permit application and acknowledge the potential landowner's responsibility, under section §17.46.110 for engineering, legal and other consulting fees incurred by the City.

§17.46.070 Design Standards

The following design standards shall apply to all applications for the siting, construction, maintenance, use, erection, movement, reconstruction, expansion, material change, or structural alteration of a personal wireless service facility.

1. Small Wireless Facilities

Small Wireless Facilities (SWF) shall be sited to inflict the minimum adverse impacts upon individual residential properties, and specifically, to minimize, to the greatest extent reasonably feasible, adverse aesthetic impacts upon residential homes or reductions in the property values of same.

SWFs attached to pre-existing wooden and non-wooden poles shall conform to the following criteria:

- (a) Proposed antenna and related equipment shall meet:
 - (i) design standards which the City may maintain and update as needed, provided that the City makes its designed standards publicly available for review by any potential applicant seeking approval for the installation of an SWF within the City, and
 - (ii) National Electric Safety Code (NESC) standards; and
 - (iii) National Electrical Code (NEC) standards.

- (b) Antennas and antenna equipment, including but not limited to radios, cables, associated shrouding, disconnect boxes, meters, microwaves, and conduit, which are mounted on poles, shall be mounted as close to the pole as technically feasible. They shall not be illuminated except as required by municipal, federal, or state authority, provided this shall not preclude deployment on a new or replacement street light.

- (c) Antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible.
 - Conduits and cabinets shall cover all cables and wiring to the extent that it is technically feasible if allowed by the pole owner. The number of conduits

shall be minimized to the extent technically feasible. To the extent technically feasible, antennas, equipment enclosures, and all ancillary equipment, boxes, and conduits shall match the approximate material and design of the surface of the pole or existing equipment on which they are attached.

SWFs attached to replacement poles and new poles shall conform to the criteria set forth herein above for SWF's attached to pre-existing wooden and non-wooden poles, but shall additionally conform to the following criteria:

(a) The City prefers that wireless providers and site developers install SWF's on existing or replacement poles instead of installing new poles, and accordingly, to obtain approval for the installation of a new pole, the provider shall be required to document that installation on an existing or replacement pole is not technically feasible.

(b) To the extent technically feasible, all replacement poles and new poles and pole-mounted antennas and equipment shall substantially conform to the material and design of the pole being replaced, or in the case of a new pole, it shall conform to the nearest adjacent pole or poles.

(c) The height of replacement poles and new poles shall conform with the height limitations applicable to the district within which the applicant seeks to install their proposed SWF unless the applicant obtains a variance to obtain relief from any such limitation(s).

2. Telecommunications Towers and Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility

The design of a proposed new telecommunications tower or personal wireless service facility shall comply with the following:

(a) The choice of design for installing a new personal wireless service facility or the substantial modification of an existing personal wireless service facility shall be chosen to minimize the potential adverse impacts that the new or expanded facility may, or is likely to, inflict upon nearby properties.

(b) Any new telecommunications tower shall be designed to accommodate future shared use by other communications providers.

(c) Unless specifically required by other regulations, a telecommunications tower shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.

(d) Notwithstanding the height restrictions listed elsewhere in this Chapter, the maximum height of any new telecommunications tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state, and/or federal law and/or regulation.

(e) Accessory Structures

(i) Accessory structures shall maximize the use of building materials, colors, and textures designed to blend with the natural surroundings. The use of camouflage communications towers may be required by the Planning Commission to blend the communications tower and/or its accessory structures further into the natural surroundings. "Camouflage" is defined as the use of materials incorporated into the communications tower design that give communications towers the appearance of tree branches and bark coatings, church steeples and crosses, sign structures, lighting structures, or other similar structures.

(ii) Accessory structures shall be designed to be architecturally similar and compatible with each other and shall be no more than 12 feet high. The buildings shall be used only for housing equipment related to the particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.

(iii) No portion of any telecommunications tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to the company name, phone numbers, banners, and streamers, except the following. A sign of no greater than two square feet indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone shall be posted adjacent to any entry gate. In addition, "no trespassing" or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of the City.

(f) Towers must be placed to minimize visual impacts. Applicants shall place towers on the side slope of the terrain so that, as much as possible, the top of the tower does not protrude over the ridgeline, as seen from public ways.

(g) Existing vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees shall take place on a site connected with an application made under this article prior to the approval of the conditional use permit use.

(h) Screening.

(i) Deciduous or evergreen tree plantings may be required to screen portions of the telecommunications tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas.

(ii) Where a site adjoins a residential property or public property, including streets, screening suitable in type, size and quantity shall be required by the Planning Commission.

(iii) The applicant shall demonstrate to the approving board that adequate measures have been taken to screen and abate site noises such as heating and ventilating units, air conditioners, and emergency power generators. telecommunications towers shall comply with all applicable sections of this chapter as it pertains to noise control and abatement.

(i) Lighting. Telecommunications towers shall not be lighted except where FAA/FCC required lighting of the telecommunications towers necessary. No exterior lighting shall spill from the site in an unnecessary manner.

(j) Access.

(a) Adequate emergency and service access shall be provided and maintained. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to the top of fill, the top of cuts, or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

(b) To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of telecommunications providers that might use the facility.

(k) Parking. Parking shall be provided to assure adequate emergency and service access. The Planning Commission shall determine the number of required spaces, but in no case shall the number of parking spaces be less than two spaces.

(l) Fencing. The telecommunications tower and any accessory structures shall be adequately enclosed by a fence, the design of which shall be approved by the Planning Commission. The Planning Commission may waive this requirement if the

applicant demonstrates that such measures are unnecessary to ensure the security of the facility.

§17.46.080 Planning Commission Initial Review

1. Initial Review

Upon the acceptance of an application that appears to be complete, the Director shall transmit the application to the Planning Commission for initial review.

The Planning Commission shall then conduct an initial review to consider whether or not to establish itself as Lead Agency pursuant to CEQA and/or NEPA and whether or not a use or area variance is required for the proposed application such that a referral for an application to the Planning Commission will be required to be made after the Planning Commission has declared itself to serve as Lead Agency and during the process of the Planning Commission considering a CEQA determination of environmental significance. That consideration of granting any required variances is done concurrently with the Planning Commission's review and consideration of conditional use permit and site plan approval.

The Planning Commission shall then conduct a public hearing upon each application, and render its determinations in accord with Sections §17.46.090 and §17.46.100 herein below, and shall ultimately determine whether or not to grant each applicant a conditional use permit and/or site plan approval.

§17.46.090 Hearings and Public Notice

1. Public Hearings

The Planning Commission shall conduct a public hearing upon each conditional use permit application, consistent with the procedures in §17.52.110, except the Planning Commission shall have authority to schedule such additional or more frequent public hearings as may be necessary to comply with the applicable shot clocks imposed upon the City and the Planning Commission under the requirements of the TCA.

2. Required Public Notices

The Planning Commission shall ensure that both the public and property owners whose properties might be adversely impacted by the installation of a wireless facility receive Notice of any public hearing pertaining to same and shall ensure that they are afforded an opportunity to be heard concerning same.

Before the date scheduled for the public hearing, the Planning Commission shall cause to be published a

“NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY”

Each “Notice of Public Hearing for New Wireless Facility” shall state the name or names of the respective applicant or co-applicants, provide a brief description of the personal wireless facility for which the applicant seeks a conditional use permit, and the date, time, and location of the hearing.

Each “Notice of Public Hearing for New Wireless Facility” shall be published both: (a) once per week for two successive weeks in the official newspaper of the City as provided in §17.52.110(D); and (b) by mailing copies of such notice to property owners, as provided for herein below.

The face of each envelope containing the notices of the public hearing shall state, in all bold typeface, in all capital letters, in a font size no smaller than 12 point, the words:

“NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY”

For Type I and Type III applications, notices of public hearing shall be mailed to all property owners whose real properties are situated within 300 feet of any property line of the real property upon which the applicant seeks to install its new wireless facility. If the site for the proposed facility is situated on, or adjacent to, a residential street containing twelve (12) houses or less, the Planning Commission shall additionally mail a copy of such notices to all homeowners on that street, even if their home is situated more than 300 feet from any property line of the property upon which the applicant proposes to install its facility.

For Type II and Type IV applications, the applicant shall mail such notices of public hearing to all property owners whose real properties are situated within 1,500 feet of any property line of the real property upon which the applicant seeks to install its new wireless facility.

The applicant shall additionally post a notice upon the proposed site advising the public of the public hearing.

Prior to the date of the hearing, the respective applicant shall file an Affidavit of Mailing, attesting to whom such notices were mailed by the applicant, and the content of the notices which were mailed to such recipients.

§17.46.100 Factual Determinations to be Rendered by the Planning Commission

1. Evidentiary Standards

In determining conditional use permit applications for personal wireless service facilities, the Planning Commission shall have sole discretion to determine what probative evidence it shall require each applicant to produce in support of its application to enable the Commission to make each of the factual determinations enumerated below.

By way of common examples of the types of evidence which the Commission may require an applicant to produce, are the following:

- (a) where an applicant is not the owner of the real property upon which it proposes to install a new wireless facility, the Commission can require the applicant to provide a copy of the applicant's lease with the property owner (including any schedules, property descriptions, appendices or other attachments), from which the applicant may censor or delete any financial terms which would be irrelevant to the factual issues which the Commission is required to determine;
- (b) where the Commission deems it appropriate, the Commission can require the applicant to perform what is commonly known as a "balloon test" and to require the applicant to publish reasonably sufficient advance public notice of same, to enable the Commission, property owners, and the community, an opportunity to assess the actual adverse aesthetic impact which the proposed facility is likely to inflict upon the nearby properties and surrounding community;
- (c) where the applicant asserts a claim that a proposed facility is necessary to remedy one or more existing significant gaps in an identified wireless carrier's personal wireless services, the Commission may require the applicant to provide drive-test generated coverage maps, as opposed to computer-generated coverage maps, for each frequency at which the carrier provides personal wireless services, to show signal strengths in bins of three (3) DBM each, to enable the Commission to assess the existence of such significant gaps accurately, and/or whether the carrier possesses adequate coverage within the geographic area which is the subject of the respective application.
- (d) where the applicant asserts that a potential less intrusive alternative location for a proposed facility is unavailable because the owner of the potential alternative site is incapable or unwilling to lease space upon such site to the applicant, the Commission may require the applicant to provide proof of such unwillingness in the form of communications to and from such property owner, and/or a sworn affidavit wherein a representative of the applicant affirms, under penalty of perjury, that they attempted to negotiate a lease with the property owner, what the material terms of any such offer to the property owner were, when the offer was tendered, and how, if at all, the property owner responded to such offer.

The Commission shall have sole discretion to determine, among other things, the relevance of any evidence presented, the probative value of any evidence presented, the credibility of any testimony provided, whether expert or otherwise, and the adequacy of any evidence presented.

The Commission shall not be required to accept, at face value, any unsupported factual claims asserted by an applicant but may require the production of evidence reasonably necessary to enable the Commission to determine the accuracy of any factual allegations asserted by each respective applicant.

Conclusory factual assertions by an applicant shall not be accepted as evidence by the Commission.

2. Factual Determinations

To decide applications for conditional use permits under this Section, the Planning Commission shall render factual determinations, which shall include two (2) specific types of factual determinations, as applicable.

First, the Commission shall render local zoning determinations according to Section (a) hereinbelow.

Then, if, and only if, an applicant asserts claims that:

(i) its proposed wireless facility or installation *is necessary to remedy a significant gap in personal wireless services for an explicitly identified wireless carrier*, and that its proposed installation *is the least intrusive means of remedying a specifically identified significant gap or gaps*, or

(ii) that a denial of their application would materially inhibit an identified wireless carrier from providing personal wireless services to its end-use customers,

then the Commission shall *additionally* render TCA determinations, in accord with Section (b) hereinbelow.

The Commission shall separately record each factual determination it makes in a written decision and shall reference, or make note of, the evidence based upon which it rendered each of its factual determinations.

Each factual determination made by the Commission shall be based upon Substantial Evidence.

For purposes of this provision, “Substantial Evidence” shall mean such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

Evidence which the Commission may consider shall include any evidence submitted in support of an application, and any evidence submitted by anyone opposing a respective application, whether such evidence is in written or photographic form, or whether it is in the form of testimony by any expert, or any person who has personal knowledge of the subject of their testimony. The Commission may, of course, additionally consider as evidence any information or knowledge which they, themselves, personally possess, and any documents, records or other evidence which is a matter of public record, irrespective of whether such public record is a record of the City, or is a record of or is maintained by, another federal, state and/or other governmental entity and/or agency which maintains records which are available for, or subject to, public review.

The requirements for specific factual determinations set forth below are intended to enure to the benefit of the City, its residents, and property owners, and not applicants.

If, and to the extent that the Planning Commission fails to render one or more of such determinations, that omission shall not constitute grounds upon which the respective applicant can seek to annul, reverse or modify any decision of the Planning Commission.

(a) Local Zoning Determinations

The Commission shall make the following factual determinations as to whether the application meets the requirements for granting a conditional use permit under this Chapter.

(i) Compliance with Chapter 17.64

Whether the proposed installation will meet each of the conditions and standards set forth within Chapter 17.64 in the absence of which the Planning Commission is not authorized to grant a conditional use permit.

(ii) Potential Adverse Aesthetic Impacts

Whether the proposed installation will inflict a significant adverse aesthetic impact upon properties that are located adjacent to, or in close proximity to, the proposed site, or any other properties situated in a manner that would sustain significant adverse aesthetic impacts by the installation of the proposed facility.

(iii) Potential Adverse Impacts Upon Real Estate Values

Whether the proposed installation will inflict a significant adverse impact upon the property values of properties that are located adjacent to, or in close proximity to the proposed site, or properties that are otherwise situated in a manner that would cause the proposed installation to inflict a significant adverse impact upon their value.

(iv) Potential Adverse Impact Upon the Character of the Surrounding Community

Whether the proposed installation will be incompatible with the use and/or character of properties located adjacent to or in close proximity to the proposed site or other properties situated in a manner that would cause the proposed installation to be incompatible with their respective use.

(v) Potential Adverse Impacts Upon Historic Properties or Historic Districts

Whether the proposed installation will be incompatible with and/or would have an adverse impact upon, or detract from the use and enjoyment of, and/or character of a historic property, historic site, and/or historic district, including but not limited to historic structures, properties and/or districts which are listed on, or are eligible for listing on, the National Register of Historic Places.

(vi) Potential Adverse Impacts Upon Ridgelines or Other Aesthetic Resources of The City

Whether the proposed installation will be incompatible with and/or would have an adverse aesthetic impact upon or detract from the use and enjoyment of, and/or character of, recognized aesthetic assets of the City including, but not limited to, scenic areas and/or scenic ridgelines, scenic areas, public parks, and/or any other traditionally or historically recognized valuable scenic assets of the City.

(vii) Sufficient Fall Zones

Whether the proposed installation shall have a sufficient fall zone and/or safe zone around the facility to afford the general public safety against the potential dangers of structural failure, icefall, debris fall, and fire.

(viii) Mitigation

Whether the applicant has mitigated the potential adverse impacts of the proposed facility to the greatest extent reasonably feasible. To determine mitigation efforts

on the part of the applicant, the mere fact that a less intrusive site, location, or design would cause an applicant to incur additional expense is not a reasonable justification for an application to have failed to propose reasonable mitigation measures.

If when applying the evidentiary standards set forth in subparagraph (a) hereinabove, the Planning Commission determines that the proposed facility would not meet the standards set forth within Chapter 17.64, or that the proposed facility would inflict one or more of the adverse impacts described hereinabove to such a substantial extent that granting the respective application would inflict upon the City and/or its citizens and/or property owners the types of adverse impacts which this provision was enacted to prevent, the Planning Commission shall deny the respective application for a conditional use permit unless the Commission additionally finds that a denial of the application would constitute an Effective Prohibition, as provided for in Sections (b) and (c) immediately hereinbelow.

(b) TCA Determinations

In cases within which an applicant has filed a “Notice of Effective Prohibition Conditions,” the Planning Commission shall make three (3) additional factual determinations, as listed herein below:

(i) Adequate Personal Wireless Services Coverage

Whether the specific wireless carrier identified by the applicant has “adequate coverage” (as defined in §17.46.010) within the geographic areas which the applicant claims to need its proposed new facility to serve

(ii) Significant Gap in Personal Wireless Services of an Identified Carrier

Whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that a specific wireless carrier suffers from a significant gap in its personal wireless services within the City.

In rendering such determination, the Commission shall consider factors including, but not necessarily limited to (a) whether the identified wireless carrier which is alleged to suffer from any significant gap in their personal wireless services has adequate service in its personal wireless services at any frequency being used by the carrier to provide personal wireless services to its end-use customers, (b) whether any such alleged gap is relatively large or small in geographic size, (c) whether the number of the carrier’s customers affected by the gap is relatively small or large, (d) whether or not the location of the gap is situated on a lightly

traveled road, or sparsely or densely occupied area, and/or (d) overall, whether the gap is relatively insignificant or otherwise relatively *de minimis*.

A significant gap cannot be established simply because the carrier's customers are currently using the carrier's personal wireless services, but the frequency at which the customers are using such services is not the frequency most desired by the carrier.

(iii) Least Intrusive Means of Remediating Gap(s) in Service

Whether the applicant has established based upon probative evidence provided by the applicant and/or its representative, that the installation of the proposed facility, at the specific site proposed by the applicant, and the specific portion of the site proposed by the applicant, and at the specific height proposed by the applicant is the least intrusive means of remediating whatever significant gap or gaps which the applicant has contemporaneously proved to exist as determined by the Planning Commission based upon any evidence in support of, and/or in opposition to, the subject application.

In rendering such determination, the Commission shall consider factors including, but not necessarily limited to: (a) whether the proposed site is the least intrusive location at which a facility to remedy an identified significant gap may be located, and the applicant has reasonably established a lack of potential alternative less intrusive sites and lack of sites available for co-location, (b) whether the specific location on the proposed portion of the selected site is the least intrusive portion of the site for the proposed installation (c) whether the height proposed for the facility is the minimum height actually necessary to remedy an established significant gap in service, (d) whether or not a pre-existing structure can be used to camouflage the facility and/or its antennas, (e) whether or not, as proposed, the installation mitigates adverse impacts to the greatest extent reasonably feasible, through the employ of Stealth design, screening, use of color, noise mitigation measures, etc., and/or (f) overall whether or not there is a feasible alternative to remedy the gap through alternative, less intrusive substitute installations, such as the installation of multiple shorter installation, instead of a single microcell facility.

(c) Finding of Effective Prohibition or Lack of Effective Prohibition

If, when applying the evidentiary standards set forth in subparagraph (a) hereinabove, the Planning Commission affirmatively determines that:

- (i) The identified wireless carrier has adequate coverage, or

(ii) the applicant has failed to establish either: (I) that an identified wireless carrier suffers from a significant gap(s) in its personal wireless services within the City, and/or (II) that the applicant has failed to establish that the proposed installation is the least intrusive means of remedying any such gap or gaps,

then the Planning Commission may deny the application pursuant to Section (a) hereinabove, and such denial shall not constitute an “Effective Prohibition.”

§17.46.110 Retention of Consultants

1. Use of Consultants

Where deemed reasonably necessary by the Planning Commission and/or the City, the Planning Commission and/or the City may retain the services of professional consultants to assist the Planning Commission in carrying out its duties in deciding conditional use permit applications for personal wireless service facilities. Where the Planning Commission uses the services of private engineers, attorneys, or other consultants for purposes of engineering, scientific, land use planning, environmental, legal, or similar professional reviews of the adequacy or substantive aspects of applications, or of issues raised during the course of review of applications for conditional use permit approvals of personal wireless service facilities, the applicant and landowner, if different, shall be jointly and severally responsible for payment of all the reasonable and necessary costs incurred by the City for such services. In no event shall that responsibility be greater than the actual cost to the City of such engineering, legal, or other consulting services.

2. Advance Deposits for Consultant Costs

The City and/or Planning Commission may require advance periodic monetary deposits held by the City on account of the applicant or landowner to secure the reimbursement of the City's consultant expenses. The City Council shall establish policies and procedures for the fixing of escrow deposits and the management of payment from them. After audit and approval of itemized vouchers by the City Administrator as to reasonableness and necessity of the consultant charges, the City may make payments from the deposited funds for engineering, legal or consultant services. Upon receiving a request by the applicant or landowner, the City shall supply copies of such vouchers to the applicant and/or landowner reasonably in advance of audit and approval, appropriately redacted where necessary to shield legally privileged communications between City officers or employees and the City's consultant. When it appears that there may be insufficient funds in the account established for the applicant or landowner by the City to pay current or anticipated vouchers, the City shall cause the applicant or landowner to deposit additional sums to meet such expenses or anticipated expenses in accordance with policies and

procedures established by the City Council. Consultants shall undertake no review on any matter scheduled before the Planning Commission until the initial escrow deposit has been made or requested replenishment of the escrow deposit has been made. No reviewing agency shall be obligated to proceed unless the applicant complies with escrow deposit requirements.

3. Reasonable Limit Upon Consultant Expenses

A consultant expense or part thereof is reasonable in amount if it bears a reasonable relationship to the customary fee charged by engineers, attorneys, or planners within the region for services performed on behalf of applicants or reviewing boards in connection with comparable applications for land use or development.

The City may also take into account any special conditions for considerations as it may deem relevant, including but not limited to the quality and timeliness of submissions on behalf of the applicant and the cooperation of the applicant and agents during the review process.

A consultant expense or part thereof is necessarily incurred if it was charged by the engineer, attorney or planner, or other consultants, for a service which was rendered to assist the Planning Commission in: (a) making factual determinations consistent with the goals of protecting or promoting of the health, safety or welfare of the City or its residents; (b) assessing potential adverse environmental impacts such as those identified within a CEQA process; (c) accessing potential adverse impacts to historic properties, structures and/or districts, and/or (d) assessing and determining factual issues relevant to Effective Prohibition claims, as addressed herein, to enable the Commission to best comply with the letter and intent of the provision of the TCA which is relevant thereto.

4. Audits Upon the Request of an Applicant

Upon request of the applicant or landowner, the City Council shall review and audit all vouchers and determine whether such engineering, legal and consulting expenses are reasonable in amount and necessarily incurred by the City in connection with the review and consideration of a conditional use permit application for personal wireless service facility. In the event of such a request, the applicant or landowner shall be entitled to be heard by the City Council on reasonable advance notice.

5. Liability for Consultant Expenses

For a land-use application to be complete, the applicant shall provide the written consent of all owners of the subject real property, both authorizing the applicant to file and pursue land development proposals and acknowledging potential landowner responsibility, under this section, for engineering, legal, and other consulting fees incurred by the City. If different from the applicant, the owner(s) of the subject real property shall be jointly and severally responsible for reimbursing the City for funds expended to compensate services

rendered to the City under this section by private engineers, attorneys, or other consultants. The applicant and the owner shall remain responsible for reimbursing the City for its consulting expenses, notwithstanding that the escrow account may be insufficient to cover such expenses. No conditional use permit, building permit or other permit shall be issued until reimbursement of costs and expenses determined by the City to be due. In the event of failure to reimburse the City for such fees, the following shall apply:

The City may seek recovery of unreimbursed engineering, legal, and consulting fees by court action in an appropriate jurisdiction, and the defendant(s) shall be responsible for the reasonable and necessary attorney's fees expended by the City in prosecuting such action.

Alternatively, and at the sole discretion of the City, a default in reimbursement of such engineering, legal and consulting fees expended by the City shall be remedied by charging such sums against the real property that is the subject of the conditional use permit application, by adding that charge to and making it a part of the next annual real property tax assessment roll of the City. Such charges shall be levied and collected simultaneously and in the same manner as City-assessed taxes and applied in reimbursing the fund from which the costs were defrayed for the engineering, legal and consulting fees. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the City Council to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.

§17.46.120 Setback Requirements

1. Small Wireless Facilities

(a) Within Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3), the minimum setback shall be fifty (50) feet, unless the facility is being installed upon a pre-existing utility pole or other utility structure.

(b) Within all residentially-zoned and other districts, all small wireless facilities shall be set back a minimum of three hundred (300) feet from any residential dwelling or structure, unless the facility is being installed upon a pre-existing utility pole or is being co-located upon a pre-existing personal wireless service facility.

2. Cell Towers and all Personal Wireless Service Facilities that do not meet the definition of a Small Wireless Facility

- (a) Each proposed wireless personal service facility and personal wireless service facility structure, compound, and complex shall be located on a single lot and comply with applicable setback requirements. Adequate measures shall be taken to contain on-site all icefall or debris from tower failure and preserve the privacy of any adjoining residential properties.
- (b) Each lot containing a wireless personal service facility and personal wireless service facility structure, compound, and complex shall have the minimum area, shape, and frontage requirements generally prevailing for the zoning district where located, in the Schedules of Regulations for Nonresidential and Residential Districts of this Chapter, and such additional land if necessary to meet the setback requirements of this section.
- (c) Cell towers and personal wireless service facilities that do not meet the definition of a small wireless facility, shall maintain a minimum setback of a distance equal to one hundred ten (110%) percent of the height of the facility, for front yard setbacks, rear yard setbacks and side yard setbacks, in all zoning districts.

§17.46.130 Height Restrictions

1. Small Wireless Facilities

Personal Wireless Service Facilities which meet the definition of a small wireless facility shall not exceed a maximum height of 60 feet above ground elevation in Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3), and shall not exceed a maximum height of 45 feet within all other zoning districts.

2. Non-Small Wireless Facilities

Personal Wireless Service Facilities which do not meet the definition of a small wireless facility shall not exceed a maximum height of 150 feet above ground elevation in Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3), and 100 feet above ground level in all other zoning districts.

§17.46.140 Use Restrictions and Variances

1. Use Restrictions by Application Type and Zoning District

Type I applications No Use Variance Required

Type I applications for co-location of a small wireless facility in Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3) shall be a permitted use with a building permit.

Type I applications for co-location of a small wireless facility in any residentially-zoned district shall be a conditional use permit use, requiring an applicant to obtain a conditional use permit from the Planning Commission.

Type II applications No Use Variance Required Unless Determined Otherwise

Applications for colocations of a wireless personal services facility, which do not meet the definition of a small wireless facility, shall be considered a conditional use permit in all Districts and shall require a conditional use permit and a building permit, but shall not require a use variance, unless the Planning Commission, in its sole discretion, determines that the proposed colocation will increase the overall intrusiveness of the site to a sufficient extent that its presence would no longer be compatible with the surrounding properties and/or surrounding community, in which case the Planning Commission shall issue a decision determining that the applicant shall be required to obtain a variance from the Planning Commission pursuant to §17.52.070 and §17.64.210 of the Municipal Code.

In rendering a determination of whether or not a variance shall be required, the Planning Commission shall consider, among other things: (a) the physical size, number, and potential intrusiveness of each new item of equipment to be installed as part of the proposed colocation, (b) the extent to which the installation of such equipment is to require or effectuate a significant physical expansion of the size or area of the facility or complex, (c) the extent to which the addition of such additional equipment will likely increase the adverse aesthetic impact of the facility, and/or any other potentially significant adverse impacts which are likely to cause a significant increase in the overall intrusiveness of the wireless facility, and/or its compound or complex, such that it will no longer be reasonably compatible with the use of nearby or surrounding properties and/or that its presence would be incompatible with the character and use of the nearby properties and/or surrounding community.

If the Planning Commission determines that a variance is required for a specific proposed facility, then the applicant shall be required to file an application for a variance to the Planning Commission. The Planning Commission shall thereafter have the authority to (a) determine that no variance is necessary, (b) grant the application for a variance, or (c) deny the application for a variance.

Type III Applications No Use Variance Required

Applications for installing new Small Wireless Facilities that meet the criteria for Type III applications shall be considered a conditional use permit use in all Districts. They shall require a conditional use permit and building permit but shall not require a variance, unless they do not meet the applicable setback requirements or height limitation.

Type IV Applications Variance Requirements

Type IV applications seeking approval for the installation of a new cell tower and/or all other wireless facilities that are not a small wireless facility shall be a permitted use in Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3), which shall not need a use variance, but shall require a conditional use permit, building permit, and area variance if the proposed facility does not meet the applicable height limitation and/or setback requirements.

Type IV applications seeking approval for the installation of a new cell tower and/or all other wireless facilities that are not a small wireless facility in all other districts shall be a prohibited use which shall require a use variance, conditional use permit, building permit, and area variance if the proposed installation does not meet the applicable height limitation and/or setback requirements.

§17.46.150 Environmental Impacts

If, and to the extent that, the Planning Commission determines a proposed installation bears the potential for a significant adverse impact upon the environment within the meaning of CEQA and/or the NEPA, then the Commission shall be expected to comply with the requirements of CEQA in determining both (a) the extent of adverse impacts upon the environment and/or historic properties and (b) what mitigation measures the applicant should be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites, structures and/or districts.

If a respective applicant fails to obtain a review from the CalEPA and/or NEPA and opinion letters from the CalEPA and the FCC pertaining to its proposed installation prior to a first public hearing before the Planning Commission for the respective application, then the Planning Commission may make direct requests to the CalEPA and the FCC for their review of the application. The Planning Commission may request OHP and the FCC's review and input in completing the statutorily-required environmental impact analysis pursuant to CEQA and NEPA.

In addition, the Planning Commission shall comply with the statutory requirements of CEQA to complete a CEQA review, make determinations of significance, and where appropriate, require the applicant to complete a draft environmental impact statement, and if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Planning Commission acts with reasonable diligence in completing its CEQA and NEPA review, if compliance with the statutory requirements for environmental review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

§17.46.160 Historic Site Impacts

The Planning Commission shall consider the potential adverse impacts of any proposed facility upon any historic site, district, or structure consistent with the requirements of the City's historic preservation law and general plan and CEQA.

If, and to the extent that, the Planning Commission determines that a proposed installation bears the potential for a significant adverse impact upon a historic site or a historic district within the meaning of CEQA and/or the NHPA (especially if the historic site at issue is listed upon the national register of historic places), then the Commission shall comply with the requirements of both CEQA and City law in determining both: (a) the extent of adverse impacts upon the historic properties, and (b) what mitigation measure might the applicant be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites, structures and/or district.

Should a respective applicant fail to obtain a OHP and/or a Section 106 review under NHPA, and opinion letters from OHP and the FCC pertaining to its proposed installation prior to a first public hearing before the Planning Commission for the respective application, then the Planning Commission shall make direct requests to OHP and the FCC for their review of the application. They shall request OHP and the FCC's review and input in completing the statutorily-required environmental/historic impact analysis pursuant to SEQRA and NHPA.

This request shall include, but not be limited to, a request to the FCC for a Section 106 review, as defined in this Chapter, as the City recognizes each application for a conditional use permit for the installation of a personal wireless services facility shall constitute "an undertaking" for purposes of compliance with the National Historic Preservation Act.

In addition, the Planning Commission shall comply with the statutory requirements of CEQA to complete a CEQA review, make determinations of significance, and where appropriate, require the applicant to complete a draft environmental impact statement, and if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Planning Commission acts with reasonable diligence in completing its CEQA and NHPA review, if compliance with the statutory requirements for historic preservation review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

§17.46.170 *Force Majeure*

In the event that the rendering of a final decision upon a conditional use permit application under this Chapter is delayed due to natural and/or unnatural events and/or forces which are not within the control of the City or the Planning Commission, such as the unavoidable delays experienced in government processes due to the COVID 19 pandemic, and/or mandatory compliance with any related federal or state government orders issued in relation thereto, such delays shall constitute reasonable delays which shall be recognized as acceptable grounds for extending the

period for review and the rendering of final determinations beyond the period allotted under the applicable shot clock.

§17.46.180 Eleventh Hour Submissions

In the event that an applicant tenders eleventh-hour submissions to the City and/or the Planning Commission in the form of (a) expert reports, (b) expert materials, and/or (c) materials which require a significant period for review due either to their complexity or the sheer volume of materials which an applicant has chosen to provide to the Commission at such late point in the proceedings, the Planning Commission shall be afforded a reasonable time to review such late-submitted materials.

If reasonably necessary, the Planning Commission shall be permitted to retain the services of an expert consultant to review any late-submitted expert reports which were provided to the Commission, even if such review or services extend beyond the applicable shot clock period, so long as the Commission completes such review and retains and secures such expert services within a reasonable period of time thereafter, and otherwise acts with reasonable diligence in completing its review and rendering its final decision.

§17.46.190 Prohibition Against Illegally Excessive Emissions and RF Radiation Testing

As disclosed upon the FCC's public internet website, personal wireless services facilities erected at any height under 200 feet are not required to be registered with the FCC.

Of even greater potential concern to the City is the fact that the FCC does not enforce the RF radiation limits codified within the CFR by either: (a) testing the actual radiation emissions of wireless Facilities either at the time of their installation or at any time thereafter, or (b) requiring their owners to test them. *See* relevant excerpts from the FCC's public internet website annexed as Appendix 2.

This means that when wireless Facilities are constructed and operated within the City, the FCC will have no idea where they are located and no means of determining, much less ensuring, that they are not exposing residents within the City and/or the general public to Illegally Excessive levels of RF Radiation.

The City deems it to be of critical importance to the health, safety, and welfare of the City, its residents, and the public at large that personal wireless service facilities do not expose members of the general public to levels of RF radiation that exceed the limits which have been deemed safe by the FCC, and/or are imposed under CFR.

In accord with the same, the City enacts the following RF Radiation testing requirements and provisions set forth herein below.

No wireless telecommunications facility shall at any time be permitted to emit illegally excessive RF Radiation as defined in §17.46.020, or to produce power densities that exceed the legally

permissible limits for electric and magnetic field strength and power density for transmitters, as codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

To ensure continuing compliance with such limits by all owners and/or operators of personal wireless service facilities within the City, all owners, and operators of personal wireless service facilities shall submit reports as required by this section.

As set forth hereinbelow, the City may additionally require, at the owner and/or operator's expense, independent verification of the results of any analysis set forth within any reports submitted to the City by an owner and/or operator.

If an operator of a personal wireless service facility fails to supply the required reports or fails to correct a violation of the legally permissible limits described hereinabove, following notification that their respective facility is believed to be exceeding such limits, any conditional use permit or other zoning approval granted by the Planning Commission or any other board or representative of the City is subject to modification or revocation by the Planning Commission following a public hearing.

1. Initial Certification of Compliance with Applicable RF Radiation Limits

Within forty-five (45) days of initial operation or a substantial modification of a personal wireless service facility, the owner and/or operator of each Telecommunications antenna shall submit to the Director a written certification by a licensed professional engineer, sworn to under penalties of perjury, that the facility's radio frequency emissions comply with the limits codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

The engineer shall measure the emissions of the approved facility, including the cumulative impact from other nearby Facilities, and determine if such emissions are within the limits described hereinabove.

A report of these measurements and the engineer's findings with respect to compliance with the FCC's Maximum Permissible Exposure (MPE) limits shall be submitted to the Director.

If the report shows that the facility does not comply with applicable limits, then the owner and/or operator shall cease operation of the facility until the facility is brought into compliance with such limits. Proof of compliance shall be a certification provided by the engineer who prepared the original report. The City may require, at the applicant's expense, independent verification of the results of the analysis.

2. Random RF Radiofrequency Testing

At the operator's expense, the City may retain an engineer to conduct random unannounced RF Radiation testing of such Facilities to ensure the facility's compliance with the limits codified within 47 CFR §1.1310(e)(1) et seq.

The City may cause such random testing to be conducted as often as the City may deem appropriate. However, the City may not require the owner and/or operator to pay for more than one test per facility per calendar year unless such testing reveals that one or more of the owner and/or operator's facilities are exceeding the limits codified within 47 CFR §1.1310(e)(1) et seq., in which case the City shall be permitted to demand that the facility be brought into compliance with such limits, and to conduct additional tests to determine if, and when, the owner and/or operator thereafter brings the respective facility and/or facilities into compliance.

If the City at any time finds that there is good cause to believe that a personal wireless service facility and/or one or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Planning Commission at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the City for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

Such hearing shall be duly noticed to both the public and the owner and/or operator of the respective facility or facilities at issue. The owner and/or operator shall be afforded not less than two (2) weeks written notice by first-class mail to its Notice Address.

At such hearing, the burden shall be on the City to show that, by a preponderance of the evidence, the Facilities emissions exceeded the permissible limits under 47 CFR §1.1310(e)(1) et seq.

In the event that the City establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment caused their failure to comply with the applicable limits through no fault on the part of the owner/operator.

If the owner and/or operator fails to establish same, the Planning Commission shall have the power to, and shall revoke any conditional use permit, variance, building permit, and/or any other form of zoning-related approval(s) which the Planning Commission, Director and/or any other representative of the City may have then issued to the owner and/or operator, for the respective facility.

In addition, the Planning Commission shall impose a fine of not less than \$1,000, nor more than \$5,000 for such violation of subparagraph 1. hereinabove, or, in the case of a second offense within less than five (5) years, a minimum fine of \$5,000, nor more than \$25,000.

In the event that an owner or operator of one or more personal wireless service facilities is found to violate subparagraph 1. hereinabove, three or more times within any five (5) year period, then in addition to revoking any zoning approvals for the facilities which were violating the limits codified in 47 CFR §1.1310(e)(1) et seq., the Planning Commission shall render a determination within which it shall deem the owner/operator prohibited from filing any applications for any new wireless personal services facilities within the City for a period of five (5) years.

§17.46.200 Bond Requirements, Removal of Abandoned Facilities and Reclamation

1. Bond Requirement

At, or prior to the filing of an application for a conditional use permit for the installation of a new personal wireless service facility, each respective applicant shall provide a written estimate for the cost of the decommissioning and removal of the facility, including all equipment that comprises any portion or part of the facility, compound and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein. The Planning Commission's engineer shall review this estimate.

Upon receiving a conditional use permit approval from the Planning Commission, and a building permit, prior to the commencement of installation and/or construction of such facility or any part thereof, the applicant shall file with the City a bond for a length of no less than three years in an amount equal to or exceeding the estimate of the cost of removal of the facility and all associated structures, fencing, power supply, and other appurtenances connected with the facility. The bond must be provided within thirty (30) days of the approval date and before any installation or construction begins.

Replacement bonds must be provided ninety (90) days prior to the expiration of any previous bond.

At any time, the City has good cause to question the sufficiency of the bond at the end of any three-year period, the owner and/or operator of the facility, upon request by the City, shall provide an updated estimate and bond in the appropriate amount.

Failure to keep the bonds in effect is cause for removal of the facility at the owner's expense. A separate bond will be required for each facility, regardless of the number of owners or the location.

2. Removal of Abandoned Facilities

Any personal wireless service facility that is not operated or used for a continuous period of twelve (12) consecutive months shall be considered abandoned. At the owner's expense, the owner of said facility shall be required to remove the facility and all associated equipment buildings, power supply, fence, and other items associated with such facility, compound and/or complex, and permitted with, the facility.

If the facility is not removed within ninety (90) days, the bond secured by the facility owner shall be used to remove the facility and any accessory equipment and structures.

§17.46.210 ADA Accommodations

The City of Carmel By The Sea seeks to comply with the Americans With Disabilities Act, and shall comply with same in the event that any person who is disabled within the meaning of the Act seeks a reasonable accommodation, to the extent that they are entitled to same under the Act.

§17.46.220 General Provisions

1. Balancing of Interests

The City formally recognizes that, as has been interpreted by federal courts, when it enacted the TCA, Congress chose to preserve local zoning authority over decisions regarding the placement, construction, and modification of personal wireless facilities (47 U.S.C. §332(c)(7)(A)) subject only to the limitations set forth in subsection §332(c)(7)(b), consistent with the holding of the United States Court of Appeals in Sprint Spectrum L.P. v. Willoth, 176 F3d 630 (2nd Cir.1999) and its progeny, and the City has relied upon such federal courts' interpretations of the TCA in enacting this Chapter.

The City similarly embraces the federal courts' determinations that the TCA was created to effectuate a balancing between the interests of facilitating the growth of wireless telephone service nationally and maintaining local control over the siting of wireless personal services facilities, as the Court additionally articulated in Omnipoint Communications Inc. v. The City of White Plains, 430 F3d. 529 (2nd Cir. 2005). This includes preserving to local governments, including the City of Carmel-by-the-Sea, the power to deny applications for the installation of wireless personal services facilities, based upon traditional grounds of zoning denials, including, but not limited to, the potential adverse aesthetic impacts or a reduction in property values which the construction of any proposed structure may inflict upon nearby properties or the surrounding community.

This additionally includes the recognition that, under this balancing of interest test, "once an area is sufficiently serviced by a wireless service provider, the right to deny

applications (for new wireless facilities) becomes broader” Crown Castle NG East LLC v. The City of Hempstead, 2018 WL 6605857.

It is the intent of the City that this Chapter be applied in a manner consistent with the balancing of interests codified within the TCA.

Consistent with same, the City rejects and shall reject any current and/or future FCC interpretations of any provision of the TCA which are clearly inconsistent with, and/or are clearly contrary to, both the language of the TCA and binding decisions of the United States Court of Appeals and United States District Courts within this Circuit.

This includes a rejection of any FCC interpretations inconsistent with Willloth and any claims that the FCA legally prohibits the Planning Commission from denying a permit application, based solely upon a claim that an applicant desires the installation of its new facility for “densification” of its existing personal wireless services, or to offer a new service, irrespective of whether or not the carrier already possesses adequate coverage within the City, and irrespective of the potential adverse impact which the installation of such new facility or facilities would inflict upon the City, its property owners, citizens and/or communities.

2. Conflict With Federal or State Laws

To the extent that any provision of this Chapter is found to conflict with any applicable federal or State law, it is the intent of the City that the remaining portion of this Chapter which has not been found to conflict with such law be deemed to remain valid and in full force and effect.



Tips for Passing Strong Local Urgency Wireless Ordinance

Here is a list of items that may help you get an immediate response. Sample letters are below as well (from others who have done this)

To Do List

1) EDUCATE: Educate yourself on hazards, science, permits, city processes

* **Physicians for Safe Technology (PST) - Executive Summary-**

<https://mdsafetech.org/featured-page-one/join-mdsafetech-org/>

* **PST – Scientific Literature-** <https://mdsafetech.org> then go to scientific Literature Tab and scroll to area of the body or mechanism or NTP Study - you want to look at

***PST – Cell tower Health Effects** - <https://mdsafetech.org/cell-tower-health-effects/>

* **PST- Cell Towers and City Ordinances-** Has model ordinances and examples and what is important to include - <https://mdsafetech.org/cell-tower-and-city-ordinances/>

2) Meet with city officials about the permits, timing, if the permits valid. You can ask for all permits in process by filing a Freedom of Information Act request.

3) Contact a trusted attorney who has the best interests of the residents. B K and K are very conservative and will generally not support any setbacks or restrictions on small cell towers.

4) Also Visit

* <https://www.americansforresponsibletech.org> (ART)

* <https://www.saferemr.com>

* <https://ehtrust.org>

* <https://bioinitiative.org>

* <http://mystreetmychoice.com>

5) Form a small group and rapidly expand. Get others to be involved with different strengths- media, communications, engineers, doctors. Talk to experts as well if you can to help you. Knock on your neighbors doors

6) Meet with your local city council people

7) Create a neighborhood name or association for your group

8) Create Flyer to handout with information on 5G or small cells and your specific city issues (see EHTrust.org)

9) Create a petition on [change.org](https://www.change.org)

10) Have neighborhood meetings. Talk face to face. The Neighborhood email list can have trolls join and then derail the group with false information and call you hysterical to discredit you. This happens commonly.

Show a movie about RF that are available on Amazon now.

- Generation Zapped- <https://www.youtube.com/watch?v=h7R4gKs8Vil>
- Mobilize- https://www.youtube.com/watch?v=XBVJ05u_o5I

11) Create an email list to share information- Make a google group with your name i.e. town name- Neighbors Against Cell Towers – through google [groups.com](https://www.google.com/groups). Let people who have emailed you know you have added them to this group for updates, city council meeting dates and letters that need to be sent to city council members

EXAMPLE Letter to neighbors

NO CELL TOWERS NEXT TO OUR HOMES AND SCHOOLS!

1. Email City Council (city council @ _____) to quickly adopt an urgency ordinance with strict regulations for the installation, operation and maintenance of wireless telecommunication facilities such as Mill Valley's.

2. Sign the new [change.org](https://www.change.org) petition at _____. (example <http://chng.it/d5zqBsBBSm>)

3. Email local carrier proposing the cell towers - _____ against all cell projects next to our homes and schools

4. ATTEND the Date _____ City Council meeting at x:xx pm

12) Contact local media (even small newspapers) with a compelling story with one or more people. Get a good HOOK for reporter that would make headlines.

13) Attend council meetings, speak up and get to know council members

14) Get many people to attend city council meetings and fill up the seats

15) Keep organizing and work fast

67) Review other ordinances from a number of cities below and add these components and others such as notification requirements, annual monitoring requirements paid for by the telecom(see PST Cell towers and City Ordinances page as above) to make your city ordinance strong. See Mill Valley and Sonoma City Ordinance for strong ordinances.

Key Additions to Ordinance

1) **Location and configuration preferences** as did Mill Valley, Palos Verdes, Suisun City

2) **Right of way rules** including a 1500 ft separation between wireless facilities as did Palos Verdes, Petaluma, Mill Valley and Suisun City

3) **Buffer from residents and schools-** 500 ft (or more- 1500 feet if you wish) buffer from residencies (or schools) as did Petaluma and Suisun City

4) **ADA compliance** language as did Palos Verdes, Mill Valley, and Sonoma City . This ordinance shall be in compliance with the Americans for Disability Act (ADA)

5) **Annual Recertification:** (1) each active small cell installation is covered by liability insurance in the amount of \$2,000,000 per installation, naming the Town as additional insured; and (2) each active installation has been inspected for safety and found to be in sound working condition and in compliance with all federal safety regulations concerning RF exposure limits. (see **Americans for Responsible Technology Model Ordinance at -**

<https://mdsafetech.files.wordpress.com/2019/07/model-ordinance-americans-for-responsible-technology-2019.pdf>)

6) **You may wish to ignore the FCC ruling** to fast track small cell towers (and which may have questionable legal merit) and add to your ordinance a stipulation that the telecom needs to prove a **significant gap in coverage** and that the **least intrusive method** was used in placement on any cell tower (small or large) as well as that every cell tower is considered the same (small cell or large cell) needs a conditional use permit (not a batch of 30 cell towers), as Sonoma City did.

7) **Work on fiberoptic or preferably cabled options** and highlight all need to keep their landlines.

14) **Review this list of Key Points of Urgency Wireless Ordinances** you may want to include from other ordinances.



Key Elements of Strong Local Ordinances

- **FCC Clause:** Have a clause voiding the agreement or requiring its modification in the event of a regulatory change (overturning the FCC Order), according to a report by [Next Century Cities](#)
- **Maintain that all wireless facilities both small cells and cell towers require a Conditional Use Permit** by the planning department followed by an encroachment permit. (remove Minor wireless permit section 18.41.050 and add all wireless communications facilities to section 18.41.060) which is reopened every 3 to 5 years- [Sonoma City, California](#)
- **Significant Gap in coverage:** Maintain requirement for significant gap in coverage to be identified for approval of both small cells and cell towers
- **Least Intrusive Methods:** Maintain requirement for the least intrusive methods to fill the gap for both small cells and cell towers. A justification study which includes the rationale for selecting the proposed use; if applicable, a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide wireless service. Said study shall include all existing structures and/or alternative sites evaluated for

potential installation of the proposed facility and why said alternatives are not a viable option. (Old-Palos Verdes)

- **1500 Foot Setback** from other small cell installations: Every effort shall be made to locate small cell installations no less than 1500 feet away from the Permittee's or any Lessee's nearest other small cell installation, or within _____ feet of any permanent residential dwelling. (ART Ordinance) Setbacks Between Small Cells: Calabasas, Petaluma, Fairfax, Mill Valley, and San Ramon (all California) require 1,500 feet between SCFs. (Boulder, CO Recommendation-[Boulder Colorado Small Cell Ordinance Legal Opinion Policy Report](#)). ([Los Altos Ordinance](#))
- **Radiofrequency Data Report Requirement:** Have a thorough radiofrequency data requirement as part of the submittal for consultants. For all applications require that both an **RF Compliance Report** signed by a registered Professional Engineer, and a supporting RF Data Request Form as Attachment A as provided is mandatory. RF DATA SHEET (can be an attached form to be filled out and submitted with application).
- **Preferred or Disfavored Locations:** In addition to residential areas, designate areas where cell towers are **disfavored** and not permitted, i.e. near schools, residential areas, city buildings, sensitive habitats, on ridge lines, public parks, Historic Overlay Districts, in open spaces or where they are **favored** i.e. commercial zoning areas, industrial zoning areas. (Boulder, CO Report-[Boulder Colorado Small Cell Ordinance Legal Opinion Policy Report](#)). ([Los Altos Ordinance](#))
- **Disfavored Location:** Every effort should be made to avoid placement of small cell installations in close proximity to residences, particularly from sleeping and living areas. Viable and defensible setbacks will vary based on zoning. (ART ordinance) ([Los Altos Ordinance](#))
- **Prohibited Zones for Small Cells:** Prohibits small cell telecommunication facilities in residential zones and multi-family zoning districts (Mill Valley) ([Los Altos Ordinance](#))
- **Require Mock-up:** Require full-size mock-up of proposed SCFs and other pertinent information in order to adequately consider the same potential impacts. It also may want to adopt Larkspur's approach to require construction drawings, a site survey, and photo simulations. (Boulder, CO Report)
- **Public notifications** of planning commission hearings; Either in newspaper, website no less than 14 days prior to the date of the hearing.
- **Notification of all property owners** within 500 feet of the proposed installation within X timeframe
- **Drip line of tree/heritage trees:** No facility shall be permitted to be installed in the drip line of any tree in the right-of-way.... (Old-Palos Verdes)- 15ft in Los Altos ([Los Altos Ordinance](#))
- **Speculative Equipment Prohibited.** The city finds that the practice of "pre- approving" wireless equipment or other improvements that the applicant does not presently intend to install but may wish to install at some undetermined future time does not serve the public's best interest. The city shall not approve any equipment or other improvements in connection with a Wireless Telecommunications Facility (Old-Palos Verdes)
- **Americans with Disabilities Act (ADA) Compliance.** All facilities shall be in compliance with the Americans with Disabilities Act (ADA). (New Palos Verdes)
- **Authorization from Property Owner:** If the facility will be located on or in the property of someone other than the owner of the facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, or cable conduit), the applicant shall provide a duly executed written authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property. (Palos Verdes)
- **Community Meeting:** The applicant would be **required to hold a community meeting** at least two weeks prior to the planning commission hearing on the use permit. (San Anselmo)
- **Noise Complaints:** If a nearby property owner registers a noise complaint, the city shall forward the same to the permittee. Said complaint shall be reviewed and evaluated by the applicant. The permittee shall have ten (10) business days to file a written response regarding the complaint which shall include any applicable remedial measures. If the city determines the complaint is valid and the applicant has not taken any steps to minimize the noise, the city may hire a consultant to study,

examine and evaluate the noise complaint and the permittee shall pay the fee for the consultant if the site is found in violation of this chapter. The matter shall be reviewed by the director. If the director determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the Code, the director may impose conditions on the project to achieve said objective. (Old- Palos Verdes)

- **Noise Restrictions:** Each wireless telecommunications facility and wireless telecommunications collocation facility shall be operated in such a manner so as to minimize any possible disruption caused by noise.
 - Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 5:00 p.m. and 7:00 a.m.
 - At no time shall any facility be permitted to exceed 45 DBA and the noise levels specified in Municipal Code XXX. [\(Los Altos Ordinance\)](#)
- **Transfer of Permit:** The **permittee shall not transfer the permit** to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by section 12.18.080(B)(5). (Palos Verdes)
- **General Liability Insurance \$ 2-5 million to protect the City:** The permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an **insurance policy or policies of commercial general liability insurance**, with minimum limits of **Two Million Dollars (\$2,000,000)** for each occurrence and Four Million Dollars (\$4,000,000) in the aggregate, that fully protects the city from claims and suits for bodily injury and property damage. The insurance must name the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with thirty (30) days prior written notice to the city, except for cancellation due to nonpayment of premium.... (Old- Palos Verdes)
- **Endangerment, Interference:** No person shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.
- **Independent Expert.** The director is authorized to retain on behalf of the city an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall address any or all of the following: xxxx (Old- Palos Verdes)
- **Annual Recertification:** Each year, commencing on the first anniversary of the issuance of the permit, the Permittee shall submit to the Town an affidavit which shall list all active small cell wireless installations it owns within the Town by location, certifying that (1) each active small cell installation is covered by liability insurance in the amount of \$2,000,000 per installation, naming the Town as additional insured; and (2) each active installation has been inspected for safety and found to be in sound working condition and in compliance with all federal safety regulations concerning RF exposure limits. (ART Ordinance)
- **Random Testing for RF Compliance:** The Town shall have the right to employ a qualified RF engineer to conduct an annual random and unannounced test of the Permittee's small cell wireless installations located within the Town to certify their compliance with all FCC radio-frequency

emission limits as they pertain to exposure to the general public. The reasonable cost of such tests shall be paid by the Permittee. (ART Ordinance)

- **Violation of Compliance Notification:** In the event that such independent tests reveal that any small cell installation or installations owned or operated by Permittee or its Lessees, singularly or in the aggregate, is emitting RF radiation in excess of FCC exposure guidelines as they pertain to the general public, the Town shall notify the Permittee and all residents living within 1500 feet of the small cell installation(s) of the violation, and the Permittee shall have forty-eight (48) hours to bring the small cell installation(s) into compliance. Failure to bring the small cell installation(s) into compliance shall result in the forfeiture of all or part of the Compliance Bond, and the Town shall have the right to require the removal of such installation(s), as the Town in its sole discretion may determine is in the public interest. (ART Ordinance)
- **Non- acceptance of Applications:** Where such annual re-certification has not been properly or timely submitted, or equipment no longer in use has not been removed within the required 30-day period, no further applications for small cell wireless installations will be accepted by the Town until such time as the annual re-certification has been submitted and all fees and fines paid. (ART ordinance)
- **Order of Preference – Location.** The order of preference for the location of small cell installations in the Town, from most preferred to least preferred, is: 1. Industrial zone
2. Commercial zone
3. Mixed commercial and residential zone 4. Residential zone (ART Ordinance and New Palos Verdes). [\(Los Altos Ordinance\)](#)
- **Fall Zone:** The proposed small cell installation shall have an adequate fall zone to minimize the possibility of damage or injury resulting from pole collapse or failure, ice fall or debris fall, and to avoid or minimize all other impacts upon adjoining property
- **1000 Foot Setback From Residencies :** The setback for Calabasas, CA is 1,000 feet (Bolder, CO Report), 500 ft Setback from residences (Petaluma).
- **Aesthetics and Undergrounding:** All equipment not to be installed on or inside the pole must be located underground, flush to the ground, within three (3) feet of the utility pole. Each installation is to have its own dedicated power source to be installed and metered separately.
- **Aesthetic Requirements:** “Law firm Baller Stokes & Lide highlighted the following aesthetic considerations that local governments can consider: “Size of antennas, equipment boxes, and cabling;
 - Painting of attachments to match mounting structures;
 - Use of shrouds, stealth techniques, or other camouflage;
 - Flush-mounting of antennas;
 - Placement of equipment in the pole base rather than on the outside of the pole;
 - Consistency with the character of historic neighborhoods;
 - Minimum spacing between attachments;” and
 - Aesthetic standards for residential neighborhoods, including “any minimum setback from dwellings, parks, or playgrounds and minimum setback from dwellings, parks, or playgrounds; maximum structure heights; or limitations on the use of small, decorative structures as mounting locations.” (Boulder, CO Report)

Examples of City Small Cell Wireless Facilities Emergency Ordinances

- City of Belvedere, California <https://www.cityofbelvedere.org/DocumentCenter/View/5641/Item-11>
- Calabasas, California (very strong) . [https://www.cityofcalabasas.com/pdf/wireless/Wireless Facility Ordinance-w CC Changes052312.pdf](https://www.cityofcalabasas.com/pdf/wireless/Wireless_Facility_Ordinance-w_CC_Changes052312.pdf)
- Fairfax, California. [Fairfax Emergency Wireless Ordinance 2018](#)
- Hillsborough Wireless Update January 2019(weak) https://library.municode.com/ca/hillsborough/codes/code_of_ordinances?nodeId=TIT15BUCO_CH15.32WICOFA or <https://www.hillsborough.net/482/Wireless>
- Los Altos, California (very strong) passed Aug 5, 2019
 - Ordinance Wireless Facilities https://www.losaltosca.gov/sites/default/files/fileattachments/city_council/page/48421/2019-08-05_19-460_1.pdf
 - Resolution No. 2019-35 of the City of Los Altos Adopting Design and Siting Guidelines and Standards for Wireless Facilities. Main document. [.https://www.losaltosca.gov/sites/default/files/fileattachments/city_council/page/48421/resolution_no.2019-35.pdf](https://www.losaltosca.gov/sites/default/files/fileattachments/city_council/page/48421/resolution_no.2019-35.pdf)
 - Fee Chart for Wireless Facilities in Los Altos, California. Resolution 2019-36.https://www.losaltosca.gov/sites/default/files/fileattachments/city_council/page/48421/resolution_no.2019-36.pdf
- City of Mill Valley, California (strong) http://cityofmillvalley.granicus.com/MetaViewer.php?view_id=2&clip_id=1290&meta_id=59943
- Newark, California. <http://www.newark.org/home/showdocument?id=4629>
- Palos Verdes, California (Medium) **New Ordinance 2019** – <https://www.rpvca.gov/DocumentCenter/View/13741/RPV—ROW-Wireless-Telecommunications-Urgency-Ordinance-April-2-2019>. **Old Ordinance 2016-** <https://www.rpvca.gov/DocumentCenter/View/7952/RPV—ROW-Wireless-Telecommunications-Urgency-Ordinance>
- Petaluma, California (setbacks good) <https://www.codepublishing.com/CA/Petaluma/html/Petaluma14/Petaluma1444.html>
- San Anselmo, California <https://www.townofsananselmo.org/DocumentCenter/View/23883/Wireless-Policy-in-effect-September-26-2018>
- San Raphael, California <https://www.cityofsanrafael.org/documents/ordinance-1967/> and <https://www.cityofsanrafael.org/documents/resolution-14621/>
- Sebastopol, California. <https://www.ci.sebastopol.ca.us/getattachment/4371a3fe-b28f-4e19-a4b2-bedd0073ab92/Ordinance-Number-11-23-TELECOMMUNICATIONS-FACILITIES-AND-MINOR-ANTENNAS-Appvd-5-7-2019.pdf.aspx?lang=en-US&ext=.pdf>
- Sonoma City, California (strong) <https://sonomacity.civicweb.net/document/17797>
- Suisun, California (medium) <https://www.suisun.com/small-cells/>

The City of San Mateo, California has set up it's own **small cell website** with **FAQ's** as it works through a new ordinance.

Sample letter to neighbors

Dear Neighbor,

I recently received a notice indirectly from (telecom company), learning of their plan to install a cell tower *** feet from my house. (bedroom window) . It's not just (***(telecom Name), but AT&T, Verizon, T-Mobile, Sprint & others are quietly bypassing local ordinances and not properly notifying residents in order to accelerate the deployment of 5G. They target cities that are under staffed and under resourced. In order to prevent local opposition, these wireless companies do not share master plans with the city and only apply for permits a few towers at a time to avoid scrutiny and public outcry (such as [Palo Alto](#), [Mill Valley](#), [San Mateo](#), [Hillsborough](#), [Oakland](#), [Rancho Palos Verdes](#) and many others). Proposed 5G technology has limited range, which requires significantly more cell towers than before. In addition most of these so-called “small cells” will have 4G well before 5G (if ever comes to pass). Since none of the telecommunication companies share cell towers, our town of (***) will be littered with cell towers on every utility pole every few hundred feet and right in front of our homes or backyards.

Why should you care?

We're in favor of smart and sensible deployment of telecommunication in (***(Town) We're not in favor of allowing the wireless companies to place towers wherever they want without any input from local residents. Cell towers bring noise, unknown health effects, negatively impact property values and aesthetics, violate our privacy, security and safety, and DO NOT belong near our homes, schools or parks. If we don't provide our urgent response now, it will be too late once they begin deploying them.

What can you do?

- 1) [Sign this petition](#) for smart and sensible placement of cell towers in (Your town) – This is sample petition from Los Altos, California.
 - 2) Join (***(your town google or yahoo group) to stay informed and get updates
 - 3) Call and/or email the (Your town) Council at (***(phone number), or email them all at (***(.city council.gov)
 - 4) Attend the next city council meeting at *** pm, on ***date, at *** location.
-

May 24, 2022

To: All Planning Commissioners, City of Monterey

Sandra Freeman, Hansen Reed, Michael Brassfield, Michael Dawson, Daniel Fletcher, Terry Latasa, and Stephen Millich.

Dear Planning Commissioners of Monterey,

This is an addendum to my previous letter of May 8, 2022, that you will find in the attachment. As a homeowner in Monterey, I just received this alarming news and you will see in a separate attachment that my Fire Insurance on my home at 801 Dry Creek, Road, Monterey, is being cancelled on 08/15//2022 by my Insurance Company as our home location is in a High Risk for Fire Vicinity.

We also know of other neighbors that have received the same type of shaking letter recently. The importance of the Wireless Ordinance, being written strongly and carefully to protect the Monterey residents from these extreme heat generating Cell Facilities and Antennas is critical. These heat radiating machines come with fans and warning signs yet still emit heat. Could not a fan on any of this equipment malfunction? Global Warming is on the rise and in the daily news and California is back in another drought. Monte Vista neighborhood, is particularly concerned being in a "Very High Fire Zone", and the evacuation routes are in question and lacking for the population in an emergency exodus.

The community of neighbors that strongly opposed the installation of these cell facilities in March 2018 absolutely wants the Wireless Ordinance to include these declarations for our safety:

A setback distance of these antennas from our homes and schools, and any occupied structure, and we would like to match what Calabasas, CA has demanded and achieved as a setback of 1,000 feet.

The neighbors want all equipment that can be put underground to be placed there for aesthetics of the beautiful Monterey Sanctuary and of course for fire prevention safety.

Please see all other detailed requests in my original letter of May 8th, regarding the Wireless Ordinance, and the importance it plays in the future protection of all the residents of Monterey. Thank you for your careful attention with this matter to protect the residents, our homes, and our lives.

Sincerely,

Dr. John Adamo
Catherine Adamo - Monterey residents

May 8, 2022

To: All Planning Commissioners, City of Monterey

Sandra Freeman, Hansen Reed, Michael Brassfield, Michael Dawson, Daniel Fletcher, Terry Latasa, and Stephen Millich.

Dear Planning Commissioners of Monterey,

A few years has passed since we were present in that overly crowded City Council Chambers on March 15, 2018 with unhappy residents opposing the Verizon Cell Tower plan to threaten their neighborhood, homes, and schools. Now, with the distraction of the pandemic we are learning that the Wireless Ordinance originally drafted by the appointed Sub-Committee of selected neighbors, has been re-written, changed, and weakened again with different language and will allow countless and powerful 5G cell antennas to be still installed close to our homes. With the Wireless Ordinance draft written as it is there is not even a setback of footage required on these radiation emitting antennas.

Honorable Planning Commissioners, you must understand that the residents that fought so long for their right to choose in their own neighborhood would be completely outraged at the Wireless Ordinance being re-written, only to allow these 5G radiation antennas to be installed close to their homes, businesses, and schools.

You are aware of the vital issues, especially in our natural and sensitive environment being filled with electromagnetic waves of 5G high frequency RF radiation going 24/7. It is clear there is a threat as Hazard signs are posted on the never tested 5G radiation equipment, so it's clear why residents don't want them close to an occupied building. Also, remember what we covered before, that this radiation definitely generates extreme heat and the equipment, especially the antennas gets intently hot. Why would anyone living in an environmentally sensitive neighborhood want 5G antennas close to their homes or schools with the intense heat they generate? With global warming and intent fires on the rise why would we want these intently heated cell antennas peppered through our natural and vulnerable environment, close to our homes where we hope to sleep in safety? Remember, August 2020 was not so long ago with the lightning fire storm and Monterey was extremely fortunate to only experience a heavy blanket of other people's ashes.

This is what we the residents of Monterey are demanding for our protection and peace of mind as necessary in the Wireless Ordinance:

The Neighbors Request: We want the Wireless Ordinance to require a setback distance of these antennas from our homes and schools, and we would like to match what Calabasas, CA has demanded and achieved as a setback of 1,000 feet.

The Neighbors Request: Especially in our environmentally sensitive city of Monterey, we want all equipment that can be put underground to be placed there for aesthetics and fire prevention safety. We want only designs that are unnoticeable and concealed and do not ruin or decrease the beauty of our natural sanctuary.

The Neighbors Request: We want a protective fall zone from the height of any antenna mounted on a monopole to be at least 1.5 times the space height between the poles to an occupied building.

The Neighbors Request: For any temporary and non-emergency cell towers within 500 feet, the residents want mailed notices stating their time of use and their purpose.

The Neighbors Request: The Wireless Ordinance should give credibility to customer evidence of the residents and their testimony of reliable service, instead of just taking the word of the applicant based on their vague and confusing, statements of a coverage gap. For instance, here in Monterey one of the signers of this letter had Verizon coverage for many years and there has been absolutely no dropped calls or static or interference whatsoever and the phone reception is perfect.

The Neighbors Request: For rights-of-way facilities, we want applicants to submit for review a Site Survey for safety and consideration of the residents.

The Neighbors Request: We want an independent review of RF radiation reports submitted by the applicants.

We want to thank you Planning Commissioners for taking the extra care and time in considering the needs of the residents that live in Monterey, and for the extreme importance of the Wireless Ordinance to be written as strongly and clearly as possible to protect our health, our lives, our homes, and our unique and irreplaceable beautiful sanctuary. We remained strongly united.

Best to you for continued health and safety,

Dr. John Adamo
Catherine Adamo
Charisse Carlile

Monterey residents

NOTICE OF NONRENEWAL


TRAVELERS

The Standard Fire Insurance Company

AGENT/CASE		ISSUE DATE	OFFICE
GEICO INS AGENCY LLC		5/20/2022	675
EFFECTIVE DATE OF EXPIRATION	POLICY IDENTIFICATION NO.		
08/15/2022	PRODUCER'S CODE	POLICY IDENTIFICATION NO.	
	██████████	████████████████████	

NAMED INSURED

JOHN ADAMO
CATHY ADAMO

████████████████████
MONTEREY, CA 93940-4209

MORTGAGEE

LOCATION OF PROPERTY: (if other than address of Named Insured shown above):

We wish to inform you that your **Homeowners** policy designated above will not be renewed at the expiration of its current policy term. Your policy will nonrenew on the effective date of expiration indicated above at the hour on which the policy became effective. If you have any questions regarding this notice, please contact your agent or insurance representative.

REASON FOR THIS ACTION

We are nonrenewing your policy because the insured property is located in a high brush exposure area that increases the risk of a wildfire loss.

ADDITIONAL INFORMATION REGARDING THE REASON(S) FOR NONRENEWAL

You have a right to a written statement containing the specific items of information that support the reasons for our action and the names and addresses of institutional sources and insurance support organizations that supplied the items of information.

In addition, you have a right to see and obtain a copy of all recorded information which we used to take this action or to be told the nature and substance of that information after properly identifying yourself.

You must make a written request within 90 days of the date of this notice to exercise these rights.

If you disagree with the accuracy of the recorded information used to take this action, you have the right to request in writing an amendment, a correction, or a deletion of the recorded information in dispute. If we refuse your request, you have the right to file a statement containing supplemental information or explaining why you disagree. We will put your statement in our file so that anyone reviewing your file will see it.

THIS NOTICE IS GIVEN ONLY BY THE COMPANY WHICH ISSUED THE POLICY.

MVNA suggested changes to Wireless Ordinance

May 17th, 2022

Section	Comment add/del	Language change
38-112.4 A	add to end of section	<p>The City seeks to minimize, to the greatest extent possible, any unnecessary adverse impacts caused by the siting, placement, physical size, and/or unnecessary proliferation of, personal wireless service facilities, including, but not limited to, adverse aesthetic impacts, adverse impacts upon property values, adverse impacts upon the character of any surrounding properties and communities, adverse impacts upon historical and/or scenic properties and districts, and the exposure of persons and property to potential dangers such as structural failures, debris fall, and fire.</p> <p>The City also seeks to ensure that, in applying this section, the Planning Commission ("Commission") is vested with sufficient authority to require applicants to provide sufficient, accurate, and truthful probative evidence, to enable the Commission to render factual determinations consistent with both the provisions set forth herein below and the requirements of the TCA when rendering decisions upon such applications.</p> <p>To achieve the objectives stated herein, the City seeks to employ the "General Authority" preserved to it under Section 47 U.S.C.A. §332(c)(7)(A) of the TCA to the greatest extent which the United States Congress intended to preserve those powers to the City, while simultaneously complying with each of the substantive and procedural requirements set forth within the subsection 47 U.S.C.A. §332(c)(7)(B) of the TCA.</p>
38-112.4 D2	Comment	<p>This is creating a liability situation for the City, there are no height limits, no notification requirement (was removed by staff) nor is there any reference to requiring a liability policy, no time limit, and ten days is too long of a removal period. These towers can have significant visual and other impacts. Notification of surrounding properties should be required to be done by applicant, not City staff (restore subcommittee language regarding notification). No mention of required RF reports. Temporary cell towers only need be allowed for emergency purposes, not private events. We have not seen in any other ordinances that allow for private temporary cell towers. We are opposed to including this provision. Every carrier would have to be allowed to install if one is. There is no bond requirement to assure compliance.</p>
38-112.4 E3 after e	add	<p>A Drawn-To-Scale Depiction</p> <p>The applicant shall submit drawn-to-scale depictions of its proposed wireless support structure and all associated equipment to be mounted thereon, or to be installed as part of such facility, which shall clearly and concisely depict all equipment and the measurements of same, to enable the Director to ascertain whether the proposed facility would qualify as a small wireless facility as defined under this Chapter.</p> <p>If the applicant claims that its proposed installation qualifies as a small wireless facility within this Chapter, the drawn-to-scale depiction shall include complete calculations for all of the antennas and equipment of which the facility will be comprised, depicting that, when completed, the installation and equipment will meet the physical size limitations which enable the facility to qualify as a small wireless facility.</p>
38-112.4 E3 after current h	add	<p>Site Survey.</p> <p>For any new wireless telecommunication facilities proposed to be located within the public right-of-way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer or surveyor. The survey shall identify and depict all existing boundaries, encroachments and other structures within two hundred fifty (250) feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks, and other street furniture; and (viii) existing trees, oak trees, planters and other landscaping features;"</p>
38-112.4 E3I	remove	<p>Photographs and Photo Simulations. Accurate color photographs 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.</p>

"	replace with	<p>Visual Impact Analysis</p> <p>A completed visual impact analysis, which, at a minimum, shall include the following:</p> <p>(a) Small Wireless Facilities</p> <p>For applications seeking approval for the installation of a small wireless facility, the applicant shall provide a visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.</p> <p>(b) Telecommunications Towers and Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility</p> <p>For applications seeking approval for the installation of a telecommunications tower or a personal wireless service facility that does not meet the definition of a small wireless facility, the applicant shall provide:</p> <p>(i) A "Zone of Visibility Map" to determine locations from where the new facility will be seen.</p> <p>(ii) A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.</p> <p>The photographic images shall depict the height at which the proposed facility shall stand when completed, including all portions and proposed attachments to the facility, including, but not limited to, the main support structure, all antennas, transmitters, whip antennas, lightning rods, t-bars, crossbars, and cantilever attachments which shall, in whole or in part, be affixed to it, any and all surrounding equipment compound(s), fencing, cellular equipment cabinets, transformers, transformer vaults and/or cabinets, sector distribution boxes, backup generators, including but not limited to equipment boxes, switch boxes, backup generators, ice bridges, etc., to the extent that any of such compound and/or equipment will be visible from properties other than the property upon which the proposed tower and compound are to be installed. The visual impact analysis shall include an assessment of alternative designs and color schemes, as well as an assessment of the visual impact of the proposed facility, taking into consideration any supporting structure which is to be constructed, as well as its base, guy wires, accessory structures, buildings, and overhead utility lines from abutting properties and streets.</p>
38-112.4 E3n (Hazard Cert)	add after n (safety cert)	<p>(Restore deleted windoad study language adopted by the study committee)</p> <p>Safety certification shall include a wind load analysis.</p>

38-112.4 E3q

modify

Combine following [City](#) and [Campanelli](#) to create strongest language.

Applicant shall submit a RF exposure compliance report prepared by a RF licensed 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 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.

An FCC compliance report, prepared by a licensed engineer, and certified under penalties of perjury, that the content thereof is true and accurate, wherein the licensed engineer shall certify that the proposed facility will be FCC compliant as of the time of its installation, meaning that the facility will not expose members of the general public to radiation levels that exceed the permissible radiation limits which the FCC has set.

If it is anticipated that more than one carrier and/or user is to install transmitters into the facility that the FCC compliance report shall take into account anticipated exposure from all users on the facility and shall indicate whether or not the combined exposure levels will, or will not exceed the permissible General Population Exposure Limits, or alternatively, the occupational Exposure Limits, where applicable.

Such FCC Compliance Report shall provide the calculation or calculations with which the engineer determined the levels of RF radiation and/or emissions to which the facility will expose members of the general public. On the cover page of the report, the report shall explicitly specify: (a) Whether the applicant and their engineer are claiming that the applicable FCC limits based upon which they are claiming FCC compliance are the General Population Exposure Limits or the Occupational Exposure Limits. If the applicant and/or their engineer are asserting that the Occupational Exposure Limits apply to the proposed installation, they shall detail a factual basis as to why they claim that the higher set of limits is applicable, (b) The exact minimum distance factor, measured in feet, which the applicant's engineer used to calculate the level of radiation emissions to which the proposed facility will expose members of the general public. The minimum distance factor is the closest distance (i.e., the minimum distance) to which a member of the general public shall be able to gain access to the transmitting antennas mounted upon, or which shall be a part of, the proposed facility.

38-112.4 E3u

add

A completed alternative site analysis of all potential less intrusive alternative sites which the applicant has considered, setting forth their respective locations, elevations, and suitability or unsuitability for remedying whatever specific wireless coverage needs the respective applicant or a specific Wireless Carrier is seeking to remedy by the installation of the new facility which is the subject of the respective application for a PWSF use permit.

If, and to the extent that an applicant claims that a particular alternative site is unavailable, in that the owner of an alternative site is unwilling or unable to accommodate a wireless facility upon such potential alternative site, the applicant shall provide probative evidence of such unavailability, whether in the form of communications or such other form of evidence that reasonably establishes same. The alternative site analysis shall contain:

- (a) an inventory of all existing tall structures and existing or approved communications towers within a two-mile radius of the proposed site.
- (b) a map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, the height of the structure and/or tower, and accessory buildings on the site of the inventoried location.
- (c) an outline of opportunities for shared use of an existing wireless facility as opposed to the installation of an entirely new facility.
- (d) a demonstration of good-faith efforts to secure shared use from the owner of each potential existing tall structure and existing or approved communications tower, as well as documentation of the physical, technical, and/or financial reasons why shared usage is not practical in each case.

38-112.4 E3v	add	<p>Effective Prohibition Claims</p> <p>The City is aware that applicants seeking approvals for the installation of new wireless Facilities often assert that federal law, and more specifically the TCA, prohibits the local government from denying their respective applications. In doing so, they assert that their desired facility is "necessary" to remedy one or more significant gaps in a carrier's personal wireless service, and they proffer computer-generated propagation maps to establish the existence of such purported gaps. The City is additionally aware that, in August 2020, driven by a concern that propagation maps created and submitted to the FCC by wireless carriers were inaccurate, the FCC caused its staff to perform actual drive tests, wherein the FCC staff performed 24,649 -tests, driving nearly ten thousand (10,000) miles through nine (9) states, with an additional 5,916 stationary tests conducted at 42 locations situated in nine (9) states. At the conclusion of such testing, the FCC Staff determined that the accuracy of the propagation maps submitted to the FCC by the wireless carriers had ranged from as little as 16.2% accuracy to a maximum of 64.3% accuracy. As a result, the FCC Staff recommended that the FCC no longer accept propagation maps from wireless carriers without supporting drive test data to establish their accuracy. A copy of the FCC Staff's 66-page report is made a part of this Chapter as per https://docs.fcc.gov/public/attachments/DOC-361165A1.pdf. The City considers it of critical import that applicants provide truthful, accurate, complete, and sufficiently reliable data to enable the Planning Commission to render determinations upon applications for new wireless Facilities consistent with both the requirements of this Chapter and the statutory requirements of the TCA.</p> <p>Consistent with same, if, at the time of filing an application under this Chapter, an applicant intends to assert before the Planning Commission or the City that: (a) an identified wireless carrier suffers from a significant gap in its personal wireless services within the City, (b) that the applicant's proposed installation is the least intrusive means of remedying such gap in services, and/or (c) that under the circumstances pertaining to the application, a denial of the application by the Planning Board would constitute an "effective prohibition" under Section 47 U.S.C. §332 the TCA, then, at the time of filing such application, the applicant shall be required to file a written statement which shall be entitled:</p> <p>"Notice of Effective Prohibition Conditions"</p> <p>If an applicant files a Notice of Effective Prohibition Conditions, then the applicant shall be required to submit Probative Evidence to enable the Planning Commission to reasonably determine: (a) whether or not the conditions alleged by the respective applicant exist, (b) whether there exists a significant gap or gaps in an identified wireless carrier's personal wireless services within the City, (c) the geographic locations of any such gaps, and (d) the geographic boundaries of such gaps, to enable the Planning</p>
"	remove	<p>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.</p>
"	remove	<p>Applicants who claim that denial would be a "prohibition" or "effective prohibition" are encouraged to address at least the following:</p> <p>i. If it is contended that compliance with an aesthetic standard is not reasonable, explain why in detail, and describe alternatives considered in</p>
"... v	remove	<p>Current signal coverage, by providing maps showing existing coverage in the area to be serviced by the proposed facilities. 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.</p>
38-112.4 E6 (Applications Available Online)	remove	<p>Except where good cause has been shown, as determined by the Director,</p>
"	remove	<p>or as soon thereafter as practical</p>

"	Comment	Mandatory and timely posting of all applications was important to all Sub Committee representatives to allow public scrutiny and study of all PWSF applications, especially in response to shortened shot clocks. This language was changed by the staff to provide exceptions which was counter to the intent of Sub Committee and interests of the public expressed at their Sub Committee meetings.
38-112.4 F4c	add	<p>Small Wireless Facilities</p> <p>(a) Within Business and Industrial Districts the minimum setback shall be fifty (50) feet, unless the facility is being installed upon a pre-existing utility pole or other utility structure. (b) Within all residentially-zoned and other districts, all small wireless facilities shall be set back a minimum of 300 feet from any residential dwelling or structure, unless the facility is being installed upon a pre-existing utility pole or is being co-located upon a pre-existing personal wireless service facility.</p> <p>Cell Towers and all Personal Wireless Service Facilities that do not meet the definition of a Small Wireless Facility</p> <p>(a) Each proposed wireless personal service facility and personal wireless service facility structure, compound, and complex shall be located on a single lot and comply with applicable setback requirements. Adequate measures shall be taken to contain on-site all debris from tower failure and preserve the privacy of any adjoining residential properties.</p> <p>(b) Each lot containing a wireless personal service facility and personal wireless service facility structure, compound, and complex shall have the minimum area, shape, and frontage requirements generally prevailing for the zoning district where located and such additional land if necessary to meet the setback requirements of this section.</p> <p>(c) Cell towers and personal wireless service facilities that do not meet the definition of a small wireless facility, shall maintain a minimum setback of a distance equal to one hundred ten (110%) percent of the height of the facility, for front yard setbacks, rear yard setbacks and side yard setbacks, in all zoning districts.</p>
"	remove	w
38-112.4 F7d	add before i.	A 1500 ft separation shall be maintained between wireless facilities within the
38-112.4 F7f	question	What are I, ii and iii

38-112.4 J1

add after "...38-159"

upon each PWSF use permit, consistent with the procedures in §38-159), except the Planning Commission shall have authority to schedule such additional or more frequent public hearings as may be necessary to comply with the applicable shot clocks imposed upon the City and the Planning Commission under the requirements of the TCA.

Required Public Notices

The Planning Commission shall ensure that both the public and property owners whose properties might be adversely impacted by the installation of a wireless facility receive Notice of any public hearing pertaining to same and shall ensure that they are afforded an opportunity to be heard concerning same.

Before the date scheduled for the public hearing, the Planning Commission shall cause to be published a

"NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY"

Each "Notice of Public Hearing for New Wireless Facility" shall state the name or names of the respective applicant or co-applicants, provide a brief description of the personal wireless facility for which the applicant seeks a special permit, and the date, time, and location of the hearing.

Each "Notice of Public Hearing for New Wireless Facility" shall be published both: (a) once per week for two successive weeks in the official newspaper of the Cityscape and (b) by mailing copies of such notice to property owners, as provided for herein below.

The face of each envelope containing the notices of the public hearing shall state, in all bold typeface, in all capital letters, in a font size no smaller than 12 point, the words:

"NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY"

Notices of public hearing shall be mailed to all property owners whose real properties are situated within 300 feet of any property line of the real property upon which the applicant seeks to install its new wireless facility. If the site for the proposed facility is situated on, or adjacent to, a residential street containing twelve (12) houses or less, the Planning Board shall additionally mail a copy of such notices to all homeowners on that street, even if their home is situated more than 300 feet from any property line of the property upon which the applicant proposes to install its facility.

Prior to the date of the hearing, the respective applicant shall file an Affidavit of Mailing, attesting to whom such notices were mailed by the applicant, and the content of the notices which were mailed to such recipients.

2. Factual Determinations to be Rendered by the Planning Commission

The Planning Commission shall have sole discretion to determine what probative evidence it shall require each applicant to produce in support of its application to enable the Board to make each of the factual determinations enumerated below.

By way of common examples of the types of evidence which the Commission may require an applicant to produce, are the following:

38-112.4 M2 add after section 1

As disclosed upon the FCC's public internet website, personal wireless services facilities erected at any height under 200 feet are not required to be registered with the FCC. Of even greater potential concern to the City is the fact that the FCC does not enforce the RF radiation limits codified within the CFR by either: (a) testing the actual radiation emissions of wireless Facilities either at the time of their installation or at any time thereafter, or (b) requiring their owners to test them. See relevant excerpts from the FCC' s public internet website. This means that when wireless Facilities are constructed and operated within the City, the FCC will have no idea where they are located and no means of determining, much less ensuring, that they are not exposing residents within the Town and/or the general public to Illegally Excessive levels of RF Radiation. The City deems it to be of critical importance to the health, safety, and welfare of the City, its residents, and the public at large that personal wireless service facilities do not expose members of the general public to levels of RF radiation that exceed the limits which have been deemed safe by the FCC, and/or are imposed under CFR. In accord with the same, the City enacts the following RF Radiation testing requirements and provisions set forth herein below.

No wireless telecommunications facility shall at any time be permitted to emit illegally excessive RF Radiation as defined in §, or to produce power densities that exceed the legally permissible limits for electric and magnetic field strength and power density for transmitters, as codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

To ensure continuing compliance with such limits by all owners and/or operators of personal wireless service facilities within the City, all owners, and operators of personal wireless service facilities shall submit reports as required by this section.

As set forth hereinbelow, the Town may additionally require, at the owner and/or operator's expense, independent verification of the results of any analysis set forth within any reports submitted to the Town by an owner and/or operator.

If an operator of a personal wireless service facility fails to supply the required reports or fails to correct a violation of the legally permissible limits described hereinabove, following notification that their respective facility is believed to be exceeding such limits, any special exception or other zoning approval granted by the Planning Commission or representative of the City is subject to modification or revocation by the Planning Commission following a public hearing.

Initial Certification of Compliance with Applicable RF Radiation Limits

Within (30) days of initial operation or a substantial modification of a personal wireless service facility, the owner and/or operator of each Telecommunications antenna shall submit to the Building Inspector a written certification by a licensed professional engineer, sworn to under penalties of perjury, that the facility's radio frequency

38-112.4 M2	add after section above	<p>Random RF Radiofrequency Testing</p> <p>At the operator's expense, the Town may retain an engineer to conduct random unannounced RF Radiation testing of such Facilities to ensure the facility's compliance with the limits codified within 47 CFR §1.1310(e)(1) et seq.</p> <p>The Town may cause such random testing to be conducted as often as the Town may deem appropriate. However, the Town may not require the owner and/or operator to pay for more than one test per facility per calendar year unless such testing reveals that one or more of the owner and/or operator's facilities are exceeding the limits codified within 47 CFR §1.1310(e)(1) et seq., in which case the Town shall be permitted to demand that the facility be brought into compliance with such limits, and to conduct additional tests to determine if, and when, the owner and/or operator thereafter brings the respective facility and/or facilities into compliance.</p> <p>If the Town at any time finds that there is good cause to believe that a personal wireless service facility and/or one or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Planning Board at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the Town for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.</p> <p>Such hearing shall be duly noticed to both the public and the owner and/or operator of the respective facility or facilities at issue. The owner and/or operator shall be afforded not less than two (2) weeks written notice by first-class mail to its Notice Address.</p> <p>At such hearing, the burden shall be on the City to show that, by a preponderance of the evidence, the Facilities emissions exceeded the permissible limits under 47 CFR §1.1310(e)(1) et seq. In the event that the City establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment caused their failure to comply with the applicable limits through no fault on the part of the owner/ operator. If the owner and/or operator fails to establish same, the Planning Commission shall have the power to, and shall revoke any use permit, variance, building permit, and/or any other form of zoning-related approval(s) which the Planning Commission, Zoning Board of Appeals, Director and/or any other representative of the City may have then issued to the owner and/or operator, for the respective facility. In addition, the Planning Commission shall impose a fine of not less than \$1,000, nor more than \$5,000 for such violation of subparagraph 1. hereinabove, or, in the case of a second offense within less than five (5) years, a minimum fine of \$5,000, nor more than \$25,000. In the event that an owner or operator of one or more personal wireless service facilities is found to violate subparagraph 1.</p>
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Additional comments

Annual Recertification	(1) each active small cell installation is covered by liability insurance in the amount of \$2,000,000 per installation, naming the City as additional insured; and (2) each active installation has been inspected for safety and found to be in sound working condition and in compliance with all federal safety regulations concerning RF exposure limits. (see Americans for Responsible Technology Model Ordinance at - https://mdsafetech.files.wordpress.com/2019/07/model-ordinance-americans-for-responsible-technology-2019.pdf)
Public Rights-of-Way Facilities	Right of way rules including a 1500 ft separation between wireless facilities A 1500' separation shall be required between wireless facilities.
Setbacks	All wireless facilities should be 50 ft from any residence and should be 500 ft from any school.
Max size	Maximum equipment volume including transformers, antennae and other boxed electronics on any sigle pole is limited to 10 cubic feet (eg. 1 large transformer). Any equipment larger than this needs to be undergrounded.
should/shall	All instances of "should" shall be repalces with "shall".