COMMENT MATRIX #1

PC MEETING AUGUST 2023
RESPONSE TO COMMENTS ON PC WORKSHOP DRAFT ORDINANCE

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
	PLANNING COMMISSION		
ORD/CL	An attorney (Andrew Campaneli) hired by the SCTCN Citizens Group provided a sample ordinance with specific language requiring applicants to offer Probative Evidence proving gaps in coverage and/or deficient capacity by conducting Drive Tests and providing Drop Call Data. It also offers a specific definition of "Adequate Coverage." I would like to understand why such language is not included in our new draft. In my own research I have discovered several other municipalities that have included this language.	Y & N	Section 17.46.080(C) of the ordinance establishes the circumstances under which the City may grant a special exception to the standards in this chapter, Chapter 17.58 or the Administrative Detailed Wireless Facility Design Guidelines if the applicant makes a claim that granting a special exception is necessary to avoid conflict with applicable federal or state law. The application checklist (Types I-IV) then addresses the proof required for various special exception claims. For example various types of "effective prohibition" claims may be made requiring different evidence. The City's draft ordinance has not been revised to add submittal requirements for special exception requests but revisions have been made to the checklist to require information to support effective prohibition claims. The Campanelli ordinance purports to deal with one type of special exception request, that is federal (not state) preemption claims in what Campanelli ordinance calls a Notice of Effective Prohibition Conditions but it defines an effective prohibition using an "adequate coverage" test that is different from the significant gap/least intrusive means test developed in Ninth Circuit case law interpreting what is an effective prohibition. Further, the Campanelli ordinance does not attempt to address or require any proof for other types of federal effective prohibition claims (such as the materially inhibits claims discussed in the FCC Small Cell Order and the Ninth Circuit decision related to that Order), nor does it address state preemption claims. In other words, the draft ordinance prepared by the City more comprehensively covers ALL of the potential Special Exemption Requests.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD/CL	I would furthermore suggest language that calls for any/all approved wireless facilities to be active before any proof of need testing is done, and that such testing be submitted as part of an application and if missing, the application would be deemed incomplete.	Y & N	Added to checklist a requirement for modeling to include coverage of recently approved/not yet operable sites. However, requiring sites to be *operable* has not been added. It is not uncommon for applicants to pursue multiple applications at the same time and the FCC rules recognize batching applications can occur (see 47 CFR 1.6003(c)(2)). Further, under the FCC's 2018 Moratoria Order, local governments cannot impose an express or de facto moratorium on the processing of applications. Per the FCC Moratoria Order: De facto moratoria are "…state or local actions that are not express moratoria, but that effectively halt or suspend the acceptance, processing, or approval of applications or permits for telecommunications services or facilities in a manner akin to an express moratorium." (¶139) In light of this, requiring an applicant to complete construction of a facility before applying for another facility would put the City at risk of claims that the City is unlawfully refusing to process of applications.
ORD	Type I, II, III and IV applications are first defined on page 9 (in Definitions) and then much more language is added beginning on page 19 (17.46.050 A – Application Types), and then again on the second page of the Application for Wireless Facility. While the wording in each is similar, I think it should be identical and clear.	Y	Cleaned up as suggested.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	Also, I get confused by the use of the terms “existing structure” and “new structure”. I believe the intent here is that an “existing structure” is a structure that already has a wireless facility on it and a “new structure” is one that does not. But what if the proposal is to place a new wireless facility on an existing building’s roof where no wireless facility currently exists? That building is a structure (per definition on page 22), it does exist, and it is not new, so I would call it an existing structure, yet I think the current language would call it a new structure. Perhaps we should introduce more descriptive terms like “structure already supporting one or more wireless facilities” instead of “existing structure” and “structure not currently supporting wireless facilities or a new structure or a replacement structure” instead of “new structure.”	N	The defined term “existing” only applies to EFRs. The specialized meaning for EFRs essentially means the structure has a wireless facility already on it. Where the code is addressing EFRs, the terms used are existing tower or base station (all of which are defined). Where the code is not addressing EFRs, the distinction is generally between existing and new structures, and “existing” has its normal meaning, that the structure currently exists. Note the FCC definition of “structure” included in the Code does not require a wireless facility on it. Where the proposal is to place a new wireless facility on a rooftop where no wireless facility currently exists that would be a placement on an existing structure.
ORD	Adding an example of an application for each Type would be helpful.	N	Would be difficult to cover all application types as part of a regulatory document. Consider creating as part of a separate guidance document that is less formal.
ORD	Page 7. 12. “non-pole concealment structure” – do we really want to offer a list of examples here ? I doubt we’ll see public support for antennas on monuments, kiosk, bus shelters and street furniture, so why include it here suggesting it’s ok ?	Y	The definition is not used and has been removed.
ORD	Page 7. 16. “public right of way” – “The term does not include private or public utility easements….” Language elsewhere addresses wireless facilities in the PROW and utility poles are the prime structure that Telecom Companies would be wanting to use. I assume such poles are in a Utility Easement so we better include such easements in the PROW we’re trying to regulate.	N	The utility poles in Carmel are mainly in public rights-of-way, not utility easements. The definition is limited because later constraints on placements in public rights of way (highly incompatible locations) are imposed to address traffic/pedestrian access and other safety concerns in streets. Utility poles that are on private parcels are also regulated just not a strictly.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	Page 12. B.1 – "wireless facilities operated for the City for public purposes" Why are these excluded? I think we want to hold the City accountable to the same standards as all wireless providers. I understand it is customary to exclude City Government from it's own ordinances, but in this case I strongly disagree. Local governments elsewhere have realized the revenue potential of streetlights, parking meters and other city property when allowed to support wireless facilities – let's nor open that door.	Y	Amended to delete exclusion. Please note that the Small Cell Order in effect requires local governments to make structures they own in the public rights-of-way available for placement wireless facilities at cost-based rates. However, local governments retain full proprietary authority over whether to allow wireless facilities on non-ROW public land.
ORD	Page 13 – Tier III includes RC as most compatible. I'd suggest it be in Tier I or at least Tier II.	N	Not changed, as this is policy matter for the full Planning Commission to consider – RC is technically one of the City's commercial districts, so staff is recommending leaving as-is. One consideration is that moving RC to a different Tier could create a situation where we're excluding too much land (40% of total commercial is RC)
ORD	Page 14 D.1 – See previous comments on "new" and "existing" structures	N	see above regarding same topic.
ORD	Page 14 E.1 – See previous comments on Utility Easements being excluded from the PROW definition. Let's be sure not to inadvertently exclude utility poles from inclusion here as highly incompatible.	N	See discussion above on page 3. WCFs on utility poles not in public right-of-way would be subject to other standards for placements on parcels.
ORD	Page 15 2 – again, see prior comments re" "new" and "existing" For 2.a, why not 10 feet instead of 5? Also, consider adding language from the Original Draft that prohibited (or at least strongly discouraged?) structures within 10 feet of a driveway or primary walkway to a residence. For 2.b, why not 500 or even 1000 feet instead of 250?	Y & N	See earlier discussion re new and existing. 5ft. criteria not changed–10 ft becomes problematic with overlap of other regulations such as placement in front of doors and windows. 250ft. criteria was changed – Staff changed to 500 feet. 1,000 feet would not be reasonable because of city size

COMMENT MATRIX #1

PC MEETING AUGUST 2023
RESPONSE TO COMMENTS ON PC WORKSHOP DRAFT ORDINANCE

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	Page 15 3.c, third line, add “distracts” – that obstructs, restricts or distracts the view…..	N	Leave as-is. “Distracts” is more subjective than “obstruct” or “restrict” since those both deal with an object directly in a line of sight to a view, as opposed to just being in an undetermined periphery area
ORD	Page 16 F.1.3 – Do we need definition for “average height of mature natural trees”?	Y	Removed “average height” standard. Upon investigation, this is an overly complicated measurement. Also, it is likely that in most cases, the number of trees over 24-feet (many well over 50-feet) would cause the average height to almost always be greater than the maximum height of the zoning district. So, this was modified to just use the standard of no-taller than 10-feet above the max height of the zoning district.
ORD	Page 17 f. “within any tree drip line” – do we want to clarify that this applies whether above or below the tree canopy ?	N	No need to clarify, this is defined in CMC 17.60
ORD	Page 18 k. View Protection – I think this should be MUCH stronger. “Substantially Eliminate an existing significant view” would be very difficult to achieve while a view is still significantly impacted. This would seem to be an important design guidelines tool.	N	Keeping the same as test for all other development 17.10.010.K
ORD	Page 21 1 5. Voluntary Community Meetings – why can’t these be mandatory?	N	A mandatory community meeting before application submittal would trigger the FCC shot clock. As a practical matter, there is not a lot of time for community meetings. The FCC shot clocks are short and leave little time for the public hearing already required for all discretionary reviews and potential appeals.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	Page 27. E. Do fall zone requirements apply to all wireless facilities including those mounted on utility poles? I believe they should and not just for habitable structures intended for residential occupancy but any for of occupancy (specifically hotels).	Y	CPUC regulates the safe installation of electric and communications utility infrastructure including attachments of wireless facilities on utility poles. See for e.g., CPUC General Order 95 which was updated in 2020 to strengthen pole safety requirements. The fall zone in the Administrative Detailed Wireless Facility Design Guidelines does not apply. Bear in mind that the Code favors the use of existing poles and not the construction of new poles, so the fall zone is already fixed by the original placement of the pole. Further, if the applicant does not own the structure or pole, the applicant must include with the application a written authorization executed by the owner(s) that authorizes the applicant to file the application and perform the work to the extent described in the application. Pole owner's will review proposals for compliance with CPUC rules (and their own requirements which may be more stringent) before granting such authorization.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
COA	General – Can we add language for annual RF Compliance reporting ?	N	City can and does require demonstration of compliance with RF emissions standards in the application and post-installation in the COA. The COA also provides that Director may ask for a report if Director has good cause to believe the facility is not in compliance. The FCC has compliance and enforcement authority. Thus, local regulation of the facility's compliance on an ongoing operation may be subject to legal challenge in the courts or at the FCC as unlawful supplemental regulation e.g.Crown Castle USA Inc, v. City of Calabasas, Superior Court of California, County of Los Angeles, Case No. BS140933, January 24, 2014 (Chalfant, J.); see also Procedures for Reviewing Requests for Relief From State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934, FCC 00-408 (rel. Nov. 17, 2000). Concerns about suspected non-compliance should be reported to the FCC for enforcement action. Phone: 1-888-225-5322 (1-888-CALL-FCC); E-mail: rfsafety@fcc.gov
	General – Do we have a stated policy of undergrounding utilities? It would seem that if we did and if we made clear that anything on a utility pole that is later undergrounded must also be placed underground or eliminated might provide Telecom providers some pause before investing in pole mounted antennas.	Y & N	CMC Chapter 13.28 (Underground Utilities) provides the process for establishing underground districts by City Council resolution. Once an underground district is established, unless the resolution provides otherwise, undergrounding requirements do not apply to certain types of facilities, including "antennae, associated equipment and supporting structures, used by a utility for furnishing communication services." See CMC Section 13.28.070(E). In the proposed conforming amendments (Section 4) 13.28.070.E, a change is proposed to ensure remaining equipment is not visible.
ORD	General – my comments on "new and existing structures" apply throughout these documents. I have not cited every instance.	Y	see earlier comments on this matter

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
	SCTCN COMMENTS		
ORD	(1) Start with the Campanelli Ordinance for Carmel (March 2022) as the framework and make any additions to make it stronger; rather than starting with the City Wireless Ordinance Draft and trying to strengthen it to the level of the Campanelli Ordinance….we find that overall, the Andrew Campanelli Ordinance we submitted to the city last March 2022 is a stronger wireless ordinance than the city's draft because: (i) Everything is included within the ordinance for transparency to the public and the courts , (ii) The description and explanation of the application types are clearer and more defined, (iii) The critical role of the Planning Commissioner's authority to render factual determinations and the findings are covered in 6 pages within the ordinance: articulating 8 zoning impacts and 4 effective prohibition conditions to determine adequate coverage, significant gap/capacity deficiency, and least intrusive means, and (iv) the Campanelli ordinance outshines the city's draft it it's ability for the Planning Commission to be able to make factual determinations on significant gap and capacity deficiency claims when an applicant has effective prohibition claims.	N	Relevant topics from the Campanelli Ordinance are already addressed in the draft ordinance and the specific comments made at the workshop were responded to and changes made in the current draft to the extent deemed advisable (as explained in this chart). The Campanelli Ordinance would require major revisions if the city were to use it. Among other things, the Campanelli Ordinance is not complete misstates certain legal requirements, and does not address California law.
CL	(2) The role of The Planning Commission as the discretionary reviewing authority of evidentiary findings must be clearly articulated within the ordinance and the Wireless Ordinance Facility Application Checklist Types I-IV.Add language from Andrew Campanelli's Wireless Ordinance Refering to Evidentiary Standards for Effective Prohibition conditions (p. 22-24) and rendering evidence for significant gap and capacity deficiency claims (page 30-36) in the Campanelli Ordinance 17.46.100	Y & N	No changes have been made to the ordinance. See comments on page 1 above regarding special exception findings and why we have not incorporated Campanelli ordinance language regarding effective prohibition in the City's ordinance. Some revisions to the checklist for Type I-IV applications have been made to require information to support effective prohibition claims.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD/CL	(3) The city draft's "Wireless Ordinance Application Types I-IV" do not require applicants to provide all of the probative evidence necessary for the Planning Commission to make factual determinations as to whether a denial of the application would materially inhibit an identified wireless carrier from providing personal wireless services. All the evidence necessary should also be articulated in the ordinance. ***17.46.080 Effective prohibition claims*** --We recommend the language used in Sonoma's June 21, 2022 ordinance under 5.30.120 exceptions B. as such,"An applicant may request an exception only at the time of applying for a wireless telecommunications facility permit and not at any time thereafter. The request must include both the specific provision(s) of this chapter from which the exception is sought and the basis of the request. Any request for an exception after the city has deemed an application complete shall be treated as a new application." ***Checklists-***The application instructions must, "require" applicants to make a showing of all probative evidence necessary for the Planning Commission to make factual determinations as to whether a denial of the application would materially inhibit an identified wireless carrier from providing personal wireless services. ***Drive test data***--include the "history of effective prohibition claims" and the "specific drive test data and map evidence" an applicant must provide for the Planning Commission to be able to make factual determinations about significant gap claims. Include the specific language and testing criteria outlined in Andrew Campanelli's ordinance (effective prohibition claims/drive test data and maps) ***Connect to landline***-add a checkbox requiring applicants to make a showing as to whether "mobile wireless services could connect to a landline", and if so, all results and data together with a report that describes how and when the applicant conducted such test(s), so that the Planning Commission may fully determine significant gap claims. ***Denial of service*** - add in a checkbox on the city application instructions requiring applicants make a showing of denial of service and/or dropped call records so that the Planning Commission may determine capacity deficiency claims. We recommend the specific language from Andrew Campanelli's ordinance as such (denial of service and/or dropped call records)	Y & N	See edit to Ordinance Section 17.46.080(C)(1) to address the timing of claims for special exceptions (only one special exception claim involves effective prohibition. It is inappropriate to put detailed requirements "effective prohibition" showings in an ordinance because the tests for effective prohibition are multiple and evolving as case law develops. Putting a specific judicial test in the ordinance would require frequent amendments to keep the ordinance current with the law, which could leave it vulnerable to challenge during the long process of updating. Further, the Campanelli ordinance only addresses one of the several judicial tests and not quite as formulated in the Ninth Circuit. Most of the requested items have been added to the checklist where appropriate for the Ninth Circuit. Additional items have been added to address other effective prohibition tests.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD/CL	(4) All the Evidentiary Standards to be rendered by the Planning Commission must be within the ordinance or in both the ordinance and the checklist.	Y & N	Some revisions have been made to the checklist. The ordinance now references the requirement for applications to contain probative evidence in order to strengthen the requirement for those materials to be included, but the specific application requirements have not been added to the ordinance and have been included in the checklist for the reasons discussed above.
CL	(5) The city draft's Wireless Ordinance Application Types I-IV & V must include a fire safety and engineering checklist outlined by consultant Susan Foster in an attachment	N	Fire safety and engineering were already addressed in the previous ordinance and checklist drafts and remain sufficient in staff's opinion.
ORD	(7) The city draft's public noticing to neighbors is limited to a 100-foot radius. The city draft's public noticing to neighbors by the applicant must be expanded from a 100 foot radius of the site to a 300-foot radius of the site. In addition to hand delivery, require the applicant to send public mailings within a 300-foot radius of the site and require the applicant to file an Affidavit of Delivery and Mailing. Example: from Andrew Campanelli's wireless ordinance for CBTS	N	The ordinance is consistent with the current city permit procedures in Section 17.52.110 for hearing notices. 100 ft hand deliver and 300 ft mailing. Further, hand delivery is being done by the City for wireless applications to make sure that it is timely done.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	(6) The city draft ordinance omits the finding of "adverse impacts upon real estate values" to be determined by the Planning Commission. Add as stated in Andrew Campanelli's ordinance (p.34) (potential adverse impacts upon real estate values)	N	Development within the City is regulated through design and location guidelines. Example – viewshed is already regulated to an extent. All development standards implicitly serve to protect property values already. Adding this finding will unnecessarily put the City at risk of legal challenge. Courts have cautioned that requirements or decisions that are ostensibly concerned with property values may be found to be unlawfully based on concerns about RF emissions. For example, in a California federal district court case in which a city had denied a wireless facility application based on the city's finding that the wireless facility would "negatively affect property values of nearby homes based upon the perceived fear of the health effects cause by the RF emissions," the court held against the city since it may not regulate based on the "direct or indirect concerns over the health effects of RF." The court explained that the denial could not be based on substantial evidence (as required by law) "…if the fear of property value depreciation is based on concerns over the health effects caused by RF emissions." See AT&T Wireless Servs. v. City of Carlsbad, 308 F. Supp. 2d 1148 (S.D. Cal. 2003). This ruling is relevant because the proposed wireless regulations already have detailed aesthetic and safety standards, and it is not clear on what basis --other than an unlawful concern over the health effects of RF emissions-- would a finding be made that a facility that is found to meet those design and development requirements nonetheless creates adverse impacts upon real estate values and must be denied. .

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	(8) The city draft's "View Protection" language is weak and does not fully protect view impacts to individual properties and neighborhoods. ***Add***: ++Wireless communications facilities, to every extent possible, should not be sited to create visual clutter or negatively affect important public or private views as determined by the Planning Commission. ++During the site visit, the City Planner shall annotate the survey regarding the potential view and privacy issues on neighboring lots. ++The project does not present excess visual mass or bulk to public view or to adjoining properties. ++Mitigate impacts on visual quality, circulation and ambience to the extent possible. ++Co-location is encouraged when it will decrease visual impact. ***Delete***: "No single parcel should enjoy a greater right than other parcels except the natural advantages of each site's topography."	Y & N	Added the following suggestions to 17.46.040.F.1.K (View Protection). The remainder were not added due to redundancy or lack or relevance to View Protection • Wireless communications facilities, to every extent possible, should be sited to not create visual clutter or negatively affect important public or private views as determined by the reviewing authority • The project does not present excess visual mass or bulk to public view or to adjoining properties • Collocation is encouraged when it will decrease visual impact Deletion Request – Not done. This language is part of municipal code under 17.10.10 that is standard for all development projects in the City.
ORD	(9) The city draft's 250 feet spacing requirement between wireless facilities in the public-rights-of-way results in a proliferation effect of about 2 facilities per block. The city staff must do a technical analysis to determine the maximum public-rights-of-way distance between facilities that does not create an effective prohibition. e.g. Sonoma has 1500 feet	Y	Spacing was changed to 500 ft. It is not possible for staff to do a meaningful technical analysis to determine the maximum public-rights-of-way distance between facilities that does not create an effective prohibition. Each carrier can make an effective prohibition claim based on its own service capabilities and circumstances and these change over time.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	(10) The city draft's "Purpose & Findings statements" are lacking protections of Carmel-by-the-Sea's character and safety elements in 5 areas. Include additional language: ++ The preservation of the residential character in Carmel is central to all land uses. ++ Respecting the past as a continuing legacy that challenges each citizen to preserve the City's character in spite of on-going change. ++ Preserving Carmel's primarily residential character with business and commerce subordinate to its residential character. ++ The encroachment shall not create, extend, or be reasonably likely to lead to an undesirable land use precedent ++ SCALE. Underlying much of Carmel's design character is a respect for scale. Scale can be defined as a relationship of size among two or more objects. In Carmel, the scale tends to be small and related to human size. The City itself is compact, its lots are small, and its streets are narrow. The character established by existing small homes and cottages reinforces this intimate size relationship. All of these contribute to a human scale and a pedestrian-friendly, built environment. ++ Designing buildings, infrastructure, and other improvements to a human scale ++ Oversized design elements make structures appear dominating and monumental. This out-of-scale character represents a poor fit to the human form, vitiates the more intimate, rural charm and village character of Carmel-by-the-Sea and shall be avoided. ++ That the project will preserve the community character and will be compatible with the streetscape, mass, bulk and height of the surrounding neighborhood context. ++ Each site shall contribute to neighborhood character including the type of forest resources present, the character of the street, the response to local topography and the treatment of open space resources such as setbacks and landscaping. It is intended by this objective that diversity in architecture be encouraged while preserving the broader elements of community design that characterize the streetscape within each neighborhood. ++ Carmel by-the-Sea's urban forest poses significant fuel source for fire within the Community ++ High density of structures within the Carmel residential areas and business districts among numerous trees increase the hazard	Y & N	Added the following to the ordinance: • Ensure the safe installation and maintenance of wireless facilities to protect against fire hazards made more prevalent by the City's unique urbanized forest, topography and accessibility. • Preserve Carmel's primarily residential character by keeping business and commerce subordinate to its residential character • … recognizing that the preservation of the residential character in Carmel is central to all land uses… The remaining suggestions were not added due to redundancy, or because they were not appropriate to be put in the purpose statement as they were specific design guidelines, or codes that are already captured elsewhere in the wireless regulations. Some were not relevant to wireless facilities, such as the concept of "human scale", which has to do with architectural elements of a building meant for human habitation.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
	(cont. from previous page) ++Many buildings in the commercial district are very closely located with many building having common walls; ++Many of the commercial buildings and residential dwellings are older without fire sprinklers or fire resistant building materials; ++Of the approximately 250 commercial buildings in Carmel, more than half are equipped with fire alarm systems, and approximately 20 percent have automatic fire sprinkler systems. ++Most construction within Carmel contains wood; most roofs are made of combustible materials; ++High-density development with small setbacks increase fire spread and limit effectiveness of fire fighting efforts; ++The most significant factor increasing fire risk is human proximity; ++Areas with limited access prevent containment goals; ++Coastal windstorms and hillsides promote strong gusts of wind toward the city; ++Steep slopes promote spreading of wildfire through increased speed and preheating of vegetation; ++Risk of burning embers pushed by wind-blown wildfires from igniting building through small setbacks and vegetation; ++The village layout creates access challenges for the emergency vehicles. Many of the roads in the residential districts are very narrow and lack adequate turnaround space for larger emergency vehicles, such as fire trucks; ++In addition to constricted access, the tightly knit community of houses and trees doesn't provide adequate fuel breaks throughout the City; ++Another aspect of the "village" character that creates an obstacle to emergency response is lack of addresses. The lack of house numbers in response to		***(cont. from previous page)***

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
	(cont. from previous page) emergencies such as fire, or flooding may not have a significant impact on the ability of emergency responders to find a property, as these are highly visible events. However, in case of medical emergency, lack of the house number may delay the arrival of the medical team. ++Dry summer and fall seasons with no precipitation create ideal conditions for fire spreading; ++A combination of generous rainy season followed by dry summer can result in large amounts of vegetation for fire fuel; ++Accidents related to spark charges from overhead transmission lines have started fires, as well as embers from wood burning stoves and faulty electrical wiring; ++ aleady included~~We have 4 very high severity hazard zones within the community (Pescadero Canyon, Forest Hill Park, Del Monte Forest and Mission Trails Nature Preserve~~); ++As discussed in the Public Facilities and Services Element, the water supply is one of the biggest challenges for Carmel and other Monterey Peninsula Cities. The City and its emergency responders have a limited supply of water. In case of a large, regional fire incident, where adjoining cities would be also drawing on water supply, the City of Carmel may experience inadequate water supply to fight fires.		***(cont. from previous page)***

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
CL	(11) The city draft is missing "visual impact analysis from the perspectives of the properties situated in closest proximity to the location" of a proposed facility. ***Add*** a checkbox in this section from Andrew Campanelli's ordinance:"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."	Y& N	See addition to Type I-IV Checklist 3.1. The city may not require photos from private property to which the applicant may not have access, but language has been added requiring the applicant to attempt to obtain pictures or provide proof that they could not get permission.
CL	(12) The city does not require the applicant to construct "a real-world mock-up" of the mass, scale, and height of the structure as field evidence necessary for the Planning Commission to be able to make factual determination on visual impacts to neighboring properties. Require balloon test (Campanelli ordinance) or mock-up for community meeting (Sonoma ordinance)	Y& N	. Amendments made to Design Review Chapters in Municipal Code which make the City's Story Pole Policy applicable to all wireless applications now, which will serve the same purpose as a mock-up. "Balloon tests" are a method of perceiving the height of much taller, free standing towers that is not applicable in the context of the facilities that would be applied for in the City.
CL	(13) The city does not ask applicants to explore co-location of service opportunities outside of city limits before adding a new facility in Carmel as least intrusive means. Specify applicants to plot existing and predicted co-location opportunities in a geographic radius of 45 miles from the city as co-location opportunities to provide service to the area proposed, as least intrusive means before adding a new wireless facility in Carmel. All results and data together with a report that describes how and when and how far away the applicant conducted such test(s)," so that the Planning Commission can determine the full-range of co-location opportunites a carrier has available to provide to existing and predicted facilities aready in Carmel.	Y& N	We require justification analysis for deviating from the most compatible location and/or structure. We have removed the requirement to identify existing wireless facilities only within the City. See 12.3. For significant gap/least intrusive means we require an alternatives analysis that is not limited to City locations. See 15.2.1(c). It does not specify the mileage but 45 miles is not a viable requirement. The appropriate radius will depend on the size of the gap and the available means to fill the gap.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	(14) The city draft's ordinance is missing "Definitions" necessary to give full explanation, distinction, and clarity to the document. ADD from Campanelli ordinance: ADEQUATE COVERAGE; DBM; NOTICE OF EFFECTIVE PROHIBITION CONDITIONS; PROBATIVE EVIDENCE; SITE DEVELOPER; SMALL WIRELESS FACILITY SUBSTANTIAL EVIDENCE; TOLLING OR TOLLED	N	Already have small wireless facility. The others are not necessary in the ordinance or generally are not used.
	VERIZON WIRELESS		
ORD	A problematic new Draft Ordinance provision prefers private parcels over the right-of-way. Draft Ordinance § 17.46.040(C). This directly 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, including new poles. Accordingly, the City cannot deny a proposed right-of-way facility due to a preference for private parcels, nor can it require applicants to demonstrate that private parcels are infeasible or unavailable. The justification for the private parcel preference—that it is necessary to ensure access for pedestrians, vehicles, and emergency personnel, among other motives—is lifted verbatim from the City's code regarding sidewalk vendors. Code § 12.46.010(B). However, those concerns are misplaced as applied to small cells in the right-of-way. State safety regulations already require that small cell equipment be elevated on utility poles, posing no impediment to circulation or access by pedestrians and motorists. Draft Ordinance Section 17.46.040(E)(3)(f) includes safety standards to protect access to transportation, fire hydrants and other public infrastructure along the right-of-way. New poles would have the same minimal footprint as utility poles. Consistent with the statewide franchise to use the right-of-way granted by Section 7901, numerous California cities including San Francisco, San Jose, San Bruno and Salinas have adopted distinct wireless regulations for private property and the right-of-way, with separate permit requirements and standards. Carmel would invite legal challenges by adopting a preference for private parcels over the right-of-way. Section 17.46.040(C) must be deleted.	N	The City disagrees that this is a prohibition. It is a rationale level of preference based on the reality of the physical circumstances of the City streets.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	The Draft Ordinance would subject small cells to a host of vague standards. These include a location that is "least intrusive to community character and values." Draft Ordinance § 17.46.040(A), (B). A "stealth" design is required, defined to require a facility to "mimic or blend" with surroundings, with all equipment screened from view. Draft Ordinance §§ 17.46.020(A)(21), 17.46.040(F)(1)(a). Such broad stealth criteria are unrealistic for small cells in the right-of-way, which are not "out-of-character" compared to other utility infrastructure such as utility poles, transformers, and utility lines.	N	The City disagrees that the standards are vague or unrealistic. Per the Ninth Circuit ruling, small cells do not have to be limited to "objective" standards.
ORD	In a major reversal from the original version, which required administrative design review for right-of-way facilities, the revised Draft Ordinance now requires the vague findings for conditional use permits, discretionary design review and coastal development permits. Draft Ordinance §§ 17.46.080(A)(1)(g), (h), (i). Those findings include "compatible with surrounding land uses," "contributes to neighborhood character," "sensitive to the natural features," "modesty and simplicity" and other criteria inappropriate for needed utility infrastructure. Code §§ 17.58.060, 17.64.010. Further, the referenced code findings require compliance with the General Plan, the various zone purposes and standards, and the local coastal program, all of which involve additional vague, excessive criteria. Alone or in combination, the various vague standards could be used to deny small cells that otherwise satisfy specific criteria such as volume thresholds. For small cells, vague standards unrelated the FCC's goal of avoiding "out-of-character deployments" are "unreasonable" and prohibitive. Federal courts have ruled that vague, generalized concerns or opinions about the aesthetics of wireless facilities do not constitute substantial evidence upon which a city can deny a permit. See City of Rancho Palos Verdes v. Abrams (2002) 101 Cal. App. 4th 367, 381. By contrast, the Draft Guidelines provide specific direction, which benefits applicants and City decision-makers alike. Our minor suggested revisions below would ensure that the Draft Guidelines are technically feasible. The Draft Ordinance should be revised to eliminate any vague standards and findings for small cells in the right-of-way, and instead simply require compliance with the Design Guidelines.	N	There is no legal requirement for administrative review for right of way facilities. An initial draft set of wireless regulations did have administrative design review, but based on public feedback the workshop draft went back to the existing Code's approach. The City disagrees that the findings are inappropriate. The Guidelines inform the decisions on the findings.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	Draft Ordinance Section 17.46.040(E)(1) requires a "special exception" for right-of-way facilities in the R1–Residential zone that covers most of Carmel, as well as the many City historic sites and coastal sites. The exception scheme is problematic because it requires an applicant to show that denial would violate federal or state law. Draft Ordinance § 17.46.080(C). The exception findings are not based on reasonable aesthetic criteria, and they inappropriately place City officials in a quasi-judicial position. By relying on "exceptions" that would be required over and over, the City would concede that its location standards are unreasonable and preempted.*** In the right-of-way, small cells serve targeted areas with a limited coverage footprint. Steering a small cell too far from a proposed location would leave a target coverage area underserved or unserved, constituting a prohibition of service. Accordingly, we suggest that instead of requiring exceptions for residential rights-of-way, the City add a reasonable search distance of 500 feet for any preferred locations or structures. Section 17.46.040(E)(1) must be deleted. Sections 17.46.040(B) and (D) should be revised to allow a less-preferred location or structure if there is no preferred option "...within 500 feet along the right-of-way that is technically feasible and available."	N	The City disagrees that requiring a special exception is inappropriate or a concession that the standards are unreasonable.
CL	To prove that denial would violate federal law, Item 15 of the proposed Type I-IV application checklist requires applicants to demonstrate an effective prohibition by providing information regarding coverage gaps, which the FCC found are not pertinent to small cells. Infrastructure Order, ¶ 40. Instead, the FCC determined that local requirements constitute an effective prohibition of service if they "materially inhibit" the goals of "densifying a wireless network, introducing new services or otherwise improving service capabilities." Id., ¶ 37. The FCC emphasized that "a legal requirement can 'materially inhibit' the provision of services even if it is not an insurmountable barrier." Id., ¶ 35. The hurdle of requiring a special exception to site in residential rights-of-way is one such barrier that is preempted by the FCC's Infrastructure Order.	Y & N	This section of the checklist has been updated to expand the alternative bases for an effective prohibition claim. The city does not agree that the requirement to demonstrative a special exception was itself preempted by the FCC Order.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	17.46.040 – General Development Standards E(3)(d). No new pole in right-of-way that would affect existing vegetation or root structure. Portions of some Carmel rights-of-way are covered with vegetation that in many cases extends from adjacent private property. While installation of a new pole foundation may require minimal vegetation removal, a pole itself has a very small footprint. Roots of established trees can be protected by a specific standard. This provision should be replaced with a requirement that a new pole not be installed within a tree's existing drip line.	Y	Modified to protect tree roots and preserve open space/possible future tree locations.
ORD	E(4). Encroachments over parcels (RF emissions). This provision attempts to regulate radio frequency emissions based on a subjective determination of whether the emissions would render a private parcel "inaccessible" or hinder future development, potentially requiring property owner consent. However, the federal Telecommunications Act clearly bars such local regulation of wireless facilities that comply with the FCC's exposure limits. 47 U.S.C. § 332(c)(7)(B)(iv). If a licensed engineer confirms that a proposed facility will not exceed the FCC's general population exposure limits, then the City cannot impose its own supplemental regulations pertaining to RF emissions. This reference to RF emissions must be deleted.	Y	The intention was not to regulate RF emissions but to preserve existing property/development rights on private property, for example if a wireless facility is placed in ROW adjacent to a parking lot and the lot later gets developed into housing. To better express this intent, the development standard has been deleted from the ordinance and new language has been added to the standard COA related to compliance with applicable laws. See Exhibit C Standard Conditions of Approval, revised Item 11.
ORD/DG	F(1)(b). Overall height. This would limit the height of any facility to 10 feet over mature trees in the vicinity or zone height limits, whichever less. On private property, this could prohibit facilities on rooftops already reaching the zone height limit. Tree screening is unnecessary because the Draft Guidelines already require full concealment. Draft Guidelines § I(B)(1). In the right-of-way, state safety rules require that pole-top antennas be elevated six feet above electric supply conductors, in which case the proposed height limits would be technically infeasible. Public Utilities Code General Order 95, Rule 94.4(C). With greater height, antennas provide a larger coverage footprint, and fewer facilities are needed to serve an area. For private property, we suggest allowing antennas to extend up to 10 feet over the height of the existing building or the zone height limit, whichever greater. For the right-of-way, we suggest allowing an antenna to extend up to 10 feet over the height of an existing utility pole, to accommodate the antenna plus the required six-foot separation distance.	Y	Modified to let view impacts rules guide, rather than limiting simply because of height. Generally, allow 10' over height for district and in right-of-way, existing utility poles.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	F(1)(f). Trees and landscaping. This would prohibit right-of-way facilities within a tree's drip line, but that should not apply to facilities placed on existing/replacement utility poles where tree branches have grown nearby. Public utility companies may prune branches as needed for safety without compromising a tree's health, obtaining a permit if needed, and a tree can provide screening of small cell accessory equipment. The first sentence should be revised to apply only to new poles, but not to facilities on existing/replacement poles.	Y	Wording change – addressed new poles and equipment
ORD	F(1)(k). View protection. This requires a location and design that preserves significant coastal views from the right-of-way while "respecting" views from neighboring parcels, referencing "private rights to views." This is another vague standard that could be used to deny a small cell that satisfies the Design Guidelines and is not "out-of-character" compared to existing right-of-way utility infrastructure. Curtailing antenna height to satisfy this provision could be technically infeasible by compromising signal propagation. Ultimately, this standard would be unreasonable. The FCC's Infrastructure Order preempts both City regulations and the referenced California Coastal Act. This provision should be deleted.	N	A site might meet all design guidelines and then still fail the view impact test but coastal view protection is a well-documented and important aesthetic concern not only for Carmel but statewide under the Coastal Act. The concerns expressed about implementation are speculative. The City does not agree that state and local laws protecting coastal views are facially unlawful and preempted by the FCC Small Cell Order as Verizon appears to suggest.
ORD	17.46.050 – Wireless Application Types and Submittal Requirements B(4). Other permits and reviews that may be required. This provision does not address the encroachment permits required for right-of-way facilities. The findings for an encroachment permit include vague, discretionary determinations such as "public interest" and "enjoyment" as well as "justifiable need." Code § 12.08.060. However, encroachments for wireless facilities are unique because Public Utilities Code Section 7901 grants telephone corporations a statewide right to place their equipment along any right-of-way with no requirement to justify the need for a facility. An applicant could secure zoning permits only to be denied an encroachment permit due to these vague standards of the City's streets and sidewalks code. The Draft Ordinance should streamline the encroachment permit review process by eliminating vague code standards for wireless facilities in the right-of-way.	Y	The encroachment permit process has been modified to eliminate duplicative reviews. Encroachment permit will be considered at the same time as the Use Permit by the Planning Commission. See conforming amendments inSection 4 of Ordinance – 12.08.050 and 12.08.060

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	17.46.060 – Application Review Procedures D. Director denial without prejudice due to failure to respond to notice of incompleteness. The City cannot terminate an application if an applicant does not respond to a notice of incomplete application ("NOI") within 120 days (or any period of time). FCC rules plainly state that the Shot Clock restarts or resumes running on the date an applicant responds to a timely NOI. 47 C.F.R. §§ 1.6003(d)(1), (d)(3)(ii); 47 C.F.R. § 1.6100(c)(3)(ii). FCC rules do not allow early, unilateral termination. The City would lack substantial evidence to deny on this basis. This provision should be deleted.	N	The City would not be denying the application on the merits. The purpose of this provision is to give the City the administrative option to terminate inactive, stale applications, without prejudice to the applicant re-applying. Keeping an application "active" indefinitely presents a risk that the City will be asked to make a decision based on information that hase become dated and inaccurate with the passage of time. This provision is not inconsistent with the FCC rules; the FCC shot clocks were adopted because the industry sought to expedite application processing. Given that application requirements must be published in advance and shot clocks are as short as 60 days, giving an applicant 120 days to respond to a NOI is reasonable.
ORD	17.46.070 – Public Notices, Public Hearings, Decision Notices and Appeals A(1), D(1), E(1). Notice and appeals for eligible facilities requests. These sections apply to Type V eligible facilities requests to modify facilities, but there is no reason to require public notice or allow public appeals of these applications. For eligible facilities requests, the City may only consider the FCC's "substantial change" criteria. 47 C.F.R. §§ 1.6100(b)(7), 1.6100(c). Because these criteria are objective, the FCC emphasized that approval of eligible facilities requests is "obligatory and non-discretionary." See In Re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Etc., 29 FCC Rcd.12950, ¶¶ 188-89, 227, 232 (FCC October 17, 2014) (the "Spectrum Act Order"). These provisions should be revised to eliminate public notice and public appeals for Type V eligible facilities requests. Only an applicant should receive notice of a decision, with a right to appeal a denial.	N	Federal law dictates result (must approve EFR if meet criteria) but does not dictate the process.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
ORD	17.46.080 – Findings Required B(2)(c). Denial finding for Type V eligible facilities requests. The City cannot deny an eligible facilities request due to health and safety factors, but the FCC allows a city to "condition" approval on that basis, as provided by the following provision, Draft Ordinance Section 17.46.080(B)(3). See Spectrum Act Order, ¶ 202. At the zoning stage, the Planning Division should only confirm that a proposed modification causes no "substantial change," while conditioning approval on applicable health and safety codes to be considered by the Building Safety Division in its review of a building permit. This finding should be deleted.	N	Para 202 does not say that the City cannot deny EFRs due to health and safety factors. It says cities can require compliance with generally applicable health and safety laws *and* can condition on compliance. That is broader than building permit review—e.g. noise ordinance compliance review would not be done for building permit.
DG	I – Facilities on Parcels B(2). Height limitations (building-mounted facilities). Similar to the Draft Ordinance, this limits building-mounted facilities to zone height limits, which could prohibit rooftop antennas. This provision should be revised to allow an additional 10 feet over an existing building or the zone height limit, whichever greater, if a facility is fully screened as required by Section I(B)(1).	Y	Design Guidelines updated to allow additional height in these circumstances up to 10 feet over allowable building height limit with screening
DG	II – Facilities in the Right-of-Way Verizon Wireless has deployed small cells on utility poles and new stand-alone poles in residential neighborhoods throughout California. We have attached photosimulations of three small cell designs currently under consideration as options to improve service in the western Carmel area, as well as a plan elevation of a typical small cell on a utility pole which complies with PG&E rules and General Order 95. A(2)(2). New pole designed to resemble existing poles. Given that almost all poles in Carmel rights-of-way are wood utility poles, this likely would require a new pole for a small cell to be a wood pole as well. While that is possible, it may not be aesthetically appropriate in certain areas. The City should consider allowing a new metal pole where preferred. For metal poles, network equipment can placed in a shroud at the base of the pole, on the side of the pole, or in a ground cabinet.	Y	Modified to let the ordinance and design guidelines control the design of the new stand-alone pole. Requiring only wood poles may miss opportunity for stealth.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
DG	B(1). Antenna placement. To be reasonable per the FCC's Infrastructure Order, antenna standards must be technically feasible for new and emerging technologies by accommodating the antenna and radio models available from manufacturers. In addition to the low-band frequencies long in use, Verizon Wireless recently licensed new mid- and high-band frequencies from the FCC. These require different equipment. Accordingly, certain small cells may involve several types of antennas, and up to three of each, facing different directions where they provide service. Some facilities include several small panel antennas mounted on a cross-arm attached to the side of a pole. Accordingly, antennas may be placed on top and/or on the side of a pole. For these reasons, this provision should not prefer "poletop" antennas, but should allow antennas both above and on the side of a pole, or be deleted.	Y	Changed to not prefer "top" of pole to allow for more flexibility in antenna placement to ensure the "least intrusive" and most compatible design based on site-specific circumstances.
DG	B(2). Antenna concealment. This requires all antennas to be placed within a "unified shroud to the extent technically feasible." A typical 4G "cantenna" is already manufactured with its own concealing shroud. Shrouding is infeasible for mid- and high-band antennas because it impedes their signal propagation. Further, mid- and high-band antennas are small in size, and multiple small panel antennas pose less visual impact than a shroud covering them all, which only adds bulk. As explained above, antennas may not all be placed in the same location on a pole. This shrouding provision could be technically infeasible, and it should be stated as an encouragement, but not a requirement.	N	Already states to extent technically feasible

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
DG	C(1). Accessory equipment placement preference. This prefers accessory equipment in an underground vault, rather than mounted on a pole or placed in a ground cabinet, with a narrow exception for technical feasibility or compatibility. However, blanket undergrounding requirements are unreasonable in two ways. First, undergrounding generally is technically infeasible due to sidewalk space constraints or Carmel's lack of sidewalks along many streets (where parked vehicles could block vault access), plus utilities already routed underground and operational impacts of required cooling and dewatering equipment. Second, small cell accessory equipment is not "out-of-character" on the side of utility poles that support other utility infrastructure (see attached photosimulations and plans of example designs for utility poles). Rather than imposing hurdles on applicants to demonstrate infeasibility, the City should allow a reasonable volume of associated equipment on a pole. The City should allow up to 15 cubic feet of associated (non-antenna) equipment on the side of a utility pole, or six cubic feet on a new stand-alone pole, before undergrounding is considered.	Y	Allowing a minimal volume of pole mounted equipment (6 cu. ft) would be consistent with the appearance of typical utility poles and minimally visually intrusive
CL	2.2, 2.4. Site development plan, site survey (Type V). For eligible facilities requests, the City can only request information that is reasonably related to determining whether a proposed modification causes a substantial change to a wireless facility. 47 C.F.R. § 1.6100(c)(1). Section 2 of the Type V application checklist, Project Plans, asks for irrelevant information that is not pertinent to the FCC's "substantial change" criteria. For example, Section 2.2 requests depiction of non-wireless improvements elsewhere on the property (e.g., driveways, gutters, trees) or within 500 feet. Likewise, Item 2.4 seeks irrelevant survey information, such as traffic lanes, non-wireless utilities, mailboxes and trees within 75 feet, among numerous other items. A City notice of incomplete based on failure to provide such irrelevant information would not toll the Shot Clock. Ibid. For the Type V application, Section 2.2 and 2.4 should request only that information on plans that is relevant to determining if there will be a "substantial change" to an existing wireless facility.	Y	Some items were amended/removed from section 2.4 of checklist that are not relevant to the review of a type V application, including: • Removed: Show the location of benches, trash cans, mail boxes, kiosks, and other street furniture; • Removed: Show approximate topographical contour lines with elevations called out; • Removed: Show all structures or improvements within the public right-of-way within any block partially or entirely occupied by the project and any elements thereof; • Removed: Requirement for wet stamp and wet signature from preparer

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
CL	2.2, 2.5. Depiction of fiber backhaul. On both checklists, these items require "depictions of the applicant's plan for electric and data backhaul utilities" and a fiber network plan, even if fiber backhaul is provided by a third party. However, fiber networks are beyond the scope of a "small wireless facility" as defined by the FCC. Fiber is regulated differently, and it is provided by other companies under distinct permits or franchises. Small cell permittees should be responsible for only their own equipment, and fiber companies cannot be subject to the conditions imposed on wireless providers. For Type V eligible facilities requests, information regarding another company's fiber backhaul is irrelevant to the "substantial change" criteria, which pertain to the modified wireless facility. These provisions should be replaced with a requirement to show the applicant's own fiber lines only up to the point of connection or "meet-me point," if relevant.	Y	The requirement has been removed for Small Wireless Facility applications. For EFRs, this could be relevant to substantial change criteria (excavation outside the "site") so not removed.
CL	11. Project purpose and technical objectives (Type I-IV). For right-of-way facilities, the City cannot require applicants to provide this information regarding the need for a facility because Public Utilities Code Section 7901 grants telephone corporations a statewide right to use any right-of-way. Further, the FCC determined that small cells are needed to densify networks and improve service, which are Verizon Wireless's objectives in placing small cells in Carmel. As noted above, the FCC disfavored dated service standards based on "coverage gaps" and the like, so the coverage/capacity information sought by this submittal requirement is preempted. Infrastructure Order, ¶¶ 37-40. This submittal requirement should be deleted, or at a minimum, it should not apply to right-of-way facilities.	N	This provision is not asking for a demonstration of need; it is simply asking for the purpose of the project. The title has been changed.
CL	12.3.1. Justification for using less-preferred locations/structures (Type I-IV). We emphasize our suggestion above that the City adopt a 500-foot search distance for any preferred locations or structures in the right-of-way. In that case, an applicant would simply submit information confirming that preferred options (if any, generally other existing poles) are technically infeasible, consistent with the FCC's direction regarding "reasonable" aesthetic criteria. The request for information regarding existing wireless facility locations and a "search ring" would be unnecessary. This section should be revised to require a demonstration of technical infeasibility for any preferred locations or structures within 500 feet along the right-of-way.	N	The City prefers the approach outlined in the documents.

Doc Type*	Comment Received From:	Edits Made? (Y/N)	Responses and References
CL	15. Special exception request (Type I-IV). This would be required in most cases, because Draft Ordinance Section 17.46.040(E)(1) requires an exception for right-of-way facilities in all R1–Residential zones and certain other locations. However, the exception requirement "materially inhibits" small cell deployments, as explained above. An applicant could simply submit a simple statement that a proposed small cell will densify its network and improve service, citing the Infrastructure Order. The City should not require exceptions for certain locations.	N	The City does not agree with Verizon's unsubstantiated claim that simply requiring a special exception in certain circumstances is itself a material inhibition of service.
COA	C(1). Permit term for eligible facilities requests. This would curtail the term for a modification permit to that of the existing facility's permit, even if it was granted to a different carrier. This contradicts California Government Code Section 65964(b), which states that permit durations of less than ten years are generally presumed to be unreasonable, absent public safety or substantial land use reasons. As noted, FCC rules allow the City to condition approval on applicable safety regulations (which do not include permit terms), and a modification that causes no "substantial change" does not pose a substantial land use impact. This condition must be deleted.	N	The City does not agree with Verizon's interpretation of state law, this is consistent as there are substantial land use reasons for the EFR permit modifying the existing facility to end when the permit term for the existing facility ends
COA	C(2). Permit subject to conditions of existing permit. The City cannot subject an eligible facilities request to existing permit conditions that are not related to health and safety. Instead, the permit for an eligible facilities request should clearly state any appropriate conditions of approval, rather than referencing prior permit conditions. This condition should be deleted.	N	The City does not agree with Verizon's narrow interpretation of FCC EFR orders.

***Doc Type Key:**

- ORD = Ordinance
- DG = Design Guidelines
- CL = Application Checklist
- COA = Conditions of Approval