DOC (ORD/DG/ CL/COA)	COMMENT	EDITS MADE? (Y/N)	RESPONSE AND REFERENCES
	INDUSTRY COMMENTS		
#1 ORD	**AT&T** 1. Obstructing Right-of-Way Siting. The city's proposed regulations erect a series of obstacles to placing wireless facilities in the public rights-of-way, which will violate the law in almost all situations. Section 17.46.040(C) specifically discourages all PROW sites. Section 17.46.040(E)(1) prohibits PROW sites throughout a large portions of the city, including all PROW sites in single-family residential zoning districts and all PROW sites along and near the coast. A review of the city's Zoning Map shows this restriction amounts to a very significant prohibition across the vast majority of the city. The only way around these prohibitions under the city's proposal is to obtain a special exception. But that process requires burdensome proof for each and every site, using the city's improperly limited types of evidence, and the restriction will violate state and federal laws in most (if not all) circumstances. These restrictions are also unlawful as AT&T and other telecommunications providers have the state law franchise right to construct poles and install lines and other necessary equipment in the public rights-of-way, so long as doing so does not incommode the public use of the roads and highways. Cal. Govt. Code Section 7901. While AT&T's broad right to place wireless facilities in the PROW is subject to reasonable and nondiscriminatory aesthetic requirements, those restrictions must be narrowly tailored. The city cannot simply create a process that renders impossible or nearly impossible every PROW location on the broad basis that the city prefers wireless facilities elsewhere. Moreover, the city can only apply reasonable time, place, and manner restrictions on PROW placements "to all entities in an equivalent manner." Cal. Govt. Code Section 7901.1(b). The city cannot, therefore, impose restrictions on wireless facilities that do not apply to other PROW users. Given the existence of vertical infrastructure in the PROW throughout the city, the city must abandon its proposed provisions obstructing deployments of wireless facilities in wide swaths of the city. Beyond the legal problems with this approach, it does not make practical sense to prohibit low-profile wireless facilities in the PROW where there already is a plethora of utility infrastructure.	N	***No changes to preferences are warranted based on these comments as discussed further below.*** AT&T and Verizon object to the provisions discouraging facilities in PROW. Verizon made similar comments in response to the prior draft. T-Mobile does not object – though they brought and lost the seminal case that AT&T and Verizon claim supports their positions. Previously we explained the outside ROW preference is a rationale level of preference based on the reality of the physical circumstances and spatial limitations of the City streets. AT&T overstates the limitations on local authority under state law and misinterprets the scope of PUC 7901 and 7901.1. PUC 7901.1 only addresses conditions of *accessing* ROW for construction. PUC 7901's requirement that telephone installations be placed "in such as manner and at such points as not to incommode the public use" addresses regulation of *permanent installations*. Aesthetics can be considered under 7901 per T-Mobile v. San Francisco, 438 P.3d 239, 249 (2019) ("San Francisco"); see also Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates, 583 F.3d 716, 722 (9th Cir. 2009) ("Palos Verdes Estates") (construing broadly the meaning of "incommode," which means to "subject [the public use] to inconvenience or discomfort; to trouble, annoy, molest, embarrass, inconvenience or [t]o affect with inconvenience, to hinder, impede, obstruct (an action, etc.)") (quotes omitted).

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	Rather than encouraging specific types of deployments, the city's proposed regulations invite disputes. They will prevent city residents, businesses, and visitors from reliable access to personal wireless services. There is no reason for this; the city should delete these restrictions. The city's proposal already requires careful placements of safe and stealth facilities. AT&T recommends, instead, that the city come up with preferred design criteria that it will accept in the PROW throughout the city, including near the coast and in residential areas. One common way to do so in a win-win fashion is to implement a pre-approved design process. Such a process will not only help expedite needed deployments, it incentivizes applicants to propose pre-approved designs. AT&T would be happy to suggest language to incorporate such a process in the proposed ordinance or proposed design guidelines. **VERIZON: The Preference for Private Parcels over the Right-of-Way Violates California Public Utilities Code Section 7901.** As explained in our prior letter, the preference for private parcels over the right-of-way 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. Draft Ordinance § 17.46.040(C). In its response to public comments, City staff did not dispute the violation of Section 7901, and simply wrote that the preference is "based on the reality of the physical circumstances of the City streets." However, City streets are already lined with utility poles supporting telephone and other utility equipment, and the City can exercise reasonable aesthetic discretion over the appearance of right-of-way facilities. For over a century, the California Supreme Court has confirmed that Public Utilities Code Section 7901 grants telephone corporations a statewide franchise right to place telephone equipment in the right-of-way without charge. *See Western Union Tel. Co. v. Hopkins*, 160 Cal. 106, 123 (Cal. Sup. Ct. 1911) (statute grants "exclusive occupation of portions of the streets...free of charge"); *Pacific Tel. & Tel. Co. v. City & Cty. of San Francisco*, 51 Cal.2d 766, 771 (Cal. Sup. Ct. 1959) (statute "gives a franchise from the state to use the public highways for the prescribed purposes without the necessity for any grant by a subordinate legislative body"); *T-Mobile West LLC v. City*		City aesthetic rules for permanent installations must be reasonable but AT&T is wrong that 7901.1(b) applies. Their alleged interpretation was firmly rejected by the Cal. Sup Ct in *San Francisco* case: "Contrary to plaintiffs' argument, construing section 7901.1 in this manner does not render the scheme incoherent. It is eminently reasonable that a local government may: (1) control the time, place, and manner of temporary access to public roads during construction of equipment facilities; and (2) regulate other, longer term impacts that might incommode public road use under section 7901. Thus, we hold that section 7901.1 only applies to temporary access during construction and installation of telephone lines." Verizon likewise provides a misleading suggestion about what the *San Francisco* case stands for. The quoted text Verizon references is not a court statement of the law but rather a description of the San Francisco ordinance that was challenged. Further, we disagree with Verizon's materially inhibits argument. Wireless carriers go on private property all the time. In some states they have to pay to use ROW. The preference here is a valid exercise of regulatory authority over aesthetics and safety. Regulating design and location of development is a fundamental police power, which PUC 7901 does not preempt. In *San Francisco* case, court noted: "Municipalities may surrender to the PUC regulation of a utility's relations with its customers (§ 2901), but they are forbidden from yielding to the PUC their police powers to protect the public from the adverse impacts of utilities operations (§ 2902).Consistent with these statutes, the PUC's default policy is one of deference to

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	and County of San Francisco, 6 Cal.5th 1107, 1122 (Cal. Sup. Ct. 2019) ("Any wireless provider may construct telephone lines on the City's public roads so long as it obtains a permit, which may sometimes be conditioned on aesthetic approval"). State law is long settled on this matter. The federal Telecommunications Act neither preempts Section 7901 nor protects a preference for private property. Verizon Wireless would challenge any denial based on that preference, claiming a violation of Section 7901 and a prohibition of service under federal law. The City could not prevail under either federal prohibition standard. Under the Ninth Circuit standard, private property could not be the "least intrusive means" to fill a service gap, because the "least intrusive" standard must be based on applicable local regulations, and Section 7901 preempts any preference for private property. Under the FCC standard, a preference for private parcels would "materially inhibit" service improvements in part by imposing burdensome requirements. For example, forcing a telephone corporation to relocate to private property would require a lease, payments and restrictive terms not required for the right-of-way. That would increase costs of deployment and inappropriately involve private landowners in the site selection process and ongoing operation of a facility. The federal Telecommunications Act neither preempts Section 7901 nor protects a preference for private property. Verizon Wireless would challenge any denial based The FCC's "materially inhibit" standard is based on two Telecommunications Act provisions barring a prohibition of service. Infrastructure Order, ¶¶ 36, 82. One of these, Section 253(c), reserves the authority of state governments to manage the public rights-of-way, which the FCC found "includes any conduct that bears on access to and use of those ROW." 47 U.S.C. § 253(c); Infrastructure Order, ¶ 94. Through Section 7901, California has long granted telephone corporations a statewide right to use the right-of-way with no local franchise requirement. In sum, the City cannot justify a preference for private property over the right-of-way, which clearly violates state law and must be stricken from the Draft Ordinance. *Draft Ordinance Section 17.46.040(C) must be deleted.*		municipalities in matters concerning the design and location of wireless facilities." The court also pointed to CPUC GO 159-A (a CPUC general order deferring to local decision-making on wireless siting) which itself "acknowledges that local citizens and local government are often in a better position than the [PUC] to measure local impact and to identify alternative sites. Accordingly, the [PUC] will generally defer to local governments to regulate the location and design of cell sites.. . ." (PUC, General order No. 159-A (1996)p. 3 (General Order 159A), available at <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/611.PDF> [as of April 3, 2019].) The exception to this default policy is telling: the PUC right to preempt local decisions about specific sites "when there is a clear conflict with the [PUC's] goals and/or statewide interests." (General Order 159A, supra, at p. 3.) In other words, generally the PUC will not object to municipalities dictating alternate locations based on local impacts,13 but it will step in if statewide goals such as "high quality, reliable and widespread cellular services to state residents" are threatened."

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#2 ORD	**AT&T** 2. Subjective, Improper, and Impossible Special Exception Requirements. Proposed Section 17.46.080(C) defines how an applicant can pursue a special exception. The city needs to eliminate or rethink its special exception process, especially since it will likely be triggered by the vast majority of wireless siting applications. As an initial matter, a wireless provider should not be required to demonstrate with each and every application that the city's prohibitions and preferences will violate state and federal laws. Combined with the proofs required under the city's proposed application checklists, the burden of the required findings for a special exception are excessive to the point of prohibition. And as to the specific data the city demands as proof of effective prohibition (for each and every PROW site, among others), the city cannot demand specific types of data or specific forms of proof. A wireless provider may be materially inhibited from providing service in many ways, and its proofs will come in various forms depending on the specific nature of its needs. **VERIZON: The City Should Not Require "Special Exceptions" to Locate Small Cells in Residential Rights-of-Way.** Requiring a "special exception" for right-of-way facilities in the R1–Residential zone as well as the City's many historic and coastal sites would impose burdensome requirements that "materially inhibit" service improvements. Draft Ordinance § 17.46.040(E)(1). Given that most of Carmel is zoned residential, this "exception" generally would be the rule. To secure a "special exception," applicants would need to prove that denial of facility would violate federal and/or state law, and submit evidence regarding coverage gaps or service improvements. However, the City could disregard an applicant's legal rights and/or network engineering needs, and deny the exception request. We previously suggested that, instead of requiring "special exceptions" for certain discouraged locations, the City should allow them if there is no technically feasible preferred location within 500 feet along the right-of-way. In the alternative, the City could eliminate the "special exception" requirement for R-1 zone rights-of-way and other sites. That would still leave special exceptions available for truly exceptional deviations from other standards, similar to a variance. *Draft Ordinance Section 17.46.040(E)(1) should be deleted.*	N and Y	**No changes are warranted to the text or scope of the existing exceptions based on comments from AT&T and Verizon**. The City disagrees that requiring a special exception and proof is inappropriate or rises to the level of a prohibition. AT&T's suggestion that the City cannot require specific kinds of proof contradicts the directive of the FCC shot clock orders that cities delineate application requirements in advance. However, **language is proposed to address T-Mobile's suggestion for allowing minor deviations in limited circumstances**. T-Mobile's language and suggested placement in a different section of the ordinance (which appears below in T-Mobile's redlines list) was not accepted. Proposed below is a change to 17.46.080.C, modeling the minor deviations on an existing concept in the Carmel's municipal code17.58.060 which allows approval of deviations from design guidelines that do not have negative aesthetic consequences.

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	T-MOBILE **1. Deviation from Design Standards** Currently, the existing draft Ordinance lacks a provision for applicants to seek limited exceptions from the prescribed design standards. For example, Section 17.46.040(F)(1)(b) imposes a 10-foot height restriction on wireless facilities above the underlying zoning district. Unlike conventional land uses, wireless antennas have distinct height requirements. The current height limitation offers only a marginal increase above the underlying zoning district, but situations may arise where additional height is essential for maintaining antenna separation in cases of colocation or ensuring clearance from nearby obstacles like trees or structures. Strict height caps might inadvertently lead to the construction of new facilities, a result contrary to the code's intent. A limited exception process would provide the Planning Commission with flexibility to allow deviations that achieve a superior aesthetic result than could be achieved with strict compliance to the design standards. T-Mobile suggests incorporating a limited exception process, as proposed in the attached redline, within Section 17.46.040(F)(3).		
#3 CL	**VERIZON: The Submittals Required to Show that Standards "Materially Inhibit" Service Improvements Cannot Include Coverage Gap Information.** The revised *Wireless Facility Application Checklist Type I-IV* now addresses a potential "materially inhibit" claim for applicants seeking a "special exception" to unreasonable Draft Ordinance standards. Checklist § 15.2.2. However, two of the required items—propagation maps and drive test data—are pertinent only to a claimed coverage gap. The FCC ruled that coverage gaps are irrelevant to the "materially inhibit" standard for a prohibition of service. Infrastructure Order, ¶¶ 38-40. Instead, the FCC determined that local requirements constitute an effective prohibition of service if they materially inhibit the goals of	N	Propagation maps are requested as evidence to demonstrate the applicant's claim whether it is that a proposed facility will densify the applicant's network, introduce new services, or otherwise improve service capabilities. Contrary to the comment, drive test data is not mandatory unless a significant gap claim is being made.

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	"densifying a wireless network, introducing new services or otherwise improving service capabilities." *Id.,* ¶ 37. Because the FCC has clearly specified three different tests for showing that local requirements "materially inhibit" service improvements, the City cannot impose its own additional tests. *At a minimum, the propagation map and drive test submittals must be deleted from Section 15.2.2 of the checklist. In the alternative, the City could simply request that an applicant submit information confirming that a proposed facility will densify its network, introduce new services, or otherwise improve service capabilities.*		
#4 ORD	***AT&T 2. (CONT'D)*** In addition, the city's subjective aesthetic requirements are unreasonable (and therefore unlawful) because they make it impossible for providers to predict how to comply with the city's requirements, which the FCC specifically found results in an effective prohibition under the TCA.[13] AT&T echoes Verizon's comment that the city should revise its proposed regulations to provide that compliance with objective criteria under the proposed design guidelines is prima facie evidence of compliance under the proposed ordinance. **VERIZON: Vague Visual Impact and View Protection Standards Could Lead to Denial of Small Cells that Satisfy the Design Guidelines.** A proposed small cell could satisfy the City's proposed Design Guidelines, yet be denied due to the various visual impact standards of the Draft Ordinance and the code's required permit findings. The Draft Ordinance requires a "stealth" design, meaning a facility must "mimic or blend" with an underlying structure (e.g., a utility pole) as well as the surroundings (homes, streetscapes). Draft Ordinance §§ 17.46.020(A)(20), 17.46.040(F)(1)(a). Findings for approval of design review in the R-1 zone include "contributes to neighborhood character," "sensitive to the natural features," and "modesty and simplicity." Municipal Code § 17.58.060(C). Use permit findings include "compatible with surrounding land uses." Municipal Code § 17.64.010(A).	N	The City disagrees that the standards are vague or unrealistic. The City has the right to apply reasonable discretion. Per the Ninth Circuit ruling regarding the Small Cell Order, aesthetic requirements for small cells do not have to be limited to "objective" standards. The court struck that requirement and recognized that subjective standards are not out of place in zoning regulation. The City disagrees that the findings are inappropriate. The Guidelines inform the decisions on the findings. The concerns expressed about implementation are speculative.

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	Additionally, the Draft Ordinance view protection standard, which already required applicants to "respect views enjoyed by neighboring parcels," has been expanded to forbid "excess visual mass or bulk," "visual clutter," and designs that "negatively affect important public or private views as determined by the reviewing authority." Draft Ordinance § 17.64.040(F)(1)(k). These visual and view impact standards are vague compared to the specific criteria in the proposed Design Guidelines, which provide clear direction to applicants so they can design compliant facilities. The various vague standards would "materially inhibit" service improvements if used to deny small cells that satisfy the Design Guidelines and are not "out-of-character" compared to other right-of-way utility infrastructure. That would constitute an unlawful prohibition of service according to the FCC's Infrastructure Order. The Draft Ordinance grants the Planning Commission authority to develop the Design Guidelines consistent with "generally applicable design standards contained in this ordinance." Draft Ordinance § 17.64.010(F)(2). *We suggest revising Section 17.64.010(F)(2) to confirm that compliance with the Design Guidelines demonstrates prima facie compliance with the various visual impact and view protection standards of the Draft Ordinance and the Municipal Code's permit findings*		
#5 ORD	**AT&T 3.** Shot Clock Problem With Submittal Appointments. Proposed Section 17.46.050(B)(3) provides that applications for wireless facilities must be submitted during pre-scheduled appointments. The city should eliminate this requirement in order to avoid inadvertently violating the FCC's shot clock. The FCC's regulations provide the city with specific timeframes to review wireless facility applications for completeness and to take final actions on applications. The FCC has also made clear that localities may not delay commencement of the shot clock by imposing pre-submittal requirements.[14] Thus, under the city's proposed process, the shot clock would commence on the date the applicant requests to schedule the appointment. This not only cuts into the city's overall review timeframe, it may, in many instances, eliminate the city's ability to toll a shot clock for incompleteness. For example, if a pre-submittal appointment	Y and N	AT&T and T-Mobile say they will claim shot clock starts upon request for application appointment. The City believe the application appointment procedure is a convenience for the city *and* applicants and is not uncommon in smaller jurisdictions with limited staff. However, **to eliminate these types of arguments being raised in future, changes to the language are proposed to allow city to establish preset application submittal windows instead.** What this means is there will be less flexibility to arrange a submittal time convenient to applicants, and if a couple of applicants show up during the window, one may have to wait for the other to complete its submittal review before being served.

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	for a small wireless facility is set more than 10 days after the request, the city's 10-day timeframe for tolling due to incompleteness will have passed before it has the chance to begin its review. While AT&T will certainly work with the city to provide needed materials in a timely manner, the city would be much better served by removing this problem from the proposed ordinance. **AT&T** 4. EFR Shot Clock Issue. AT&T recommends the city eliminate or truncate the right to appeal approval of an eligible facilities request under Section 6409(a), 47 U.S.C. § 1455(a). The applicable shot clock is 60 days. Adding time to re-review a non-discretionary review based on the FCC's objective standards does not make practical sense and only serves to risk shot clock compliance and resulting deemed granted applications. **T-MOBILE 3. Shot Clock Concerns** Section 17.46.050(A)(1) of the draft ordinance establishes that application types I - IV necessitate initial review by the Planning Commission, with the possibility of contesting these decisions through appeals to the City Council. Section 17.46.050(A)(2) similarly indicates that Eligible Facilities Requests are also open to appeal at the City Council level. T-Mobile expresses concerns about the City's ability to carry out the application reviews and facilitate procedures for noticed hearings within the time constraints stipulated by the relevant FCC Shot Clocks. Additionally, 17.46.020(B)(3) requires that all applications must be submitted at a pre-scheduled appointment with the Community Planning and Building Department. The FCC Order clarified that all permits and authorizations necessary for the deployment of wireless facilities must be approved or denied within the applicable shot clock period.[2] Any pre-application procedures, public meetings or hearings, or appeals are included in this calculation.[3] Therefore, the applicable FCC Shot Clock would commence at the time of Applicant's request for the application intake appointment.		AT&T and T-Mobile also expressed concerns appeals will take too long to complete within shot clocks. City is aware it will have to manage process to meet shot clocks to avoid potential deemed granted remedies being invoked. **No changes have been proposed to the appeal process**.
#6 ORD	**AT&T** 5. Spacing Requirement. Section 17.46.040(E)(2)(b) prohibits wireless facilities in the PROW within 500 feet of any other wireless facility in the PROW. This is too restrictive as it creates a substantial risk for prohibitions not only in high-traffic areas where multiple providers will need facilities, but even in less dense areas where existing utility poles are already deployed closer together. This restriction also discriminates against wireless facilities vis-à-vis other PROW users, which	N	T-Mobile also objects (see T-Mobile redlined comments below). This was changed from 250 to 500 after workshop. The City believes this is reasonable. AT&T's 7901.1 argument is wrong for the reasons stated earlier.

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	contravenes Section 7901.1. Plus, there can hardly be an aesthetic justification for this separation requirement of low-profile facilities like small cells, especially given the additional proposed stealth and design requirements.		
#7 ORD	**AT&T** 6. Cost Reimbursement. Section 17.46.050(B)(2) requires payment of a fee or deposit for costs incurred in connection with the permit. It also authorizes, without setting any specific standard or basis, the city to ask for additional fees and deposits. This provision should be revised because only objectively reasonable costs that are recovered on a nondiscriminatory basis can be included in fees. To the extent the city's costs exceed the FCC's safe harbor for presumptively reasonable fees and are not objectively reasonable, the costs are preempted and unlawful. AT&T looks forward to working with the city to ensure its proposed fees comport with state and federal laws.	N	Language already says "deposit estimated by the Director to reimburse the City for its reasonable costs incurred in connection with the application, including costs of consultants retained by City." AT&T language not necessary. No other industry commenter objected to this language. This is as applied concern.
#8 ORD	**AT&T** 7. Consultants. Section 17.46.060(B)(1) authorizes the city to engage consultants whenever they are deemed necessary, and Sections 17.46.060(B)(2)&(3) require applicants to advance and replenish deposits to cover open-ended consulting charges. While AT&T appreciates the city's desire to thoroughly review applications, consultants can unnecessarily increase the cost of deployment and slow down the permitting process. For small cell applications, the city needs to make sure that all fees, including those of a consultant, are within the FCC safe harbor or are reasonable, cost-based fees. For all applications, the city should be mindful that the cost of a consultant may not automatically pass through to an applicant as only objectively reasonable costs can be imposed.15 The city will be unable justify fees that will routinely exceed the FCC's safe harbor for small cell applications. Plus, excessive consulting fees risk disputes that may result in striking down ordinance provisions requiring the use of consultants.16 The city should limit the use of consultants to technical and objective criteria, such as a structural safety assessment or compliance with FCC regulations of radio frequency emissions, and only to the extent these topics exceed the capabilities of City Staff.	Y	While the City disagrees with many of AT&T's unsupported statements, upon closer review in response to these and T-Mobile's comments, the language in Section 17.46.060(B)(1) has been modified to require City to provide detailed invoice for consultant services and (B)(3) has been deleted. **(See comment #17 below as well)**.

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	T-MOBILE **2. Liability for Consultants Expenses.** Currently, Section 17.46.060(B)(3) requires an Applicant to submit written consent from property owners, assuming responsibility for expenses incurred by third-party consultants, including legal fees. Imposing onerous authorization requirements on property owners could materially limit or inhibit a provider's ability to provide service within the City. It could also eliminate properties where the City would prefer facilities to be located, simply because those property owners may not be willing to accept unlimited liability associated with fees charged by third-party consultants. This requirement might inadvertently create limitations on feasible locations for wireless facilities situated on privately owned parcels due to onerous demands placed on property owners. Additionally, it might steer wireless service providers towards seeking locations in the right-of-way, where this written consent is not required. This contradicts the City's stated preference in the Ordinance for facilities to be predominantly situated on private parcels. Upon comparing the City's standard Affidavit of Owner Authorization form used for standard land use categories, it's notable that the standard form only entails a property owner granting legal authorization to an Applicant for submitting planning applications on their behalf. The form does not include provisions related to the payment of consultant fees or assumption of unlimited liability. To the extent that this requirement is limited to wireless facility applications and not applied to other land use applications, it could potentially be viewed as discriminatory and should be removed. T-Mobile suggests a more workable standard in the attached redline		
#9 COA	**AT&T** 8. Indemnification. The indemnification provision in the proposed conditions of approval needs to carve out exceptions to indemnity in instances of the city's own negligence. In addition, AT&T must retain the right to select its own counsel. The second portion of the indemnity provision needs to be eliminated or significantly revised. For example, AT&T obviously cannot be made to defend the city from actions or omissions by its customers. The city also must limit the overall scope	Y	AT&T did not provide any language but raised some valid concerns about the scope of the indemnity. T-Mobile also requested an edit in their redlined comments below. Some edits are proposed that make the indemnity requirements more consistent with City's existing practice. **(Also see comment #24 below)**

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	of this provision, which must be much more narrowly tailored than referring to all activities "in connection with this permit or the wireless facility."		
	T-MOBILE REDLINES		
#10 ORD	20. "**stealth**" means concealment elements, measures and techniques that mimic or blend with the underlying structure, surrounding environment and adjacent uses to screen all transmission equipment from public view and integrate the wireless facility into the built or natural environment such that, given the particular context, the ~~average, untrained observer~~reasonable person would not recognize the structure as a wireless facility. Stealth concealment techniques include, without limitation: (1) transmission equipment placed completely within existing or replacement architectural features such that the installation causes no visible change in the underlying structure; (2) new architectural features that mimic or blend with the underlying or surrounding structures in style, proportion and construction quality such that they appear part of the original structure's design; and (3) concealment elements, measures and techniques that mimic or blend with the underlying structure, surrounding environment ~~and~~ or adjacent uses	Y	"Reasonable Person" language change has been accepted.
#11 ORD	5. **"substantial change"** c. In addition, for all towers and base stations wherever located, a substantial change occurs when: i. the proposed collocation or modification would defeat the existing concealment elements of the stealth eligible support structure as determined by the reviewing authority; or	N	This is not necessary – phrasing tracks federal language. It would defeat the concealment elements of the eligible support structure

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#12 ORD	ADD TO LIST OF EXEMPT FACILITIES IN 17.46.030.B: 6. temporary wireless facilities needed to maintain coverage provided by an existing WCF whose support structure is demolished, relocated, repaired or redeveloped in connection with new construction.	N	Temporary facilities would be tied to some sort of new construction, and should go through the standard design review process.
#13 ORD	17.46.040.E REQUESTS: 2. **Additional Public Right-of-Way Location Selection Standards.** Applicants shall not select existing structures and shall not propose new (non-replacement) structures in the following locations unless the application includes a written justification, based on factual and verifiable evidence, that shows no structure/location is technically feasible and available outside these locations: a. directly in front of the areas which are five feet in either direction from the centerline of each entry door or window in the front façade of any occupied residential building. b. within a 250~~500~~-foot radius from another provider's wireless facility within the public rights-of-way. Author: Please define this term. Author: This separation requirement is too great for SWFs that often have a range of 250-500 feet in challenging and vegetated terrain like Carmel. This also potentially sets up an unreasonable discrimination among carriers claim under the TCA because the first carrier to deploy effectively precludes other carriers from serving the same coverage area. August 4, 2023 DRAFT 3. Public Right-of-Way Safety Considerations. d. Any location that would adversely affect the root structure of any existing trees, or significantly reduce greenbelt area that may be used for tree planting. Author: Please quantify this term.	N	Factual and verifiable evidence is what is require in the checklist FOR Type I-IV, section 12.On review a typo was discovered (reference is missing that would make this more clear) which is cleaned up in the checklist As discussed earlier, separation changed from 250 to 500 after workshop. Significantly reduce greenbelt will not be quantified as it depends on context, but the term is used throughout the code, and is well understood by the department.

DOC (ORD/DG/ CL/COA)	COMMENT	EDITS MADE? (Y/N)	RESPONSE AND REFERENCES
#14 ORD	17.46.040.F REQUESTS: b. **Overall Height.** On public and private parcels, wireless facilities may not exceed more than 10 feet above the maximum height allowed by this code for the underlying zoning district where the facility is proposed. In the public right-of-way, wireless facilities may not increase the height of an existing pole by more than 10 feet or involve a replacement pole or a new pole that is more than 10 feet above the height of existing poles in the vicinity. **Author** At a minimum, there should be a special exception process to this restriction for towers. Lower tower heights usually require more sites - certainly something the city has an interest in avoiding. f. **Trees and Landscaping.** Wireless facilities shall not be installed (in whole or in part) on new poles within any tree drip line. Wireless facilities may not displace any existing tree or landscape and/or hardscape features. All wireless facilities proposed to be placed in a landscaped area must include landscape and/or hardscape features (which may include, without limitation, trees, shrubs and ground cover) and a landscape maintenance plan. The **Author** Please define this term. the development standards specified in this chapter shall control. 2. **Deviation from Design Standards.** 3. a. An applicant may obtain a deviation from these design standards if compliance with the standard: (i) is not technically feasible; (ii) impairs a desired network performance objective; or (iii) otherwise materially inhibits or limits the provision of wireless service. b. When requests for deviation are sought, the request must be narrowly tailored to minimize deviation from the requirements of these design standards, and the ~~Director~~Planning Commission finds the applicant's proposed design provides similar -aesthetic value when compared to strict compliance with these standards. c. The ~~Director~~Planning Commission may also allow for a deviation from these standards when it finds the applicant's proposed design provides superior aesthetic value when compared to strict compliance with these standards. d. The ~~Director~~Planning Commission will review and may approve a request for deviation to the minimum extent required to address the applicant's needs or facilitate a superior design.	N and Y	**Overall Height** – this can be subject of special exception request already. **No change needed**. **Trees and Landscaping** – hardscaping is a term of art that generally means built as part of the landscaped environment, but "hard'. For example, stone patios, low garden walls, brick walkways, etc. **There is no need to add a definition**. Deviation language -- T-Mobile request for deviations exception is OK concept but not their language or location in code. **Concept is added to Special Exception section 17.46.080.C which incorporates the minor deviation concept already existing in the City's code** in 17.58.060.D for all other Design Review applications.

DOC (ORD/DG/ CL/COA)	COMMENT	EDITS MADE? (Y/N)	RESPONSE AND REFERENCES
#15 Ord	17.46.050.A.c. c. **Type III Applications: New Small Wireless Facilities on New or Replacement Structures.** Type III applications shall be limited to applications seeking to install and/or construct a new Small wireless facility that involves placement of a new or replacement structure. Subject to the 90 day Shot clock. **Author** Suggest that like for like replacement structures be processed as a Type I or II as the visual impact from a replacement pole is not equivalent to the visual impact of a new pole.	N	Replacement poles require additional analysis like new poles due to excavation etc, It is not just about visual impact. The 90 day shot clock for new poles should apply.
#16 Ord	17.46.060.A. 2. If the Director determines that the application is defective or incomplete, they shall promptly deliver a Notice of Incompleteness to the applicant within the required time period under federal law in order to pause the applicable FCC shot clock.	N	Unnecessarily wordy and not needed
#17 ORD	17.46.060.B. B. **Consultants** 1. **Use of Consultants**. Where deemed reasonably necessary by the City, the City may retain the services of professional consultants to assist the City in carrying out its duties in reviewing and making decisions on applications. The applicant and private landowner, if applicable, shall be jointly and severally responsible for payment of all the reasonable and necessary costs incurred by the City for such services. The city shall provide the Applicant with a detailed invoice of time spent and the nature of the review. 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 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 and the Consultant shall supply the Applicant with a reasonable estimate of anticipated costs. The City Council shall establish policies and procedures for the fixing of escrow deposits and the management of payment from them. When	Y and N	**Use of consultants: the proposed revision has been incorporated** Advance Deposits: Estimate requirement is already stated in 17.46.050.B.2 (if not established by City Council per B.1). Also the ordinance already states the City Council can establish policies and procedures. **Suggestion not incorporated**

DOC (ORD/DG/ CL/COA)	COMMENT	EDITS MADE? (Y/N)	RESPONSE AND REFERENCES
	3. **Liability for Consultant Expenses**. The City may require the Applicant to pay for independent technical review, by a consultant retained by the City, of materials submitted to demonstrate compliance Section 17.46.040 General Development Standards and with the requirements contained in the Application for Wireless Facility form and the applicable Wireless Facility Application Checklist. For an 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: a. 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. b. 3. 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. **Author** Imposing onerous authorization requirements on property owners could materially limit or inhibit a provider's ability to provide service within the City. It could also eliminate properties where the City would prefer facilities to be located, simply because those property owners may not be willing to accept unlimited liability associated with fees charged by third-party consultants. Additionally, if this requirement is limited to wireless facility applications and not applied to other land use applications, it could be seen as discriminatory		Liability – **T-Mobile edits are not incorporated** – they completely change the intent. However, on closer review other section of code 18.04.260, already covers liability for permit expenses, and the application form requires owner authorization. No need to include.B.3.

#18 DG	I. FACILITIES ON PARCELS 4. **Secondary Power Sources.** The reviewing authority may approve secondary or backup emergency power sources and/or generators ~~on a case-by-case basis~~as required by state and federal law. No permanent diesel generators or other similarly noisy or noxious generators in or within 250 feet from any residential structure are permitted absent a showing of extraordinary need, such as a declared public emergency; provided, however, the reviewing authority may approve sockets or other connections used for temporary backup generators. 5. **Utilities.** All underground cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent **Author** First, the proposed language is inconsistent with both federal and state law. Sec. 6409(a) expressly includes back-up power, and EFR's under Sec. 6409(a) are non-discretionary. Moreover, CA Gov't Code Section 65850.75 makes certain emergency generator permits non-discretionary. From a policy perspective, its unclear why the city would want to limit emergency generator deployment when generators provide backup power to sites that are crucial to emergency services.	N	The concerns are misplaced. This only applies to Types I-IV. It would not apply to EFRs for backup power. CA Gov Code provision applies to existing macro sites only and is about to expire. City policy is not to limit per se but to consider case by case.
#19 DG	II. FACILITIES IN PUBLIC RIGHTS OF WAY A. ANTENNAS 3. **Volume.** Any individual antenna shall not exceed three cubic feet in volume. The cumulative limit for all antennas (including their shrouds or other stealth or concealment devices and any accessory equipment integrated with the antennas) on a single wireless facility shall not exceed six cubic feet. However, the reviewing authority may approve a larger cumulative volume on a case-by-case basis when the applicant demonstrates that ~~additional volume will not be visually incompatible with the surrounding environment and may reduce the need for additional wireless facilities in the vicinity.~~the six cubic foot limit is technically infeasible for the facility to meet the network objective. **Author** This is inconsistent with federal law, which places no cumulative antenna volume limits. Per the FCC, each antenna may not exceed 3 cubic feet and the total volume of the additional equipment must not exceed 28 cubic feet. This provision as written contemplates configurations exceeding 6 cubic feet, but only if that configuration is not "visually incompatible." T-Mobile encourages a technical feasibility standard. II. FACILITIES IN PUBLIC RIGHTS OF WAY C. ACCESSORY EQUIPMENT mitigates unnecessary physical obstructions in the public rights-of-way. However, the reviewing authority may approve a less compatible configuration for the accessory equipment when the applicant demonstrates that more compatible configurations are technically infeasible or the reviewing authority finds that a less compatible configuration is more consistent with existing poles and the surrounding environment. 2. **Volume.** The cumulative limit for all accessory equipment (~~including~~ excluding their shrouds, cabinets or other stealth or concealment devices) for a single wireless facility shall not exceed 17 cubic feet. These limits shall not be applicable to undergrounded accessory equipment. 3. **Pole-Mounted Accessory Equipment.** These standards for pole-mounted accessory equipment apply except to the extent that different safety **Author** This is inconsistent with federal law, which places no cumulative antenna volume limits. Per the FCC, each antenna may not exceed 3 cubic feet and the total volume of the additional equipment must not exceed 28 cubic feet. This provision contemplates configurations exceeding 6 cubic feet, but only if that configuration is not "visually incompatible." T-Mobile encourages a technical feasibility standard. **Author** Concealment and shrouding are there for the benefit of the city and that volume is not required for the Applicant's deployment and should not be included in the overall volume calculation.	N	This is a valid aesthetic regulation. If unable to meet the allowed circumstances for exceeding (where not visually incompatible), applicant may alternatively seek a special exception. Federal definition of SWF with 28 cu ft is for shot clock purposes; city has authority to regulate aesthetics and may require smaller volumes. Volume itself creates an aesthetic impact, City disagrees with T-Mobile's logic that concealment is for city benefit and should not count toward volume.

#20 COA	8. **Post-Installation Certifications/RF Emissions Compliance.** Within 60 calendar days after the permittee commences full, unattended operations at the wireless facility, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility has been installed and/or constructed in strict compliance with the Approved Plans and Laws. Such documentation shall include, without limitation, as-built drawings prepared by a California licensed civil engineer, GIS data, site photographs and a written ~~report~~statement, signed by an RF engineer under penalty of perjury, certifying that: (1) the installation is operated in compliance with 47 U.S.C. § 324 (use of minimum power); and (2) the installation complies with all applicable FCC rules and regulations for human exposure to RF emissions and will not cause members of the general public to be exposed to RF levels that exceed the maximum permission exposure levels deemed safe by the FCC.	N	Disagree wording change is needed.
#21 COA	10. **Landscape Features.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. If feasible, a~~A~~ny replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the City. The permittee shall, at all times, be responsible to maintain any replacement landscape features. **Author** Sometimes, transplanting a very mature tree is not advisable and a younger tree may have a better chance of surviving.	N	While the statement is correct, disagree wording change is needed. Language already contemplates City may approve alternative if circumstances warrant.

#22 COA	11. **Compliance with Applicable Laws/RF Emissions Exposure Limits.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("**Laws**") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit, including any Laws applicable to human exposure to RF emissions. This permit is not granting the permittee any rights to make any portion of the adjacent properties inaccessible to the general public or to hinder future lawful development of adjacent properties as a mitigation measure to ensure the wireless facility will comply with Laws applicable to human exposure to RF emissions, absent agreement from the adjacent land owner. The permittee understands that if site conditions change in the future due to lawful development on adjacent property, the permittee may need to modify or	Y	Ok: Proposed edit is consistent with intent
#23 COA	14. **Interference with City Communications Systems.** The permittee shall not permit the wireless facility authorized under this permit to interfere with any City communication systems operating on FCC licensed frequencies. In the event that the wireless facility authorized under this permit is causing interference with any City communication systems operating on FCC licensed frequencies, p~~.~~ermitee will endeavor to investigate and resolve or mitigate any harmful interference that may impact those FCC licenses communication systems. ~~the City may notify the permittee and may order the facility to be powered down until such time as the interference has been mitigated.~~ Any mitigation required shall be at the permittee's sole cost and expense. Author Local regulation of interference is federally preempted. In the Matter of Petition of Cingular Wireless L.L.C. for a Declaratory Ruling that Provisions of the Anne Arundel County Zoning Ordinance are Preempted as Impermissible Regulation of Radio Frequency Interference Reserved Exclusively to the Federal Communications Commission, FCC Memorandum Decision and Order, DA 03-2196, 2003.	Y	Ok to accept changes as proposed. It is true that FCC is responsible.

#24 COA	19. **Indemnification.** The permittee and, if applicable, owners (other than the City) of the property and the structure upon which the wireless facility is installed, shall defend, indemnify and hold harmless the City, City Council and the City's boards, board members, commissions, commissioners, agents, officers, officials, employees and volunteers (collectively, the "**City Indemnitees**") from any and all (a) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings brought against any City Indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this permit, and (b) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this permit ~~or the wireless facility~~ (collectively, "Claims"). If the City becomes aware of any Claims, the City will promptly notify the permittee and the owners of the property and the structure (if applicable) and shall	Y	Some changes are made in response to these edits and AT&T's comments above to in line with City practice. **(Also See comment # 9 above)**
#25 COA	~~21.~~ ~~22.~~ **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the permit application, permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the permit (collectively, "**Records**"). In the event the records cannot be produced by the city or the applicant, the applicant shall have the opportunity to demonstrate by other relevant evidence that the facility is compliant with the applicable code in place at the time of the construction of the original facility and any subsequent modifications to the original facility~~If the permittee does not maintain such Records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing Records will be construed against the permittee~~. The requirements in this condition shall not be construed to create any obligation on the City to create or prepare any **Author** It is the city's responsibility to keep records as a public agency. The proposed presumption is overreaching and unfair. Wireless facilities change hands over the course of time and the permit records are often not available. The City has an independent obligation to maintain permit records and is not entitled to a conclusive presumption of accuracy in the event of a conflict, especially where this presumption and burden is not imposed on other types of land use applicants. **Author**	N	The City disagrees with the premise of the comment. Permittees should keep records of their permits.

#26 COA	B. **For Facilities in the Public Right-of-Way, the following additional conditions apply.** 1. **Future Undergrounding Programs**. During the term of the permit, if other public utilities are required to underground their facilities in the segment of the public rights-of-way where the permittee's wireless facility is located, the permittee must also underground its wireless facility, except for any components of the facility that ~~are exempted under the applicable undergrounding program~~that may not technically be feasible to locate underground. At such time that other public utilities are required to be placed underground, permittee may place a wireless only pole consistent with the city's design requirements, in the right of way, provided it does not exceed the dimensions of the removed utility pole. Such undergrounding shall occur at the permittee's sole cost and expense, except as may be reimbursed through tariffs approved by the California Public Utilities Commission for undergrounding costs or other available funding mechanisms.	N	The City will regulate future undergrounding under its undergrounding resolutions and code provisions. No special requirements will go in this ordinance. However, note that the default exemption for undergrounding is being slightly modified in a conforming amendment. **Section 13.28.070.E**. shall be amended to read as follows: "E. Antennae, associated equipment that is within the supporting structure or integrated with the antennae, and supporting structures, used by a utility for furnishing communication services."
	SCTCN COMMENTS		
#27 CL	**1. Strengthen Material Inhibition Claim Information Required by the Applicant** Applicants are not required to disclose the full details of their service plans, which must be required for full transparency in the application process. a) Bullet # 3 (Application Checklist, page 14) Weakness: The statement gives the applicant a choice whether to describe new services "and/or" minimum service levels they seek to provide. Solution: Remove the word "or" which allows a choice to explain either new services or minimum services levels. Both explanations must be required. This is very important because only telephone service is protected under the Federal Telecommunications Act, while non-telephone services goals are not protected by the TCA.	Y and N	OK to delete word "or", **request "(a)" has been incorporated**.

	b) Bullet #4 (Application Checklist, page 14) Weakness: The statement gives the applicant a choice "whether" they would like to submit drive tests. Solution: Require the applicant to submit drive test data and maps as required in a significant gap/least intrusive means claim.		**Request "(b)" not accepted**. If the materially inhibits claims is based on a claim of significant gap, applicant must provide drive test data but not for other materially inhibits claims.
#28 CL	**2. The City Does Not Require Telecom Companies to Activate all Their Cell Sites Before They Apply for a New cell Site** Weakness: The City Does Not Require Telecom companies to activate all their facilities before they apply for a new facility. Because Camel-by-the Sea is only one-mile-square, it seems perfectly reasonable and logical to require all facilities to be turned on so we can see if a new facility is actually needed. Solution: Require telecom companies to turn on all their facilities before they apply for a new facility.	N	Under federal law and FCC Moratoria Order, the city may not impose a de facto moratorium on the acceptance and processing of applications. By requiring applicants to finish construction of one facility before applying for another, the city will be vulnerable to legal challenge. Further, FCC shot clock rules contemplate bulk applications as does a pending state bill.
#29 ORD	**3. The City Neglects to Include the Potential Adverse Impacts on Real Estate Values in Residential Zoning Districts** (Omitted from the Ordinance) Weakness: The City neglects the welfare of its residents by not evaluating how the close proximity of cell towers in residential neighborhoods could substantially affect their property value in the zoning district. For many residents, their home is their single greatest asset, whose real estate value is threatened by the close proximity of a cell tower whose presence is incompatible with the character of residential districts. Cell towers in residential zones put people at unnecessary fall zone and electrical fire risk with no way to indemnify themselves if a tower fails. Residents must be allowed to present	N	As previously stated, development within the City is regulated through design and location guidelines. This ordinance pays very special attention to aesthetics and things that create or detract from property value, so no need to call out property value specifically. 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. Generalized concerns are not considered substantial evidence Further, 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

	evidence at a public hearing that a cell tower in close proximity to their home affects their personal welfare. Weakness: The City incorrectly identifies just on reason a cell tower can create property devaluation; RF health emission concerns, when there are many other reasons. Federal Communications Act of 1996 says health concerns are not a valid reason for a municipality to deny zoning for a cell tower or antenna. However, Telecommunications Act of 1996 has found that property values and aesthetics are valid reason for a municipality to deny zoning for a cell tower or antenna. Evidence That Cell Towers Impact Property Values: **The Federal Telecommunications Act of 1996 has found that property values and aesthetics are valid reason for a municipality to deny zoning for a cell tower or antenna.** https://www.nytimes.com/2010/08/29/realestate/29Lizo.html https://www.ashland.or.us/SIB/files/Walker_351_PA-T1-2021-00158_Comment_Period_Oct_19.pdf The legislature could require the council to specifically consider property values, but the federal Telecommunications Act of 1996 requires specific evidence to deny an application. In other jurisdictions, courts have upheld regulators' decisions to deny applications to build telecommunication towers based on an anticipated decline in property values in some cases (see *Cellular Tel. Co. V. Zoning Bd. of Adjustment of the Borough of Ho-Ho-Kus,* 24 F. Supp. 2d 359, 364 (D.N.J. 1998)). https://www.cga.ct.gov/2014/rpt/2014-R-0281.htm		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.

	"You also have the right to: (a) fight against sustaining a loss to the value of your property as a result of the installation of a Cell Tower in close proximity, (b) protect yourself, your family, friends and neighbors against the dangers of Cell Tower failures and fires, which occur more often than the average person realizes and (c) fight against having the installation of a Cell Tower adversely affect the character or aesthetics of your neighborhood."- Andrew Campanelli https://campanellipc.com/practice-areas/cell-tower-opposition-nationwide/ **Studies** The Bond and Hue - Proximate Impact Study The Bond and Hue study conducted in 2004 involved the alanysis of 9,514 residential home sales in 10 suburbs. The study reflected that close proximity to a Cell Tower reduced price by 15% on average. The Bond and Wang - Transaction Based Market Study The Bond and Wang study involved the analysis of 4,283 residential home sales in 4 suburbs between 1984 and 2002. The study reflected that close proximity to a Cell Tower reduced price between 20.7% and 21%. The Bond and Beamish - Opinion Survey Study The Bond and Beamish study involved surveying whether people who lived within 100' of a tower would have to reduce the sales price of their home. 38% said they would reduce the price by more than 20%, 38% said they would reduce the price by only 1%-9%, and 24% said they would reduce their sale price by 10%-19%. United States Court of Appeals for the 11th Circuit upheld a denial of a Cell Tower application based upon testimony of residents and a real estate broker, that the Tower would reduce the values of property which were in close proximity to the Tower.		

	Cell Towers are Hazards and Nuisances to Single Family Properties **(https://ehtrust.org/cell-phone-towers-lower-property-values-documentation-research/)** • The U.S. Department of Housing and Urban Development (HUD) considers cell towers “Hazards and Nuisances” • HUD requires its certified appraisers to take the presence of nearby cell towers into consideration when determining the value of a single family property. • HUD prohibits FHA underwriting of mortgages for homes that are within the engineered fall zone of a cell tower. **Some Home Buyers Back Out of Purchases Due to Disclosure of Cell Tower as Neighborhood Nuisance** (https://ehtrust.org/wp- content/uploads/Real-Estate-Seller-Property-Questionaire- reduced-12-17-1.pdf) California Realtors are required to prepare a disclosure statement upon sale for all homes near a cell tower as a neighborhood nuisance. Disclosures cause some buyers **to back out of the sale of purchasing a home near a cell tower.** **20% Property Reduction Living Next to a Cell Tower** • Documentation of a price drop of up to 20% is found in multiple surveys and published articles. https://www.nationalbusinesspost.com/cell-towers-impact-home-values/ • Local, state and International Real Estate Agents estimate a minimum 20% property devaluation for homes next to cell towers		

	• Research finds, cell towers, high powered powerlines and electric substations near homes can drop property values up to 20%. • The National Institute for Science, Law & Public Policy (NISLAPP) reports that an overwhelming 94 percent of home buyers and renters surveyed say they are less interested and would pay less for a property located near a cell tower or antenna. https://www.businesswire.com/news/home/20140703005726/en/survey-National-Institute-Science-Law-Public-Policy#.U8muiLGO1oY **Property Appraisers Recognize Property Values are Impacts by Adverse Aesthetics in Proximity to Cell Towers** • "In 32 years of experience as a Real Estate Appraiser specializing in detrimental conditions, takings, adverse impacts and right-of-way, I have found that aesthetics (or rather the adverse impact on aesthetics) of externalities routinely has the largest impact on property values. As a result, proximity to towers of all types (cell, wind turbine, and electric transmission) has an impact on property values. The same is true with all sorts of surface installations such as pump stations and communication equipment boxes. This would apply to new small cell and DAS equipment, although again, one would expect that the less intrusive the facility, the less significant the impact. Small cell and DAS installations can be unsightly, bulky, inconsistent, and even noisy." "Impact of Communication Towers and Equipment on Nearby Property Values" prepared by Burgoyne Appraisal Company, March 7, 2017 Weakness: The City also justifies that allowing a negative impact to property value finding to the wireless ordinance opens the city to litigation. *However,* no city can control whether telecoms will bring forth litigation. When a telecom does choose to litigate, it doesn't mean that they win their legal battles, as proven		

	with the most recent Carmelo Tower litigation. Also, cities are not required to compensate telecoms for their losses. The City can and does include insurance compensation protection for the City and City Officials in the ordinance. While the City and City Officials can seek protective compensations for losses from a cell tower approval, residents have no way to indemnify themselves should a cell tower located in close proximity fail and cause physical harm or property loss. Local, state and international realtors document multiple reasons, including negative aesthetics and neighborhood nuisance disclosure statements as reasons to not risk purchase a home next to a cell tower. The City must block residential property owners from making the case in a public hearing that a cell tower located near their residential property would create a negative effect on their welfare. Solution: The City must add the legally viable “Potential Adverse Impact Impact to Real Estate Value” as a finding in the wireless ordinance to protect the welfare of its residents and the essential residential character of Carmel-by-the-Sea.		
#30 --	**4. Wireless Facility Shot Clock Noticing & Community Outreach Must Be Strengthened** Weakness: Wireless facility developments are public utilities that affect the entire community. The FCC shot clock is a unique timeline than any other planned development in the City. Residents could miss important shot clock timelines or pauses and restarts in the shot clock due to lack of community-wide noticing.	N/A	The City understands this request is not seeking any changes to the ordinance or companion documents but the City will explore this as part of department operating procedures to ensure the greatest amount of public awareness that is practically possible.

	Solution: Once the shot clock starts, inform the community at the same time through public email notices, including shot clock stop and restart times.		
#31 ORD	**5. Increase Public Noticing Distance** Weakness: The current draft ordinance only provides hand-delivered postcard notice to neighbors within 100-feet radius of the site. Solution: Increase the radius to 500-1,000 feet. The rule is, the higher the structure, the further the noticing. Petaluma does 1,000 feet.	Y	Section 17.46.070.B language proposed to expand the mailing radius to 500 ft. Hand delivery is being done by the City for wireless applications to make sure that it is timely done but the radius will not be expanded for hand delivery.
#32 CL	***Error?-** Wireless Facility Application Check list Type I-IV (**page 9**) 12.1 Incompatibility items The project is proposed in a location that it is: **(Last square) in the public right-of-way within a **250-foot radius (should be 500 feet. On Page 16 of the ordinance , this was changed to 500 ft**	Y	Typo corrected
#33 ORD	***Fire Safety**- All wireless facilities (**page19**) ***says, " should" We need to change this to, " shall be** *proactively monitored."*	Y	Typo corrected
	END		