



## CITY OF CARMEL-BY-THE-SEA PLANNING COMMISSION

Erin Allen, Robert Delves, Stefan Karapetkov, Michael  
LePage, Stephanie Locke

All meetings are held in the City Council Chambers  
East Side of Monte Verde Street  
Between Ocean and 7th Avenues

**SPECIAL MEETING**  
**Wednesday, August 23, 2023**

**Second-Draft Wireless Ordinance Hearing**

**MEETING 5:00 PM**

**THIS MEETING WILL BE HELD VIA TELECONFERENCE AND IN PERSON AT CITY HALL. The public is welcome to attend the meeting in person or remotely via Zoom; however, the meeting will proceed as normal even if there are technical difficulties accessing Zoom. The City will do its best to resolve any technical issues as quickly as possible.**

**To attend in person, visit the City Council Chambers at City Hall located on Monte Verde Street between Ocean and Seventh Avenues. To view or listen to the meeting remotely, you may access the YouTube Live Stream at:**

**<https://www.youtube.com/@CityofCarmelbytheSea/streams>, or use the link below to view or listen to the meeting via Zoom teleconference:**

**[https://ci-carmel-ca-us.zoom.us/j/85318916129?](https://ci-carmel-ca-us.zoom.us/j/85318916129?pwd=QTVTVEROZVRVend2R3daNFo3ZW9CQT09)**

**[pwd=QTVTVEROZVRVend2R3daNFo3ZW9CQT09](https://ci-carmel-ca-us.zoom.us/j/85318916129?pwd=QTVTVEROZVRVend2R3daNFo3ZW9CQT09). To attend Zoom via telephone, dial +1 305-224-1968. Meeting ID: 8531 8916 129. Passcode: 669288.**

**HOW TO OFFER PUBLIC COMMENT: Public comment may be given in person at the meeting, or using the Zoom teleconference module, provided that there is access to Zoom during the meeting. Zoom comments will be taken after the in-person comments. The public can also email comments to [bswanson@ci.carmel.ca.us](mailto:bswanson@ci.carmel.ca.us). Comments must be received 2 hours before the meeting in order to be provided to the legislative body. Comments received after that time and up to the beginning of the meeting will be made part of the record.**

**The COVID-19 Community Level for Monterey County as of the date of this agenda posting on 8/18/2023 is LOW. Wearing a face mask to attend a meeting of a legislative body inside a City facility is optional when the Community Level is LOW or MEDIUM. Seating will be limited and available on a first-come, first-served basis.**

**CALL TO ORDER AND ROLL CALL**

**PUBLIC APPEARANCES**

Members of the public are entitled to speak on matters of municipal concern not on the agenda during Public Appearances. Each person's comments shall be limited to 3 minutes, or as otherwise established by the Chair. Matters not appearing on the agenda will not receive action at this meeting and may be referred to staff. Persons are not required to provide their names, and it is helpful for speakers to state their names so they may be identified in the minutes of the meeting.

## **PUBLIC HEARINGS**

1. Planning Commission Consideration of:
  1. Making a formal Recommendation to the City Council Regarding Ordinance No. 2023-006, which would amend the Carmel Municipal Code (CMC) Title 17 (Zoning) by repealing and replacing chapter 17.46 (Telecommunications and Wireless Facilities) and making conforming amendments to Zoning Code sections 17.08.040, 17.12.020, 17.14.030, 17.14.220, 17.18.030, 17.40.070, 17.52.150, 17.54.010, 17.54.040, 17.54.080, 17.58.030, 17.58.040, 17.68.070, 17.70.010 and 17.70.020 and to municipal code sections 12.08.050, 12.08.060, 13.28.070; and finding the same exempt from the California Environmental Quality Act and in full conformance with the City's Local Coastal Program and the California Coastal Act; and
  2. All six (6) of the administrative regulatory documents which are a companion to the wireless ordinance which include: "Application for Wireless Facility Form"; "Wireless Facility Application Checklist - Type I-IV"; "Wireless Facility Application Checklist - Type V Eligible Facilities Request"; "Administrative Detailed Wireless Facility Design Guidelines"; and "Wireless Facility Standard Conditions of Approval".

## **ADJOURNMENT**

### **CORRESPONDENCE**

2. [CLICK HERE](#) to view correspondence received AFTER the public workshop held on March 29, 2023.
3. Materials Provided to the Commission at the August 23rd Hearing

This agenda was posted at City Hall, Monte Verde Street between Ocean Avenue and 7th Avenue, Harrison Memorial Library, located on the NE corner of Ocean Avenue and Lincoln Street, the Carmel-by-the-Sea Post Office, 5th Avenue between Dolores Street and San Carlos Street, and the City's webpage <http://www.ci.carmel.ca.us> in accordance with applicable legal requirements.

### **SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA**

Any supplemental writings or documents distributed to a majority of the Planning Commission regarding any item on this agenda, received after the posting of the agenda will be available at City Hall located on Monte Verde Street between Ocean and Seventh Avenues during regular business hours.

### **SPECIAL NOTICES TO PUBLIC**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at 831-620-2000 at least 48 hours prior to the meeting to ensure that reasonable arrangements can be made to provide accessibility to the meeting (28CFR 35.102-35.104 ADA Title II).



# CITY OF CARMEL-BY-THE-SEA PLANNING COMMISSION Staff Report

August 23, 2023  
PUBLIC HEARINGS

**TO:** Chair LePage and Planning Commissioners

**SUBMITTED BY:** Brandon Swanson, Director of Community Planning & Building

**APPROVED BY:** N/A

Planning Commission Consideration of:

**SUBJECT:**

1. Making a formal Recommendation to the City Council Regarding Ordinance No. 2023-006, which would amend the Carmel Municipal Code (CMC) Title 17 (Zoning) by repealing and replacing chapter 17.46 (Telecommunications and Wireless Facilities) and making conforming amendments to Zoning Code sections 17.08.040, 17.12.020, 17.14.030, 17.14.220, 17.18.030, 17.40.070, 17.52.150, 17.54.010, 17.54.040, 17.54.080, 17.58.030, 17.58.040, 17.68.070, 17.70.010 and 17.70.020 and to municipal code sections 12.08.050, 12.08.060, 13.28.070; and finding the same exempt from the California Environmental Quality Act and in full conformance with the City's Local Coastal Program and the California Coastal Act; and
2. All six (6) of the administrative regulatory documents which are a companion to the wireless ordinance which include: "Application for Wireless Facility Form"; "Wireless Facility Application Checklist - Type I-IV"; "Wireless Facility Application Checklist - Type V Eligible Facilities Request"; "Administrative Detailed Wireless Facility Design Guidelines"; and "Wireless Facility Standard Conditions of Approval".

**Application:** N/A

**APN:** N/A

**Block:** N/A

**Lot:** N/A

**Location:** Citywide

**Applicant:** N/A

**Property Owner:** N/A

## Executive Summary:

The City of Carmel-by-the-Sea is in the process of updating regulations pertaining to wireless (e.g.: cell phone) telecommunication facilities. In March, 2023, the Planning Commission held a public workshop on a first-draft ordinance package. Several comments were received from the public and Commission as part of that workshop. Since that time, staff has been working with outside legal counsel to prepare a second-draft

ordinance package in response to feedback received as part of the workshop.

The Planning Commission is now being asked to consider making a formal recommendation to City Council regarding adoption of this second-draft ordinance. This recommendation will be provided to Council at the first and second reading of the ordinance for adoption. In addition to the draft ordinance, the Commission is also being asked to consider the six (6) companion regulatory documents such as an Application Checklist, which can be approved solely by the Planning Commission.

## Recommendation:

It is recommended that the Planning Commission:

1. Approve a resolution making a formal Recommendation to the City Council to adopt Ordinance No. 2023-006, which would amend the Carmel Municipal Code (CMC) Title 17 (Zoning) by repealing and replacing chapter 17.46 (Telecommunications and Wireless Facilities) and making conforming amendments to Zoning Code sections 17.08.040, 17.12.020, 17.14.030, 17.14.220, 17.18.030, 17.40.070, 17.52.150, 17.54.010, 17.54.040, 17.54.080, 17.58.030, 17.58.040, 17.68.070, 17.70.010 and 17.70.020 and to municipal code sections 12.08.050, 12.08.060, 13.28.070; and finding the same exempt from the California Environmental Quality Act and in full conformance with the City's Local Coastal Program and the California Coastal Act; and
2. Approve all six (6) of the administrative regulatory documents which are a companion to the wireless ordinance which include: "Application for Wireless Facility Form"; "Wireless Facility Application Checklist - Type I-IV"; "Wireless Facility Application Checklist - Type V Eligible Facilities Request"; "Administrative Detailed Wireless Facility Design Guidelines"; and "Wireless Facility Standard Conditions of Approval".

## Background and Project Description:

At the Direction of City Council, the Community Planning and Building Department, with support from the City Attorney and special outside Wireless Counsel, has been drafting updates to the City's wireless facility regulations. From the outset, the policy direction from City Council was to draft the strongest wireless ordinance possible to protect the special and unique characteristics of Carmel-by-the-Sea.

At their March 29th, 2023 Special Workshop, the Commission was presented with a first-draft wireless ordinance package consisting of an ordinance amending the Carmel Municipal Code, Application Checklists, Design Guidelines, Standard Conditions of Approval, and an Application Form. These documents had been released to the public and Commission for review and comments approximately one month prior to the workshop. At the workshop, staff received specific comments from the Commission in addition to those received from the public over the preceding month.

Since the March workshop, staff has been working with the City's outside legal counsel, Gail Karish of the firm BBK, LLP, to prepare a second-draft version of the wireless ordinance package. This second draft package was released for review by the public and Planning Commission on August 5th, 2023 along with a "Reader's Guide" (Attachment 2). The second draft seeks to address substantive comments received from both the public and the Planning Commission on the first-draft ordinance package. These comments were collected, and placed into a matrix (Attachment 3), along with an explanation of how they were addressed in the second-draft. Many of the comments received were addressed through edits to one or more of the documents in the first-draft ordinance

package. Some comments, however, were not incorporated for various reasons. The attached matrix also includes a brief explanation of how and why comments were addressed in the second-draft ordinance package.

In addition to the comments matrix, staff has also prepared “redline” versions (Attachments 4b, 5b, 6b, 7b, 8b, 9b) of each document in the ordinance package to assist with understanding edits that have been made since the first-draft. These redlines show every change, regardless of how small. Text that is underlined represents an addition, and text with a ~~strikethrough~~ represents a deletion. “Clean” versions of each document in the package have also been included (Attachments 4a, 5a, 6a, 7a, 8a, 9a), which are exactly the same as the “redline” versions, but with the changes accepted.

The changes presented in the redline versions, along with the comment matrix, are meant to present a complete picture of the approach taken by staff to address comments received in March. Staff will be prepared at the hearing to provide any needed clarification and answer questions. This package was released to the public and Commission on August 5th, 2023, along with a “Reader’s Guide” explaining all of the various components listed above.

## Staff Analysis:

Some of the documents in the wireless ordinance package require a formal recommendation by the Planning Commission and adoption by the City Council, while some only require approval by the Planning Commission. This section explains the different approval paths for both types of documents.

- **Ordinance** - For all ordinances amending the City’s Zoning Code (Title 17), the Planning Commission must adopt a resolution which provides a formal recommendation to the City Council regarding adoption of the subject ordinance. This recommendation may be for adoption of the ordinance as presented to the Commission, which is how the attached resolution has been drafted. The Commission’s recommendation may also be for adoption, but with specific modifications to the ordinance that should be incorporated into the ordinance as part of Council’s first reading. The Commission also has the option, if they feel that the ordinance is substantially deficient, to continue the matter to a later date with specific direction to staff regarding how the substantial deficiencies should be addressed. Following adoption at a first and second reading by Council, the ordinance must be considered and approved by the California Coastal Commission prior to becoming effective.
- **All Other Regulatory Documents** – The remainder of the regulatory documents in the wireless ordinance package (Application Checklist, Design Guidelines, etc.) require only Planning Commission approval at a public hearing to become effective. Review and approval by City Council or the Coastal Commission is not needed for these documents to become effective or to be amended in the future. In other words, the formal ordinance and the companion regulatory documents are not tied to the same approval process. Therefore, the Commission may choose to approve these companion documents as presented at this hearing, or continue them to a future date for modifications while still moving the ordinance along to City Council with a formal recommendation. As discussed at the March workshop, the major benefit of these companion regulatory documents requiring only Planning Commission approval, is the efficiency with which they can be amended in the future if needed. For example, if new State or Federal laws take effect that create a gap in the Application Checklist, the document can be amended in one to two months since only Planning Commission approval would be required. If amendments needed to be made within the ordinance (Title 17), this would require a formal recommendation by the Planning Commission, two readings by the City Council, and approval by the Coastal Commission, which would take approximately one-year.

## ***Other Project Components:***

A recommendation to the City Council will have no impact on the environment and is not considered a project requiring compliance with the California Environmental Quality Act (Section 21065 of the California Public Resources Code)

Attachment 2 - Readers guide

Attachment 1 - PC Resolution Wireless Ordinance 08-23-23

Attachment 3 - RESPONSE TO PUBLIC COMMENTS

Attachment 4a - Draft Ordinance Amending Zoning Code Chapter 17.46

Attachment 4b - REDLINE Draft Ordinance Amending Zoning Code Chapter 17.46

Attachment 5a - Draft Wireless Application Form

Attachment 5b - REDLINE Draft Wireless Application Form

Attachment 6a - Draft Wireless Application Checklist for Type I through IV Facilities

Attachment 6b - REDLINE Draft Wireless Application Checklist for Type I through IV Facilities

Attachment 7a - Draft Wireless Application Checklist for Type V Facilities

Attachment 7b - REDLINE Draft Wireless Application Checklist for Type V Facilities

Attachment 8a - Draft Detailed Wireless Facility Design Guidelines

Attachment 8b - REDLINE Draft Detailed Wireless Facility Design Guidelines

Attachment 9a - Draft Required Standard Conditions of Approval for Wireless Facilities

Attachment 9b - REDLINE Draft Required Standard Conditions of Approval for Wireless Facilities



# Reader's Guide

## Second Draft Wireless Ordinance Package

### August 23<sup>rd</sup>, 2023 Planning Commission Special Meeting

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#### **What is this Reader's Guide for, and how can you get involved?**

This reader's guide will give you a brief overview of what documents you will find in the second draft wireless ordinance package and how they relate to each other. It is intended to help you as you provide input into the overall process. As you review these documents, remember that the August Planning Commission Meeting is intended for the Commission to make a formal recommendation to the City Council, who ultimately will consider them for adoption at an upcoming hearing. In other words, this is not a workshop, but rather an actual meeting. You can send in thoughts ahead of the meeting, or **join the Planning Commission on August 23<sup>rd</sup>** to share your feedback. Thank you in advance for getting involved and providing your thoughts!

#### **How can I tell what has changed since the March, 2023 Planning Commission Workshop?**

The first way to follow edits that have been made to the March draft is by reviewing the "redline" versions of each document. These redlines will show you every change, regardless of how small. Text that is underlined represents an addition, and text with a ~~strikethrough~~ represents a deletion. In addition to these redline versions, you can also understand how specific comments from the March 2023 Planning Commission Workshop were addressed in the second draft by checking out this document:

1. Response to Public Comments – Wireless Ordinance August 2023
  - This document lists specific comments received on the first draft ordinance package, whether or not changes were made to the second draft, and an explanation of how/why the comment was or was not addressed.

#### **What is this ordinance updated all about, and what are all the documents for?**

At the Direction of City Council, the Community Planning and Building Department, with support from the City Attorney and special outside Wireless Counsel, has been drafting updates to the City's wireless facility regulations. From the outset, the policy direction from City Council was to draft the strongest wireless ordinance possible to protect the special and unique characteristics of Carmel-by-the-Sea. With that in mind, the following documents have been produced based on Council's original direction, and by incorporating many of the comments received during the March Planning Commission Workshop. They all work together to create the rules and regulations for anyone wishing to apply for a wireless facility in the City of Carmel-by-the-Sea:

2. Draft Ordinance Amending Zoning Code Chapter 17.46
  - This document contains the draft updated Zoning Code language to regulate wireless facilities in the City of Carmel-by-the-Sea. This document lives in the City's Municipal Code, and becomes part of the City's Local Coastal Plan following Adoption by City Council and certification by the California Coastal Commission.
3. Draft Wireless Application Form
  - This document is the cover sheet that all applicants will need to include with their application packages to identify themselves and the type of wireless project being proposed.
4. Draft Wireless Application Checklist for Type I through IV Facilities
  - This document contains a checklist of materials that all applicants **MUST** submit with applications for **Type I through IV** wireless facilities before the City will begin processing them. In other words, you cannot pass "go" unless you provide all the required materials needed to evaluate the application.
5. Draft Wireless Application Checklist for Type V Facilities
  - This document contains a checklist of materials that all applicants **MUST** submit with applications for **Type V** wireless facilities before the City will begin processing them. In other words, you cannot pass "go" unless you provide all the required materials needed to evaluate the application.
6. Draft Detailed Wireless Facility Design Guidelines
  - This document contains more specific design guidelines and standards for the various types of wireless facilities. This document does not live in the Municipal Code. This means it can be more easily amended by the Planning Commission in the future to add/strengthen design standards without having to go back to the California Coastal Commission.
7. Draft Required Standard Conditions of Approval for Wireless Facilities
  - This document contains a list of Conditions of Approval that will be standard and required for any wireless projects approved in the future. These conditions help to ensure that a wireless project adheres to the limits of any permits that have been granted.

**How do I send in my comments ahead of the August 23<sup>rd</sup> meeting?**

- Send an email...(please use both emails)  
Brandon Swanson, Director of Community Planning and Building – [bswanson@cbts.us](mailto:bswanson@cbts.us)  
Leah Young, Administrative Coordinator – [lyoung@cbts.us](mailto:lyoung@cbts.us)
- Give a call and chat...  
Brandon Swanson, Director of Community Planning and Building – 831-624-2024



**CITY OF CARMEL-BY-THE-SEA  
PLANNING COMMISSION**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARMEL-BY-THE-SEA MAKING A FORMAL RECOMMENDATION TO THE CITY COUNCIL TO ADOPT ORDINANCE NO. 2023-006, WHICH WOULD AMEND THE CARMEL MUNICIPAL CODE (CMC) TITLE 17 (ZONING) BY REPEALING AND REPLACING CHAPTER 17.46 (TELECOMMUNICATIONS AND WIRELESS FACILITIES) AND MAKING CONFORMING AMENDMENTS TO ZONING CODE SECTIONS 17.08.040, 17.12.020, 17.14.030, 17.14.220, 17.18.030, 17.40.070, 17.52.150, 17.54.010, 17.54.040, 17.54.080, 17.58.030, 17.58.040, 17.68.070, 17.70.010 AND 17.70.020 AND TO MUNICIPAL CODE SECTIONS 12.08.050, 12.08.060, 13.28.070; AND FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND IN FULL CONFORMANCE WITH THE CITY’S LOCAL COASTAL PROGRAM AND THE CALIFORNIA COASTAL ACT.**

WHEREAS, the City of Carmel-by-the-Sea currently regulates the placement of wireless facilities throughout the City under Title 17, Chapter 17.46 of the Municipal Code; and

WHEREAS, Chapter 17.46 was last amended in 2004; and

WHEREAS, there have been significant changes in state and federal law affecting local authority over wireless siting since Chapter 17.46 was last amended, including the passage of new federal laws and state laws, the adoption of new Federal Communications Commission regulations and orders, the amendment of California Public Utility Commission orders related to utility infrastructure, and various judicial decisions interpreting those laws and regulations; and

WHEREAS, notwithstanding the various changes in state and federal law, local governments continue to retain authority to regulate the placement, construction, and modification of personal wireless service facilities, subject to those matters where local authority has been limited or removed by state or federal law; and

WHEREAS, Carmel-by-the-Sea has made longstanding and sustained efforts to preserve its distinct “village in a forest, by the sea” character, the natural beauty of its shoreline environment, and its charm as a popular visitor destination, by not allowing incompatible development that degrades the visual and economic value of adjoining properties, especially in residential areas; and

WHEREAS, Carmel-by-the-Sea’s topography, forested nature, location partially within and partially adjacent to California’s High Fire-Threat District (HFTD), and narrow streets, with few gutters or sidewalks or streetlights, gives rise to many unique concerns and situations relating to fire safety, traffic circulation, parking and pedestrian safety; and

WHEREAS, if not adequately regulated, the installation of personal wireless services facilities within the City can pose a threat to the public health, safety, and welfare; traffic and pedestrian safety hazards; negative impacts to trees; creation of visual and aesthetic blights and potential safety concerns arising from improper design or excessive size, heights, noise, or lack of camouflaging; and

WHEREAS, the City therefore intends to exercise its powers to regulate personal wireless service facilities to the maximum extent allowed by law, to protect its residents and visitors, promote public health, safety and community welfare, preserve the natural resources and unique scenic quality of Carmel-by-the-Sea, and protect the character of the City's residential neighborhoods, while nonetheless respecting and adhering to the law as it is today and may change in the future; and

WHEREAS, on February 29, 2022, the City Council and Planning Commission held a joint special meeting on wireless regulation to receive an update on changes to the law, to receive public feedback and to provide general direction to staff on an update to the City's wireless regulations; and

WHEREAS, on March 29, 2023, the Planning Commission conducted a duly noticed public workshop on a draft of the wireless regulations (ordinance, design guidelines, standard conditions of approval, and application forms) to receive public feedback; and

WHEREAS, on August 11, 2023, notice of a public hearing of the Planning Commission was published in compliance with State law (California Government Code 65091); and

WHEREAS, on August 23, 2023, the Planning Commission held a public hearing to consider making a recommendation to the City Council regarding Ordinance No. 2023-006 amending regulations pertaining to telecommunication and wireless facilities and received public testimony, including without limitation, information provided to the Planning Commission by City staff and through public testimony; and

WHEREAS, the Planning Commission found that the draft Ordinance 2023-006 was consistent with the City's General Plan, Local Coastal Plan, and all other relevant City and State codes and regulations; and

WHEREAS, the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA"), together with State Guidelines (14 California Code Regulations §§ 15000, et seq., the "CEQA Guidelines") and City Environmental Regulations (CMC 17.60) require the review of certain projects for environmental impacts and preparation of environmental documents; and

WHEREAS, the Planning Commission finds that pursuant to CEQA regulations, the project will have no impact on the environment and is not considered a project requiring compliance with the California Environmental Quality Act (Section 21065 of the California Public Resources Code); and

WHEREAS, the proposed amendments are in full conformity with the City's Local Coastal Plan and the California Coastal Act (Public Resources Code Section 30510 et seq.); and

WHEREAS, the facts set forth in the recitals are true and correct and are incorporated herein by reference.

**NOW, THEREFORE, BE IT RESOLVED, THAT THE PLANNING COMMISSION OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY** recommend the Carmel-by-the-Sea City Council adopt ordinance no. 2023-006, which would amend the Carmel Municipal Code (CMC) Title 17 (Zoning) by repealing and replacing chapter 17.46 (Telecommunications and Wireless Facilities) and making conforming amendments to Zoning Code sections 17.08.040, 17.12.020, 17.14.030, 17.14.220, 17.18.030, 17.40.070, 17.52.150, 17.54.010, 17.54.040, 17.54.080, 17.58.030, 17.58.040, 17.68.070, 17.70.010 and 17.70.020 and to CMC sections 12.08.050, 12.08.060, 13.28.070; and finding the same exempt from the California environmental quality act and in full conformance with the City’s Local Coastal Program and the California coastal act.

**PASSED, APPROVED, AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF CARMEL-BY-THE-SEA** this 23rd day of August, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

\_\_\_\_\_  
Michael LePage, Chair

\_\_\_\_\_  
Leah Young, Planning Commission Secretary

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	<p>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.</p>	Y & N	<p>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.</p> <p>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.</p> <p>In other words, the draft ordinance prepared by the City more comprehensively covers ALL of the potential Special Exemption Requests.</p>

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/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 <i>operable</i> 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.

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	<p>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.”</p>	N	<p>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).</p> <p>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.</p>
ORD	<p>Adding an example of an application for each Type would be helpful.</p>	N	<p>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.</p>
ORD	<p>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 ?</p>	Y	<p>The definition is not used and has been removed.</p>
ORD	<p>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.</p>	N	<p>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.</p>

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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

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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.



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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	<p>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.</p> <p>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.</p>

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COA	General – Can we add language for annual RF Compliance reporting ?	N	<p>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.</p> <p>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</p>
	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	<p>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).</p> <p>In the proposed conforming amendments (Section 4) 13.28.070.E, a change is proposed to ensure remaining equipment is not visible.</p>
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

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SCTCN COMMENTS			
ORD	<p>(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.</p>	N	<p>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.</p>
CL	<p>(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 Referring 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</p>	Y & N	<p>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.</p> <p>Some revisions to the checklist for Type I-IV applications have been made to require information to support effective prohibition claims.</p>

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ORD/CL	<p>(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.</p> <p><b>17.46.080 Effective prohibition claims</b> --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.”</p> <p><b>Checklists</b>-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.</p> <p><b>Drive test data</b>--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)</p> <p><b>Connect to landline</b>-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.</p> <p><b>Denial of service</b> - 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)</p>	Y & N	<p>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.</p>

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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.

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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	<p>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&amp;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.</p>

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ORD	<p>(8) The city draft's "View Protection" language is weak and does not fully protect view impacts to individual properties and neighborhoods. <b>Add:</b> ++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.  <b>Delete:</b> "No single parcel should enjoy a greater right than other parcels except the natural advantages of each site's topography."</p>	Y & N	<p>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</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• The project does not present excess visual mass or bulk to public view or to adjoining properties</li> <li>• Collocation is encouraged when it will decrease visual impact</li> </ul> <p>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.</p>
ORD	<p>(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</p>	Y	<p>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.</p>

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ORD	<p>(10) The city draft's "Purpose &amp; Findings statements" are lacking protections of Carmel-by-the-Sea's character and safety elements in 5 areas. Include additional language:</p> <p>++ The preservation of the residential character in Carmel is central to all land uses.</p> <p>++ Respecting the past as a continuing legacy that challenges each citizen to preserve the City's character in spite of on-going change.</p> <p>++ Preserving Carmel's primarily residential character with business and commerce subordinate to its residential character.</p> <p>++ The encroachment shall not create, extend, or be reasonably likely to lead to an undesirable land use precedent</p> <p>++ 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.</p> <p>++ Designing buildings, infrastructure, and other improvements to a human scale</p> <p>++ 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.</p> <p>++ That the project will preserve the community character and will be compatible with the streetscape, mass, bulk and height of the surrounding neighborhood context.</p> <p>++ 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.</p> <p>++ Carmel by-the-Sea's urban forest poses significant fuel source for fire within the Community</p> <p>++ High density of structures within the Carmel residential areas and business districts among numerous trees increase the hazard</p>	Y & N	<p>Added the following to the ordinance:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Preserve Carmel's primarily residential character by keeping business and commerce subordinate to its residential character</li> <li>• ... recognizing that the preservation of the residential character in Carmel is central to all land uses...</li> </ul> <p>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.</p>



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	<p><i>(cont. from previous page)</i></p> <ul style="list-style-type: none"> <li>++Many buildings in the commercial district are very closely located with many building having common walls;</li> <li>++Many of the commercial buildings and residential dwellings are older without fire sprinklers or fire resistant building materials;</li> <li>++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.</li> <li>++Most construction within Carmel contains wood; most roofs are made of combustible materials;</li> <li>++High-density development with small setbacks increase fire spread and limit effectiveness of fire fighting efforts;</li> <li>++The most significant factor increasing fire risk is human proximity;</li> <li>++Areas with limited access prevent containment goals;</li> <li>++Coastal windstorms and hillsides promote strong gusts of wind toward the city;</li> <li>++Steep slopes promote spreading of wildfire through increased speed and preheating of vegetation;</li> <li>++Risk of burning embers pushed by wind-blown wildfires from igniting building through small setbacks and vegetation;</li> <li>++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;</li> <li>++In addition to constricted access, the tightly knit community of houses and trees doesn't provide adequate fuel breaks throughout the City;</li> <li>++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</li> </ul>		<p><i>(cont. from previous page)</i></p>

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	<p><i>(cont. from previous page)</i></p> <p>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.</p> <p>++Dry summer and fall seasons with no precipitation create ideal conditions for fire spreading;</p> <p>++A combination of generous rainy season followed by dry summer can result in large amounts of vegetation for fire fuel;</p> <p>++Accidents related to spark charges from overhead transmission lines have started fires, as well as embers from wood burning stoves and faulty electrical wiring;</p> <p>++ already included <del>We have 4 very high severity hazard zones within the community (Pescadero Canyon, Forest Hill Park, Del Monte Forest and Mission Trails Nature Preserve);</del></p> <p>++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.</p>		<p><i>(cont. from previous page)</i></p>

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CL	<p>(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. <b>Add</b> 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:</p> <p>(a) Small Wireless Facilities</p> <p>For applications seeking approval for the installation of a small wireless facility, the applicant shall provide a visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a “clear line of sight” between the tower location and their location.”</p>	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	<p>(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)</p>	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	<p>(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 opportunities a carrier has available to provide to existing and predicted facilities already in Carmel.</p>	Y& N	<p>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.</p> <p>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.</p>

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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	<p>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.</p> <p>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.</p> <p>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.</p>	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.

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ORD	<p>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.</p>	N	<p>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.</p>
ORD	<p>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.</p> <p>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 <i>City of Rancho Palos Verdes v. Abrams</i> (2002) 101 Cal. App. 4th 367, 381.</p> <p>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.</p>	N	<p>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.</p>

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ORD	<p>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.***</p> <p>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.</p> <p>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.”</p>	N	<p>The City disagrees that requiring a special exception is inappropriate or a concession that the standards are unreasonable.</p>
CL	<p>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.</p>	Y & N	<p>This section of the checklist has been updated to expand the alternative bases for an effective prohibition claim.</p> <p>The city does not agree that the requirement to demonstrative a special exception was itself preempted by the FCC Order.</p>

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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.

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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 in Section 4 of Ordinance – 12.08.050 and 12.08.060



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ORD	<p>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.</p>	N	<p>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 has 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.</p>
ORD	<p>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.</p>	N	<p>Federal law dictates result (must approve EFR if meet criteria) but does not dictate the process.</p>

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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 <i>and</i> 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.

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DG	<p>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.</p>	Y	<p>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.</p>
DG	<p>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.</p>	N	<p>Already states to extent technically feasible</p>

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DG	<p>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.</p>	Y	<p>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</p>
CL	<p>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.</p>	Y	<p>Some items were amended/removed from section 2.4 of checklist that are not relevant to the review of a type V application, including:</p> <ul style="list-style-type: none"> <li>• Removed: Show the location of benches, trash cans, mail boxes, kiosks, and other street furniture;</li> <li>• Removed: Show approximate topographical contour lines with elevations called out;</li> <li>• 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;</li> <li>• Removed: Requirement for wet stamp and wet signature from preparer</li> </ul>

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CL	<p>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.</p>	Y	<p>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.</p>
CL	<p>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.</p>	N	<p>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.</p>
CL	<p>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.</p>	N	<p>The City prefers the approach outlined in the documents.</p>

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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

**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL**

**ORDINANCE NO. 2023-XXX**

**AN ORDINANCE OF THE CITY COUNCIL OF CARMEL-BY-THE-SEA AMENDING THE CARMEL MUNICIPAL CODE (CMC) TITLE 17 (ZONING) BY REPEALING AND REPLACING CHAPTER 17.46 (TELECOMMUNICATIONS AND WIRELESS FACILITIES) AND MAKING CONFORMING AMENDMENTS TO ZONING CODE SECTIONS 17.08.040, 17.12.020, 17.14.030, 17.14.220, 17.18.030, 17.40.070, 17.52.150, 17.54.010, 17.54.040, 17.54.080, 17.58.030, 17.58.040, 17.68.070, 17.70.010 AND 17.70.020 AND TO MUNICIPAL CODE SECTIONS 12.08.050, 12.08.060, 13.28.070; AND FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND IN FULL CONFORMANCE WITH THE CITY'S LOCAL COASTAL PROGRAM AND THE CALIFORNIA COASTAL ACT.**

**WHEREAS**, the City of Carmel-by-the-Sea currently regulates the placement of wireless facilities throughout the City under Title 17, Chapter 17.46 of the Municipal Code; and

**WHEREAS**, Chapter 17.46 was last amended in 2004; and

**WHEREAS**, there have been significant changes in state and federal law affecting local authority over wireless siting since Chapter 17.46 was last amended, including the passage of new federal laws and state laws, the adoption of new Federal Communications Commission regulations and orders, the amendment of California Public Utility Commission orders related to utility infrastructure, and various judicial decisions interpreting those laws and regulations; and

**WHEREAS**, notwithstanding the various changes in state and federal law, local governments continue to retain authority to regulate the placement, construction, and modification of personal wireless service facilities, subject to those matters where local authority has been limited or removed by state or federal law; and

**WHEREAS**, Carmel-by-the-Sea has made longstanding and sustained efforts to preserve its distinct "village in a forest, by the sea" character, the natural beauty of its shoreline environment, and its charm as a popular visitor destination, by not allowing incompatible development that degrades the visual and economic value of adjoining properties, especially in residential areas; and

**WHEREAS**, Carmel-by-the-Sea's topography, forested nature, location partially within and partially adjacent to California's High Fire-Threat District (HFTD), and narrow streets, with few gutters or sidewalks or streetlights, gives rise to many unique concerns

and situations relating to fire safety, traffic circulation, parking and pedestrian safety;  
and

**WHEREAS**, if not adequately regulated, the installation of personal wireless services facilities within the City can pose a threat to the public health, safety, and welfare; traffic and pedestrian safety hazards; negative impacts to trees; creation of visual and aesthetic blights and potential safety concerns arising from improper design or excessive size, heights, noise, or lack of camouflaging; and

**WHEREAS**, the City therefore intends to exercise its powers to regulate personal wireless service facilities to the maximum extent allowed by law, to protect its residents and visitors, promote public health, safety and community welfare, preserve the natural resources and unique scenic quality of Carmel-by-the-Sea, and protect the character of the City's residential neighborhoods, while nonetheless respecting and adhering to the law as it is today and may change in the future; and

**WHEREAS**, the City Council and Planning Commission held a joint special meeting on wireless regulation on February 28, 2022 to receive an update on changes to the law, to receive public feedback and to provide general direction to staff on an update to the City's wireless regulations; and

**WHEREAS**, the Planning Commission conducted a duly noticed public workshop on a draft of the wireless regulations (ordinance, design guidelines, standard conditions of approval, and application forms) on March 29, 2023 to receive public feedback; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on the proposed ordinance, design guidelines, standard conditions of approval, and application forms on August 23, 2023 at which it took public testimony, held a discussion, and voted to adopt the design guidelines, standard conditions of approval, and application forms, and to recommend that City Council adopt of the proposed code amendments (Resolution No.\_\_\_\_);

**WHEREAS**, on \_\_\_\_\_, 2023 the City Council held a duly noticed public hearing on the proposed code amendments;

**WHEREAS**, the City determined this ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines; and

**WHEREAS**, the proposed amendments are in full conformity with the City's Local Coastal Plan and the California Coastal Act (Public Resources Code Section 30510 et seq.)

**SECTION 1. CEQA Review.** This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an



application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a “project” within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council’s adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the applicant would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. The City Council therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Monterey within five working days of the passage and adoption of the Ordinance.

**SECTION 2.** Repeal and Replacement of Chapter 17.46. Chapter 17.46 of Title 17 of the Carmel-by-the-Sea Municipal Code is hereby repealed in its entirety and replaced with the following:

**Chapter 17.46**  
**TELECOMMUNICATIONS AND WIRELESS FACILITIES**

Sections:

- 17.46.010 Purpose and Findings.**
- 17.46.020 Definitions.**
- 17.46.030 Applicability.**
- 17.46.040 General Development Standards.**
- 17.46.050 Wireless Application Types and Submittal Requirements.**
- 17.46.060 Application Review Procedures.**
- 17.46.070 Public Notices, Public Hearings and Appeals.**
- 17.46.080 Findings Required.**
- 17.46.090 Standard Conditions of Approval.**
- 17.46.100 Violations**

**17.46.010 Purpose and Findings.**

A. **Purpose.** The purpose of this chapter is to establish comprehensive requirements and development standards for the siting, design, construction, maintenance and modification of wireless facilities in Carmel-by-the-Sea, including on public and private property and in public rights-of way, in order to manage their deployment and minimize adverse aesthetic impacts to Carmel-by-the-Sea’s unique village character, consistent with and to the full extent of the City’s authority under federal and California law.

**B. Findings.** The City Council hereby finds that:

1. Limitations on the placement of wireless facilities within the City limits are necessary to:

a. Protect Carmel-by-the-Sea's distinct "village in a forest, by the sea" character with its centralized commercial core surrounded by residential land uses.

b. Protect Carmel-by-the-Sea's charm as a popular visitor destination, known as much for its spectacular coast as for its unique community character.

c. Recognize and respect that Carmel-by-the-Sea is among a limited number of California coastal communities where nearly the entire shoreline from the first public road to the sea is open to the public and easily accessible, and that over the years, Carmel has maintained a balance between preserving the beauty of the shoreline environment and adding the physical improvements that make the Carmel shoreline accessible and enjoyable to the public, keeping the entire beach and bluff as natural appearing as possible consistent with public access, habitat protection, safety and provision of limited recreational support facilities.

d. Recognize and respect that Carmel-by-the-Sea's streets are narrow in width, 26 to 34 feet, with few gutters or sidewalks and that this lack of formal development of streets throughout Carmel (with the exception of some of the downtown thoroughfares) has been a conscious effort on the part of residents to maintain a "village in a forest" atmosphere, and gives rise to many unique situations relating to traffic, circulation, parking and pedestrian safety.

2. Personal wireless services can serve as an important and effective part of Carmel-by-the-Sea's emergency response and communications.

3. The regulations contained herein are designed to promote public health, safety and community welfare, preserve the natural resources and scenic quality of Carmel-by-the-Sea and protect the character of the City's residential neighborhoods, recognizing that the preservation of the residential character in Carmel is central to all land uses, consistent with the findings in (1) and (2), while regulating managed development of wireless infrastructure throughout the City.

4. The provisions of this chapter are intended to:

a. Comply with all applicable goals, objectives and policies of the General Plan, the City's Local Coastal Program and the California Coastal Act.

b. Minimize adverse aesthetic impacts associated with wireless facilities in all districts.

c. Preserve Carmel's primarily residential character by keeping business and commerce subordinate to its residential character.

- d. Comply with all federal law, Federal Communications Commission rules, regulations and standards, California law, and California Public Utilities Commission regulations and standards.
- e. Ensure the safe installation and maintenance of wireless facilities to protect against fire hazards made more prevalent by Carmel's unique urbanized forest, topography and accessibility.

### **17.46.020 Definitions.**

The definitions in this Section apply to this chapter. Undefined terms shall have the meaning assigned to them in Chapter 17.70. Per Section 17.02.090(C), to the extent that this chapter quotes or paraphrases any State or Federal Statute for convenience and any conflict is discovered, or is created through amendment, the State or Federal Statute shall control and shall be cause for an amendment to this chapter.

#### **A. Generally Applicable Definitions**

1. **"accessory equipment"** means equipment other than antennas used in connection with a wireless facility. The term includes transmission equipment.
2. **"amateur station"** means the same as defined by the FCC in 47 C.F.R. § 97.3, which means a station in an amateur radio service consisting of the apparatus necessary for carrying on radio communications. This term includes amateur radio antennas and related facilities used for amateur radio services.
3. **"antenna"** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), which means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services.
4. **"base station"** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(1), which means:

A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower or any equipment associated with a tower.

- (i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.6100(b)(1)(i) through (ii) of 47 C.F.R. § 1.6100 that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.6100(b)(1)(i)–(ii) of 47 C.F.R. § 1.6100.

5. **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), which means (1) Mounting or installing an antenna facility on a pre-existing structure; and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure. For eligible facilities requests, the definition of collocation in B.1 below applies instead of this definition.
6. **“CPUC”** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
7. **“Director”** means the City of Carmel-by-the-Sea Community Planning and Building Director or the Director’s designee.
8. **“EFR” or “eligible facilities request”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(3) which means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.
9. **“FCC” or “Commission”** means the Federal Communications Commission, as constituted by the Communications Act of 1934, Pub. L: 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.

10. **“Fire Safety Authority”** means the Chief Building Official of the City of Carmel-by-the-Sea or the Fire Safety Authority’s designee.

11. **“historic resource”** means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources, the “Carmel Inventory of Historic Resources” or the “Carmel Inventory” as defined in code Section 17.32.230, the “Carmel Register of Historic Resources” or the “Carmel Register” as defined in code Section 17.32.230, or any “historic resource” or “historical resource” as defined in code Section 17.32.230. The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.

12. **“OTARD”** means any “over-the-air reception device” subject to the FCC rules in 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and antennas, and certain fixed wireless antennas not greater than one meter in diameter.

13. **“personal wireless service facility”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(i) which means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

14. **“personal wireless services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i) which means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

15. **“public right-of-way”** or **“public rights-of-way”** means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.

16. **“reviewing authority”** means the City official or appointed/elected body responsible for application review and vested with authority to approve, approve with modifications and/or conditions, or deny such applications.

17. **“RF”** means radiofrequency.

18. **“small wireless facility”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), which means a personal wireless service facility that meets each of the following conditions:

(a) The facilities (i) are mounted on structures 50 feet or less in height including their antennas; or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures; or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(b) Each antenna associated with the deployment is no more than three (3) cubic feet in volume, excluding associated antenna equipment;

(c) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume;

(d) The facility does not require antenna structure registration under 47 CFR Part 17 (Construction, Marking and Lighting of Antenna Structures);

(e) The facility is not located on tribal land; and

(f) The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1).

19. “**FCC shot clock**” means the time defined by the FCC in 47 C.F.R. § 1.6003 or 1.6100(c) (as applicable) in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless services facilities.

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 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 adjacent uses

21. “**structure**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(m) which means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services). A tree including live, dead, partially cut down or limbed tree is not a structure and may not be used for placement of wireless facilities.

22. **“tower”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(9) which means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.
23. **“transmission equipment”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(8) which means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
24. **“Type I application”** means an application type described in 17.46.050(A)(1)(a).
25. **“Type II application”** means an application type described in 17.46.050(A)(1)(b).
26. **“Type III application”** means an application type described in 17.46.050(A)(1)(c).
27. **“Type IV application”** means an application type described in 17.46.050(A)(1)(d).
28. **“Type V application”** means an eligible facilities request or EFR.
29. **“utility pole”** means a wood or steel vertical structure in the public right-of-way designed to support electric, telephone and similar utility lines. A tower is not a utility pole.
30. **“visibility triangle”** means that portion of both the public and private property at any corner bounded by the curb line or edge of roadway of the intersecting streets and a line joining points on the curb or edge of roadway a distance in feet equivalent to the width of the roadway from the point of intersection of the extended curb lines or edges of roadway.
31. **“wireless facility”** means the transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), structure(s), and base station(s).

**B. Additional Definitions Applicable to Eligible Facilities Requests (EFRs) Only**

1. **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), which means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
2. **“eligible support structure”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4) which means any tower or base station, provided that it is existing at the time the relevant eligible facilities request application is filed with the State or local government.
3. **“existing”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4) which means a constructed tower or base station is “existing” for purposes of an EFR, if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
4. **“site”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(6), which means that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.
5. **“substantial change”** or **“substantially change”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(7), which establishes different criteria based on the particular facility type and location. For clarity, the definition in this chapter reorganizes the FCC’s criteria and thresholds for a substantial change according to the facility type and location.
  - a. For towers outside the public rights-of-way, a substantial change occurs when:
    - i. the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array with separation from the nearest antenna not to exceed 20 feet (whichever is greater); or



- ii. the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
  - iii. the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
  - iv. the proposed collocation or modification involves excavation or deployment outside the current boundaries of the leased or owned property surrounding the wireless tower by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
- b. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
- i. the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
  - ii. the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
  - iii. the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
  - iv. the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
  - v. the proposed collocation or modification involves excavation or deployment outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- 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 eligible support structure as determined by the reviewing authority; or

- ii. the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this definition.
- d. The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits from the originally-permitted eligible support structure. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted eligible support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites that existed prior to February 22, 2012, the cumulative limit for vertically separated deployments is measured from the permitted site dimensions as they existed on February 22, 2012—the date that P.L. 112-96 was signed into law.

#### **17.46.030 Applicability.**

- A. **General.** This chapter applies to all requests for the City’s regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities on property within the City’s territorial and jurisdictional boundaries, unless expressly exempted pursuant to subsection (B). This includes permit applications submitted to the City for decision in its regulatory capacity for wireless facilities on property or structures owned or controlled by the City and located within the City, including in public rights-of-way; provided, however, that this chapter does not govern whether or under what terms and conditions the City, in its capacity as the property or structure owner, would lease, license or otherwise allow a wireless facility on such property or structures.
- B. This chapter shall not be applicable to the following:
1. wireless facilities installed completely indoors and used to extend personal wireless services into a business or the subscriber’s private residence, such as a “femtocell” or indoor distributed antenna system;
  2. OTARD antennas which are regulated pursuant to Chapter 15.40 (Antennas and Satellite Dishes);
  3. antennas and related transmission equipment used in connection with a duly authorized amateur station operated by a federally licensed amateur radio

- operator as part of the Amateur Radio Service; provided, that its maximum height does not exceed the height requirements of the zoning district;
4. wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D;
  5. temporary wireless facilities parked in a fixed location within the public rights-of-way for no longer than 10 days under an approved special events permit pursuant to Chapter 12.48.

#### **17.46.040 General Development Standards.**

- A. **Location Standards.** When considering compatibility of a location and structure for Type I, Type II, Type III and Type IV wireless facilities, the City requires applicants to propose those that will be the least intrusive to community character and values. Subsection B provides a ranking that describes Zoning Districts where wireless facilities are least compatible to most compatible with other uses. Subsection C provides the City's preference for placements on parcels over public rights-of-way. Subsection D provides structure rankings. Subsection E provides additional special considerations for site selection on public right-of-way.
- B. **Ranked Locations.** Applicants must propose placement in locations with the least intrusive land use designation (i.e.: Zoning) technically feasible and potentially available. Applications proposing placement in Tier I or II must include a written justification as part of the application submittal, supported by factual and verifiable evidence, that shows no location in a Tier III land use tier is technically feasible and available. The following land use tiers are ranked from least compatible to most compatible:

*Tier I (Least Compatible):*

Senior Citizen Facility (A-3), Multi-Family Residential (R-4), and Single-Family Residential (R-1).

*Tier II:*

Improved Parklands (P-2), Natural Parklands and Preserves (P-1), and Theatrical (A-1).

*Tier III (Most Compatible):*

Central Commercial (CC), Service Commercial (SC), Community and Cultural (A-2), Residential and Limited Commercial (RC)

C. **Preference for Placement on Public and Private Parcels Over on Public Right-of-Way.**

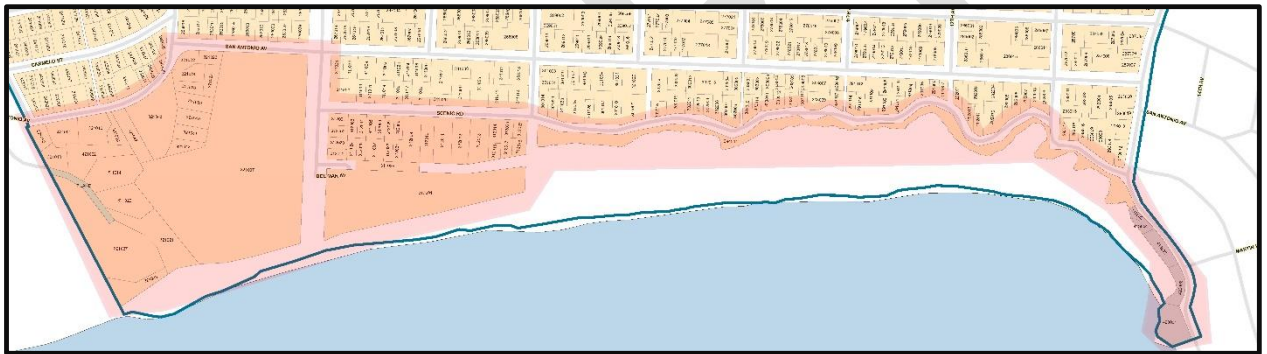
Placement on public and private parcels is strongly preferred over placements in the public rights-of-way because Carmel's public rights-of-way are narrow in width (26 to 34 feet), with few gutters or sidewalks. Limiting wireless facilities in public rights-of-way is necessary: (i) to ensure that the flow of pedestrian and vehicular traffic, including ingress to, or egress from, any residence, public building, or place of business or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles is maintained; (ii) to provide reasonable access for the use and maintenance of sidewalks, pathways, hydrants, restrooms, trash receptacles, firefighting apparatus, as well as access to locations used for public transportation services; (iii) to ensure no interference to the performance of police, firefighter, and other emergency medical personal; and (iv) to maximize public access in the commercial districts and along the coast which have unusually high pedestrian and vehicular traffic volumes. Applications proposing placement in the public right-of-way must include a written justification as part of the application submittal, supported by factual and verifiable evidence, that shows placement on a parcel is not technically feasible and available

D. **Structure Selection.** Applicants shall propose placement on the most-compatible structure that is technically feasible and available. Any application to place a wireless facility on a structure other than the most compatible structure must include a written justification, based on factual and verifiable evidence, that shows no more compatible structure is technically feasible and available.

1. **Structure Selection on Parcels.** The following structures are ranked from least compatible to most compatible on parcels:
  - a. new (non-replacement) structures.
  - b. residential historic structures
  - c. existing building rooftops.
  - d. existing (or replacement) non-building structures without existing wireless facilities.
  - e. existing non-building structures with existing wireless facilities.
2. **Structure Selection on Public Rights-of-Way.** New (non-replacement) structures of any type (pole or non-pole) are the least compatible structures to use on public rights-of-way. Existing (or replacement) utility poles are the most compatible structures. Selection of structures/locations in the public right-of-way is also subject to the limitations in Subsection E below.

**E. Additional Special Considerations for Locations in the Public Right-of-Way.**

1. **Highly Incompatible Locations in the Public Right-of-Way.** Applicants shall not propose to install wireless facilities in/on a highly incompatible location in the public right-of-way unless the application is accompanied by a request for a special exception finding under Subsection 17.46.080(C). The following is a list of highly incompatible locations:
  - a. any location in the public right-of-way within the Single-Family Residential Zoning District.
  - b. any location in the public right-of-way that would trigger review of consistency with the Secretary of the Interior's Standards for potential impacts to a historic resource on a residential parcel in any Tier I zone in B above;
  - c. any location in the public right-of-way within the area depicted in Figure 1 below.



**FIGURE 1**

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 500-foot radius from another wireless facility within the public rights-of-way.

3. **Public Right-of-Way Location Safety Considerations.** Applicants shall not propose adding new structures in the following locations:
  - a. Any location that would create a hazard to public health or safety.
  - b. Any location that would adversely affect the normal drainage of surface water, unless an acceptable mitigation is included that will be advantageous to the general public.
  - c. Any location that would adversely affect vehicular and/or pedestrian traffic or the parking of vehicles including placements in any visibility triangle that obstructs or restricts the view necessary for the safe operation of motor vehicles as determined by the Traffic Safety Committee.
  - 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.
  - e. Any location within 10 feet away from any driveways for police stations, fire stations, or other emergency responder facilities.
  - f. Any location that would physically interfere with or impede access to any:
    - (i) above-ground or underground infrastructure for traffic control, or public transportation, including, without limitation, any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors;
    - (ii) public transportation vehicles, shelters, street furniture, or other improvements at any public transportation stop;
    - (iii) above-ground or underground infrastructure owned or operated by any public or private utility agency;
    - (iv) fire hydrant or water valve;
    - (v) doors, gates, sidewalk doors, passage doors, stoops, or other ingress and egress points to any building appurtenant to the right-of-way; or
    - (vi) fire escape.

## F. **Design Standards**

1. **General Requirements.** This subsection establishes generally applicable design standards for all Type I, Type II, Type III and Type IV wireless facilities in all locations. The design of Type I, Type II, Type III and Type IV wireless facilities must also comply with applicable administrative guidelines adopted by the Planning Commission pursuant to subsection 17.46.040(B)(2), Chapter 17.58, and the City Council pursuant to subsection 17.58.020(E).
  - a. **Stealth/Concealment.** All wireless facilities must be stealth to the maximum extent feasible. Colors and materials for wireless facilities shall be muted, subdued, non-reflective and chosen to minimize visibility to the greatest extent feasible.

- 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.
- c. **Finishes.** All exterior surfaces shall be painted, colored, and/or wrapped in flat, muted, subdued, non-reflective hues that match the underlying structure or blend with the surrounding environment. All exterior surfaces on wireless facilities shall be constructed from, or coated with, graffiti-resistant materials. All finishes shall be subject to the reviewing authority's prior approval.
- d. **Noise.** All wireless facilities must be compliant with all applicable noise regulations, which includes, without limitation, any noise regulations in this code. The reviewing authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
- e. **Lights.** Wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC, other applicable federal or state governmental regulations. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible. Any lights associated with the electronic equipment shall be appropriately shielded from public view. Any light beacons or lightning arresters shall be included in the overall height calculation.
- 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 existing native vegetation shall be maintained to the maximum extent feasible. The reviewing authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the stealth techniques required under this chapter. All plants proposed or required must be reviewed as part of a formal landscaping plan and approved by the City.
- g. **Signage; Advertisements.** All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage

or advertisements unless expressly approved by the reviewing authority, required by law or recommended under FCC or other federal governmental agencies for compliance with RF emissions regulations.

- h. **Security Measures.** To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as fences, walls and anti-climbing devices, may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall stealth, and the reviewing authority may condition approval on additional stealth elements to mitigate any aesthetic impacts, which may include, without limitation, additional landscape or hardscape features. Barbed wire, razor ribbon, electrified fences or any similar security measures are prohibited. Alarm systems shall not include any audible sirens or other sounds.
- i. **Fire Safety.** All wireless facilities shall be designed by qualified, licensed persons to provide the maximum protection that is technically feasible to prevent electrical and fire hazards. All wireless facilities should be proactively monitored and maintained to continue and if possible, improve the safety design.
- j. **Compliance with Laws.** All wireless facilities must be designed and sited in compliance with all applicable federal, state, regional, and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, general plan and any applicable specific plan, this code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
- k. **View Protection.** Wireless facilities shall be located and designed to preserve significant coastal views from the public right-of-way in conformance with Section 30251 of the California Coastal Act. The protection of public views should not prevent reasonable development of the site, yet development shall not preclude reasonable protection of any significant coastal view. Designs should respect views enjoyed by neighboring parcels and should not present excess visual mass or bulk to public view or to adjoining properties. 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. Collocation is encouraged when it will decrease visual impact. This objective is intended to balance the private rights to views from all parcels that will be affected by a proposed wireless facility. No single parcel should enjoy a greater right than other parcels except the natural advantages of each site's topography. Wireless facilities which substantially eliminate an existing significant view enjoyed on another parcel should be avoided.



2. **Administrative Detailed Wireless Facility Design Guidelines.** The Planning Commission may develop, and from time to time amend, Administrative Detailed Wireless Facility Design Guidelines consistent with the generally applicable design standards contained in this ordinance to clarify the aesthetic and public safety goals and standards in this chapter for City staff, applicants and the public. The Administrative Detailed Wireless Facility Design Guidelines shall provide more detailed standards to implement the general principals articulated in this section and may include specific standards for particular wireless facilities or site locations, but shall not unreasonably discriminate between functionally equivalent service providers. If a conflict arises between the development standards specified in this chapter and the Administrative Detailed Wireless Facility Design Guidelines, the development standards specified in this chapter shall control.

G. **Standards Applicable to Type V Wireless Facilities.** Type V applications are evaluated under the criteria for an eligible facilities request established by federal law and FCC regulations to determine whether or not the request involves a “substantial change” to an “eligible support structure” as these terms are defined in Section 17.46.020. Type V applications also must comply with any generally applicable law, regulation, rule or standard or permit condition reasonably related to public health or safety.

#### **17.46.050 Wireless Application Types and Submittal Requirements.**

##### **A. Application Types**

1. **Conditional Use Permit Applications.** There shall be four (4) specific types of applications for conditional use permits under this section, which shall include Type I, Type II, Type III, and Type IV applications. The Planning Commission is the initial reviewing authority for Type I-IV applications. Decisions of the Planning Commission may be appealed to the City Council.
  - a. **Type I Applications: Collocations of Small Wireless Facilities.** Type I applications shall be limited to applications wherein an applicant seeks to place a new small wireless facility upon an existing structure and either (i) the structure is not an existing tower or base station (as defined for EFR purposes) or (ii) the structure is an existing tower or base station (as defined for EFR purposes) but the proposed facility does not qualify as an EFR. If the completed facility would still meet the physical limits and requirements to meet the definition of a small wireless facility after the installation of the new equipment, then the application to install such new equipment is a Type I application.
  - b. **Type II Applications: Collocations which do not qualify as a Small Wireless Facility Collocation or EFR.** Type II applications shall be limited to applications wherein an applicant is seeking to place a new personal wireless service facility upon an existing structure which does not meet the definition of a small wireless

facility or which will not meet the definition of a small wireless facility if and when the proposed new personal wireless service equipment is installed upon the existing facility and/or structure and either (i) the structure is not an existing tower or base station (as defined for EFR purposes) or (ii) the structure is an existing tower or base station (as defined for EFR purposes) but the proposed facility does not qualify as an EFR.

- 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.
  - d. **Type IV Applications: New Towers and All Other Wireless Facilities, Except EFRs.** Type IV applications shall include any applications for the installation of a new personal wireless service facility which does not meet the criteria for Type I, Type II, Type III or Type V applications.
2. **Administrative Use Permit Applications.** There shall be one type of application for an administrative use permit under this section, which shall be a Type V application. The Director is the initial reviewing authority for Type V applications. Decisions of the Director may be appealed to the City Council.
- a. **Type V Applications: Eligible Facilities Requests or EFRs.** Type V applications shall include any applications that purport to meet the criteria for an eligible facilities request under federal law and FCC regulations.

## B. Submittal Requirements.

- 1. **Application Content.** All applications for a permit under this Chapter must include all the information and materials required by the Application for Wireless Facility form and the applicable Wireless Facility Application Checklist adopted by resolution of the Planning Commission. The Planning Commission is authorized to develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Planning Commission finds necessary, appropriate or useful for processing any application governed under this chapter. All such requirements must be in written form and publicly stated and available. All applications shall, at a minimum, require the applicant to submit probative evidence to demonstrate that the proposed project will be in compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions. It shall be the obligation of any applicant to use the correct forms and explicitly and correctly identify which type of application they are filing.
- 2. **Application Fee/Deposit.** The applicant shall submit with its written materials the full application fee or deposit amount established by City Council resolution. If

no application fee has been adopted at the time of application, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a 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. Should the deposit be inadequate, an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be refunded to the applicant.

3. **Application Submittal.** All applications submitted under this chapter must be submitted to the City at a pre-scheduled appointment with the Community Planning and Building Department. Applicants may submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Community Planning and Building Department shall use reasonable efforts to provide the applicant with an appointment in writing within five working days after the Community Planning and Building Department receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed whether the City retains the submitted materials or not.
4. **Other Permits and Reviews That May Be Required.** In addition to any permit required by this Chapter, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state, or local laws or regulations for the construction of the proposed facility, which includes, without limitation, any applicable permits or reviews listed below:
  - a. **Forest and Beach Commission Review.** Any proposed project that involves a request to remove or prune any tree type identified in Chapter 17.48 must be approved by the Forest and Beach Commission prior to determining completeness of the application.
  - b. **Historic Resources Board Review.** In accordance with Section 17.32.220, facilities proposed within a historic district or within the boundaries of an historic property included in the inventory are subject to additional review under Chapter 17.32 prior to consideration by the Planning Commission.
  - c. **Coastal Development Permit Review.** In accordance with Section 17.52.090, any person wishing to undertake any development in the coastal zone shall obtain a coastal development permit unless excluded from coastal permit requirements pursuant to Section 17.52.100.
5. **Voluntary Community Meetings.** The City strongly encourages, but does not require, prospective applicants and applicants to schedule, notice, arrange, and attend one or more voluntary community meetings with all interested members of the public. Community meetings may be conducted before or after application

submittal. This community meeting is intended to give applicants the opportunity to hear from members of the public regarding the proposed project and any alternative locations or designs. Voluntary community meetings do not cause any FCC shot clock to begin.

#### **17.46.060 Application Review Procedures.**

##### **A. Completeness Review By Director**

1. In addition to exercising other duties and powers listed in Section 17.52.030 and elsewhere in this Title relevant to the application, the Director shall review each application and determine whether or not the application is complete and inform the applicant in writing that the application is complete or that additional information is needed to complete the application consistent with timeline in Section 17.52.020 and the applicable FCC shot clock.
2. If the Director determines that the application is defective or incomplete, they shall promptly deliver a Notice of Incompleteness to the applicant in order to pause the applicable FCC shot clock.
3. The Director may take such other steps as may be required for the City to timely act upon applications for placement of wireless facilities, including entering into agreements with applicants to extend the time for action on any application under the applicable FCC shot clock.

##### **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. 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 Council shall establish policies and procedures for the fixing of escrow deposits and the management of payment from them. When it appears that there may be insufficient funds in the account established for the applicant or landowner by the City to pay current or anticipated vouchers, the City shall cause the applicant or landowner to deposit additional sums to meet such expenses or anticipated expenses in accordance with policies and procedures established by the City Council. No reviewing agency shall be obligated to proceed unless the applicant complies with escrow deposit requirements.

3. **Liability for Consultant Expenses.** 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. 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.
4. **Independent Consultants Retained by Fire Safety Authority.** The Fire Safety Authority has the authority to select and retain an independent consultant with expertise and/or specialized training in fire safety and fire hazard mitigation and prevention satisfactory to the Fire Safety Authority in connection with any application. The Fire Safety Authority may request independent consultant review on any matter committed to the Fire Safety Authority for review or approval. Subject to applicable laws, if the Fire Safety Authority elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the actual and reasonable costs in connection with the services provided, which may include without limitation any actual and

reasonable costs incurred by the independent consultant to attend and participate in any meetings or hearings. The same procedures for fee deposits, cost reimbursements and refunds to the applicant as described in this Section shall be applicable to independent consultant review required by the Fire Safety Authority.

**D. Director Denial Without Prejudice Due to Failure to Respond to Notice(s) of Incompleteness.** To promote efficient review and timely decisions, any application governed under this chapter regardless of type may be denied by the Director without prejudice when the applicant fails to tender a substantive response to the City within 120 calendar days after the Director deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 120th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

**E. Environmental Review.** Environmental review of the proposed project to protect and assure that citizens of the community contribute to the preservation and the enhancement of the environment shall be performed in accordance with Chapter 17.60 of the City's Municipal Code.

**F. Fire Safety Authority Review.** After submittal by the applicant, the relevant application materials shall be transmitted to the Fire Safety Authority for their review and any recommended conditions.

**G. Staff Report and Recommendations.** A staff report shall be prepared for Type I-IV applications involving a public hearing. Staff reports shall evaluate the compliance of the proposed project with the applicable City policies, regulations and requirements. The report shall recommend, with appropriate findings, the approval, approval with conditions, or disapproval of the application, based on the project evaluation. The report and supporting materials will be made available to the public in advance of the public hearing.

#### **17.46.070 Public Notices, Public Hearings, Decision Notices and Appeals.**

##### **A. Application Submittal Notices – For Types I-V**

- 1. Posted and Hand-Delivered Notices.** Within five days after an application is duly filed with the Director, the applicant shall (1) post notice on the proposed project site in a location near to and visible from the public rights-of-way or in the public right-of-way if the project site is in the public right-of-way; (2) provide a hand-delivered postcard notice to neighbors within 100-foot radius of the site; and (3) provide the Director an affidavit that such notice has been posted and hand-delivered. The applicant is responsible for maintaining and replacing the posted notice as necessary during the duration of the application review process until the

reviewing authority acts on the application. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for the duration of the notice period. The posted notice shall be no more than two square feet and not violate Section 17.40.070. The notice/sign shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, pedestrians or other users in the public right-of-way. The City encourages applicants to consult with the department on placement locations to avoid any potential hazards.

2. **City Website Notice.** Within 10 days after an application is duly filed with the department, the Director shall post notice of the submittal on the City's website.
3. **Notice Content.** The notices required by this Section 17.46.070(A) shall include: (1) the project location with both an approximate street address and GPS coordinates; (2) the City's permit application number; (3) the application type and a general project description with photo simulations; (4) the applicant's contact information as provided on the application submitted to the City; (5) a URL for the City's website page where application information can be obtained once uploaded in accordance with Section 17.46.070(A)(2); and (6) a statement as to whether a public hearing will be required for the application.

B. **Public Hearing Notices (For Types I-IV).** Public hearing notices shall be provided consistent with the requirements of Section 17.52.110.

C. **Public Hearings (For Types I-IV).** The Planning Commission shall conduct a public hearing upon each conditional use permit application, consistent with the procedures in §17.52.160.

D. **Decision Notices.**

1. **For Types I-V.** Within five calendar days after the Planning Commission makes a decision on a Type I, II, III or IV application or the Director makes a decision on a Type V application, the Director shall: (1) deliver a written decision notice to the applicant; (2) post written notice of the decision at the proposed project site; (3) provide a hand-delivered written notice of the decision to neighbors within 100-foot radius of the site; and (4) post the decision on the City's website.
2. **Content of Decision Notices for Types I-V.** The written notice sent to the applicant, posted at the proposed project site and hand-delivered to neighbors must contain: (1) the decision made (approval or denial); (2) either the reasons for the decision or where the reasons for the decision are available; (3) if the decision is a denial, a statement whether the denial

is with prejudice or without prejudice for the purposes of CMC 17.52.170(D); and (4) instructions for how and when to file any appeal.

3. **For Director Denials Without Prejudice.** The Director must send a written notice to the applicant to deny an application without prejudice due to failure to respond to notice(s) of incompleteness pursuant to Section 17.46.060(D)(1). The written notice shall state: (1) the number of days that have passed without the applicant tendering a substantive response to the City after the Director last deemed the application incomplete in a written notice to the applicant; (2) a statement that denial is without prejudice; and (3) instructions for how and when to file any appeal.

#### E. **Appeals.**

1. **For Types I-V.** Within ten calendar days after the Director issues the decision notices pursuant to Section 17.46.070(D)(1) or (3), any interested person may file a written appeal for cause in accordance with the provisions in Chapter 17.54; provided, however, that (1) the time for filing an appeal and the notice provisions in this chapter shall control over those in Chapter 17.54 and (2) appeals from an approval shall not be permitted when based solely on environmental effects from RF emissions exposure from the approved facility that was found compliant with applicable FCC regulations and guidelines.
2. **For Director Denials Without Prejudice.** Within ten calendar days after the Director issues the decision notice pursuant to Section 17.46.070(D)(3) denying an application without prejudice, the applicant may file a written appeal for cause in accordance with the provisions in Chapter 17.54; provided, however, that the time for filing an appeal and notice provisions in this chapter shall control over those in Chapter 17.54.
3. **Appeals to City Council.** The City Council shall be the appellate authority for all appeals in accordance with the provisions of Chapter 17.54. The City Council shall issue a written decision that contains the reasons for the decision, and such decision shall be the final action of the City and not subject to any further administrative appeals.

#### **17.46.080 Findings Required.**

##### A. **Types I to IV Applications**

1. **Required Findings for Approval.** The reviewing authority may approve wireless facility applications only when the reviewing authority makes all the following findings:



- a. the proposed wireless facility will not result in adverse visual impacts because it complies with all applicable development standards in Section 17.46.040 and the Administrative Detailed Wireless Facility Design Guidelines;
  - b. if applicable, to the extent the proposed wireless facility does not comply with all applicable development standards in Section 17.46.040 and the Administrative Detailed Wireless Facility Design Guidelines, the applicant has requested a special exception and the findings for granting a special exception pursuant to Section 17.46.080(C) can be made;
  - c. the proposed wireless facility will comply with all applicable FCC regulations and guidelines for human exposure to RF emissions and will not, either individually or cumulatively with other transmitters in the vicinity, result in RF exposures that exceed the FCC's maximum permissible exposure level for the general population;
  - d. the proposed wireless facility will comply with all applicable fire safety and public safety standards;
  - e. the proposed wireless facility will comply with fall zone requirements in the Administrative Detailed Wireless Facility Design Guidelines;
  - f. all public notices required for the application have been given;
  - g. all the findings required for a use permit pursuant to Section 17.64.010;
  - h. all the findings for discretionary design review approval pursuant to Section 17.58.060;
  - i. if applicable, all the findings required for a Coastal Development Permit.
2. **Conditional Approvals.** Subject to any applicable federal or state laws, nothing in this chapter is intended to limit the reviewing authority's ability to conditionally approve any application governed under this chapter as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, this code, or this chapter.

## B. Type V Applications (EFRs)

1. **Required Findings for Approval.** The reviewing authority may approve or conditionally approve an application for an EFR administrative design review approval when the reviewing authority finds that the proposed project:

- a. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
  - b. does not substantially change the physical dimensions of the existing wireless tower or base station in that it meets each and every one of the applicable criteria for an eligible facilities request stated in the definition of “substantial change,” after application of the definitions in 47 C.F.R. 1.6100(b). The reviewing authority shall make an express finding for each criterion.
2. **Findings for Denial.** The reviewing authority may deny without prejudice any application for an EFR administrative design review approval when the reviewing authority finds that the proposed project:
    - a. does not meet the findings required in Section 17.46.080(B)(1);
    - b. involves the replacement of the entire eligible support structure; or
    - c. violates any generally applicable law, regulation, rule or standard or permit condition reasonably related to public health or safety.
  3. **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this chapter is intended to limit the reviewing authority’s authority to conditionally approve an application for an EFR administrative design review approval to comply with all generally applicable laws and to protect and promote the public health and safety.
- C. **Special Exceptions for Federal or State Preemption (Types I to IV only)**
1. **Preface.** The provisions in this section establish 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, but only if specifically requested by the applicant in writing at the time of application submittal and only to the extent necessary to avoid conflict with applicable federal or state law. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.
  2. **Required Findings.** The reviewing authority shall not grant any special exception unless the reviewing authority finds the following:
    - a. the applicant has shown that denial of an application will result in an effective prohibition or otherwise violate federal law; OR the applicant has shown that denial of an application will violate state law.

- b. the special exception requested by the applicant does not compromise or excuse compliance with any fire safety or other public health and safety requirements; and
  - c. the special exception is narrowly tailored such that any deviation from the requirements of this chapter is only to extent necessary for compliance with federal or state law.
3. **Evidentiary Standard.** The applicant shall have the burden to prove to the reviewing authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for a special exception.

#### **17.46.090 Standard Conditions of Approval.**

A. **Wireless Facility Standard Terms and Conditions.** All wireless facilities approved under this chapter or deemed approved by the operation of law shall be automatically subject to the Wireless Facility Standard Terms and Conditions adopted by the Planning Commission by resolution, unless modified by the reviewing authority in an approval decision.

B. **Modified Approval Conditions.** The reviewing authority, when granting approval of a permit application, may modify, add to or remove standard conditions set forth in the Wireless Facility Standard Terms and Conditions adopted by the Planning Commission by resolution, as the reviewing authority deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions to the particular facts and circumstances associated with the project; and/or (3) memorialize any changes to the proposed project needed for compliance with the City's Municipal Code, generally applicable health and safety requirements and any other applicable laws.

#### **17.46.100 Violations**

Any use or condition caused or permitted to exist in violation of any provision of this chapter shall be and hereby is declared a public nuisance and may be subject to administrative citations as set forth in Chapter 18.04 of this code, summary abatement pursuant to Chapter 15.57 of this code, California Code of Civil Procedure § 731, or any other remedy available to the City.

**SECTION 3.** Conforming Amendments to Title 17. The following Sections of Title 17 of the Carmel-by-the-Sea Municipal Code are amended as follows (all other sections remain unchanged):

**Section 17.08.040:** the residential uses table listing for "Communications" uses in the Transportation, Communications and Utilities uses table shall read:

Transportation, Communication and Utilities			
Antennas and Transmission Towers – Telecommunications	C	C	See Chapter 17.46 for findings
Antennas and Transmission Towers – Other	-	C	
Facilities Within Buildings	C	C	

**Section 17.12.020.H.** shall read:

“H. Outdoor Antennas. Except as provided in Chapter 17.46 CMC, Telecommunications and Wireless Facilities and antennas used by Federal Communications Commission licensed ham operators or operators certified by RACES or ARES, both of which are excluded from the application of these provisions, antennas erected in the R-4 land use district shall be subject to the following standards:

1. No antenna or its supporting structure shall be located in the area between the front property line and the portion of the main structure or building located closest to the front property line.
2. No antenna shall be roof-mounted except on a flat portion of the roof structure with parapets, and/or architecturally matching screening plan.
3. All ground-mounted antennas shall be camouflaged by walls, antenna color, fences, or landscaping. Landscaping shall be of a type and variety capable of growth within one year to a landscape screen that obscures the visibility of the antenna. The landscaping plan shall be approved by the City Forester before it is implemented.
4. No antenna shall be erected within the public viewshed as identified in CMC 17.12.050, Preservation of Public Viewshed.
5. No part of any antenna shall be higher than 24 feet.”

**Section 17.14.030:** the commercial uses table listing “Communications” uses in the Transportation, Communications and Utilities uses table shall read:

Transportation, Communication and Utilities				
Antennas and Transmission Towers – Telecommunications	C	C	C	
Antennas and Transmission Towers – Other	-	-	-	
Facilities Within Buildings	P	P	C	

**Section 17.14.220.F.** shall read:

“F. Antennas. ~~Except for antennas preempted by Federal law, antennas in the commercial districts shall be located and screened to reduce their visibility from the public right-of-way and adjacent properties.~~ All antenna installations must be reviewed and approved through the commercial design review procedures. Except as provided in Chapter 17.46 CMC, Telecommunications and Wireless Facilities, antennas located in any commercial land use district shall conform to the following standards:

1. All ground-mounted antennas shall be required to maintain their supporting structures at least three feet from any property line.
2. All ground-mounted antennas shall be screened by walls, color, fences or landscaping. Landscaping shall be of a type and variety capable of growing within one year to a landscape screen, which obscures the visibility of the antenna. The landscaping plan shall be approved by the City Forester before it is implemented.
3. No part of any antenna shall be higher than the maximum height allowed in the underlying land use district.
4. A maximum of one antenna shall be allowed on a building site.
5. All roof-mounted antennas are prohibited except as provided in ~~CMC 17.46.020(E)~~17.46.030(B) (general development standards).”

**Section 17.18.030:** the public and quasi-public uses table listing for “Communications” uses in the Transportation, Communications and Utilities uses table shall read:

Transportation, Communication and Utilities			
Communication Facilities			
Antennas and Transmission Towers – Telecommunications	C	C	See Chapter 17.46 CMC
Antennas and Transmission Towers – Other	-	C	
Facilities Within Buildings	C	C	

**Section 17.40.070.H.** shall read:

“H. Signs in the public right-of-way, except for signs posted by a Federal, State, or local governmental entity with permission of the City and application notices posted in accordance with CMC 17.46.070(A)(1).”

**Section 17.52.150.C** shall read:

“C. Appeals. All final actions of the Director may be appealed to the Planning Commission in accordance with Chapter 17.54 CMC, Appeals, except for Director decisions pursuant to CMC 17.46.050(A)(2) and 17.46.060(D) which may only be appealed to the City Council.”

**Section 17.54.010.E.** shall read:

“E. The findings and actions of the Planning Director shall be final and conclusive from and after the date of final action unless an appeal is filed with the Planning Commission Secretary pursuant to CMC 17.54.040(A), Appeals to the Forest and Beach Commission or the Planning Commission, or CMC 17.54.040(B), Appeals to the Historic Resources Board, or with the Coastal Commission pursuant to CMC 17.54.040(D) and 17.54.050, or with the City Clerk pursuant to CMC 17.54.040(C), Appeals to City Council. “

**Section 17.54.040.C.** shall read:

“C. Appeals to the City Council. Decisions to approve or deny projects made by the Planning Commission, Forest and Beach Commission, or the Historic Resources Board may be appealed to the City Council by filing a notice of appeal in writing in the office of the City Clerk within 10 working days following the date of action by the decision-making body and paying the required filing fee as established by City Council resolution. Notwithstanding the foregoing, decisions for projects subject to Chapter 17.46 (Telecommunications and Wireless Facilities) made by the Planning Director or by the Planning Commission must be appealed within the time periods specified in CMC 17.46.070(E).“

**Section 17.54.080.A.** shall read:

“A. Appeals of Decisions on Permits. Any decision to approve, deny or conditionally approve any permit made by the Director (except for denials without prejudice made pursuant to CMC 17.46.060(D)), the City Forester, the Planning Commission, or the Historic Resources Board may be appealed by any aggrieved party. Coastal Commissioners may appeal these decisions pursuant to CMC 17.54.020 and 17.54.050.”

**Section 17.58.030.B.1.d.** shall read:

“d. Installation of antennas and associated equipment.”

**Section 17.58.040.B.1 and the introductory part of B.2** shall read:

B. Residential Track Two Design Study. Track two is a discretionary review process for projects that require a public hearing with the Planning Commission. All track two projects shall require public notice and a hearing pursuant to CMC 17.52.110, Notice of Public Hearing.

1. Applicability. Residential district track two design review is for the construction of new dwellings, rebuilds, substantial alterations, installation of antennas and associated equipment, and other projects that comply with applicable zoning standards and design review guidelines but do not qualify for track one processing.

2. Procedures. Except for the installation of antennas and associated equipment which shall be subject to the procedures in CMC 17.58.030.B.2, dDesign review for track two projects is a three-phase process requiring: (1) preliminary site assessment, (2) design concept review, and (3) final details review. The application shall not be deemed complete until the preliminary site assessment has occurred and the City has received a complete application for design concept review. When a use permit, variance, or other land use permit is required, the application shall not be deemed complete until design concept review is completed and the City has received a complete application for final details review and for the applicable land use permit. The procedure for track two projects includes the following:

**Section 17.68.070 “Communication Facilities”** uses shall read:

Antennas and Transmission Towers - Telecommunications. Communication services accomplished through electronic or telephonic mechanisms, as well as structures designed to support one or more reception or transmission systems. Examples of transmission towers - telecommunications are limited to telephone exchange or microwave relay towers, and cellular telephone transmission or personal communications systems towers.

Antennas and Transmission Towers - Other. Broadcasting, recording, and other ~~communication~~ services accomplished through electronic or telephonic mechanisms, as well as structures designed to support one or more reception or transmission systems. Examples of transmission towers- other are limited to radio towers, television towers, ~~telephone exchange or microwave relay towers, and cellular telephone transmission or personal communications systems towers~~ and other towers that are not used for telecommunications.

Facilities Within Buildings. Includes radio, television, or recording studios and telephone switching centers; excludes antennas and transmission devices.

**Section 17.70.010 and Section 17.70.020** shall be amended to repeal the following listed terms and corresponding definitions:

Amateur Radio Antenna (See Antenna);

Antenna; Monopole (See Telecommunications Terms);

Satellite Antenna (See Antenna);

Telecommunications Facility, Co-Located (See Telecommunications Terms);

Telecommunications Facility (See Telecommunications Terms);

Telecommunications Terms (Building-Mounted Telecommunications Facility; Monopole; Telecommunications Facility; Telecommunications Facility, Co-Located).

**Section 17.70.010** shall be further amended to add to the listed terms the following:

“Telecommunications and Wireless Terms. See Chapter 17.46.”

**SECTION 4.** Conforming Amendments to Titles 12 and 13. The following Sections of Title 12 and 13 of the Carmel-by-the-Sea Municipal Code are amended to read (all other sections remain unchanged):

**Section 12.08.050** shall be amended to add a new subsection E as follows:

“E. Notwithstanding Section 12.080.040.A. and Section 12.08.050.A, B, C and D, for applications that are subject to both Ch. 17.46 and Ch. 12.08, the reviewing authority under Ch. 17.46 shall process and decide both applications concurrently under the procedures in Ch. 17.46, including any appeals.”

**Section 12.08.060** shall be amended to add a new subsection I as follows:

“I. For applications that are subject to both Ch. 17.46 and Ch. 12.08, only the standards in Ch. 17.46 and the applicable administrative guidelines shall apply.”

**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.”

**SECTION 5.** Effective Date. This Ordinance shall take effect 30 days after its adoption by the City Council of the City of Carmel-by-the-Sea and after approval by the California Coastal Commission.

**SECTION 6.** Severability. If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining sections, subsections, provisions, sentences, clauses, phrases or words of this Ordinance.

**INTRODUCED** at a Regular City Council Meeting on \_\_\_\_\_, 2023.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA** this \_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:



ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

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Mayor

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City Clerk

DRAFT

**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL**

**ORDINANCE NO. 2023-XXX**

**AN ORDINANCE OF THE CITY COUNCIL OF CARMEL-BY-THE-SEA AMENDING THE CARMEL MUNICIPAL CODE (CMC) TITLE 17 (ZONING) BY REPEALING AND REPLACING CHAPTER 17.46 (TELECOMMUNICATIONS AND WIRELESS FACILITIES) AND MAKING CONFORMING AMENDMENTS TO ZONING CODE SECTIONS [TBD]; 17.08.040, 17.12.020, 17.14.030, 17.14.220, 17.18.030, 17.40.070, 17.52.150, 17.54.010, 17.54.040, 17.54.080, 17.58.030, 17.58.040, 17.68.070, 17.70.010 AND 17.70.020 AND TO MUNICIPAL CODE SECTIONS 12.08.050, 12.08.060, 13.28.070; AND FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, the City of Carmel-by-the-Sea currently regulates the placement of wireless facilities throughout the City under Title 17, Chapter 17.46 of the Municipal Code; and

**WHEREAS**, Chapter 17.46 was last amended in 2004; and

**WHEREAS**, there have been significant changes in state and federal law affecting local authority over wireless siting since Chapter 17.46 was last amended, including the passage of new federal laws and state laws, the adoption of new Federal Communications Commission regulations and orders, the amendment of California Public Utility Commission orders related to utility infrastructure, and various judicial decisions interpreting those laws and regulations; and

**WHEREAS**, notwithstanding the various changes in state and federal law, local governments continue to retain authority to regulate the placement, construction, and modification of personal wireless service facilities, subject to those matters where local authority has been limited or removed by state or federal law; and

**WHEREAS**, Carmel-by-the-Sea has made longstanding and sustained efforts to preserve its distinct “village in a forest, by the sea” character, the natural beauty of its shoreline environment, and its charm as a popular visitor destination, by not allowing incompatible development that degrades the visual and economic value of adjoining properties, especially in residential areas; and

**WHEREAS**, Carmel-by-the-Sea’s topography, forested nature, location partially within and partially adjacent to California’s High Fire-Threat District (HFTD), and narrow streets, with few gutters or sidewalks or streetlights, gives rise to many unique concerns

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and situations relating to fire safety, traffic circulation, parking and pedestrian safety;  
and

**WHEREAS**, if not adequately regulated, the installation of personal wireless services facilities within the City can pose a threat to the public health, safety, and welfare; traffic and pedestrian safety hazards; negative impacts to trees; creation of visual and aesthetic blights and potential safety concerns arising from improper design or excessive size, heights, noise, or lack of camouflaging; and

**WHEREAS**, the City therefore intends to exercise its powers to regulate personal wireless service facilities to the maximum extent allowed by law, to protect its residents and visitors, promote public health, safety and community welfare, preserve the natural resources and unique scenic quality of Carmel-by-the-Sea, and protect the character of the City's residential neighborhoods, while nonetheless respecting and adhering to the law as it is today and may change in the future; and

**WHEREAS**, the City Council and Planning Commission held a joint special meeting on wireless regulation on February 28, 2022 to receive an update on changes to the law, to receive public feedback and to provide general direction to staff on an update to the City's wireless regulations; and

**WHEREAS**, the Planning Commission conducted a duly noticed public workshop on a draft of the wireless regulations (ordinance, design guidelines, standard conditions of approval, and application forms) on [TBD] March 29, 2023 to receive public feedback; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on the proposed ordinance, design guidelines, standard conditions of approval, and application forms on [TBD] August 23, 2023 at which it took public testimony, held a discussion, and voted to adopt the design guidelines, standard conditions of approval, and application forms, and to recommend that City Council adopt of the proposed code amendments (Resolution No.\_\_);

**WHEREAS**, on \_\_\_\_\_, 2023 the City Council held a duly noticed public hearing, etc on the proposed code amendments;

**WHEREAS**, the City determined this ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines; and

**WHEREAS**, the proposed amendments are in full conformity with the City's Local Coastal Plan and the California Coastal Act (Public Resources Code Section 30510 et seq.)

**SECTION 1.** CEQA Review. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines,

because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the applicant would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. The City Council therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Monterey within five working days of the passage and adoption of the Ordinance.

**SECTION 2.** Repeal and Replacement of Chapter 17.46. Chapter 17.46 of Title 17 of the Carmel-by-the-Sea Municipal Code is hereby repealed in its entirety and replaced with the following:

**Chapter 17.46**  
**TELECOMMUNICATIONS AND WIRELESS FACILITIES**

Sections:

- 17.46.010 Purpose and Findings.**
- 17.46.020 Definitions.**
- 17.46.030 Applicability.**
- 17.46.040 General Development Standards.**
- 17.46.050 Wireless Application Types and Submittal Requirements.**
- 17.46.060 Application Review Procedures.**
- 17.46.070 Public Notices, Public Hearings and Appeals.**
- 17.46.080 Findings Required.**
- 17.46.090 Standard Conditions of Approval.**
- 17.46.100 ~~Enforcement~~ Violations**

**17.46.010 Purpose and Findings.**

A. **Purpose.** The purpose of this chapter is to establish comprehensive requirements and development standards for the siting, design, construction, maintenance and modification of wireless facilities in Carmel-by-the-Sea, including on

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public and private property and in public rights-of way, in order to manage their deployment and minimize adverse aesthetic impacts to Carmel-by-the-Sea's unique village character, consistent with and to the full extent of the City's authority under federal and California law.

**B. Findings.** The City Council hereby finds that:

1. Limitations on the placement of wireless facilities within the City limits are necessary to:

- a. Protect Carmel-by-the-Sea's distinct "village in a forest, by the sea" character with its centralized commercial core surrounded by residential land uses.
- b. Protect Carmel-by-the-Sea's charm as a popular visitor destination, known as much for its spectacular coast as for its unique community character.
- c. Recognize and respect that Carmel-by-the-Sea is among a limited number of California coastal communities where nearly the entire shoreline from the first public road to the sea is open to the public and easily accessible, and that over the years, Carmel has maintained a balance between preserving the beauty of the shoreline environment and adding the physical improvements that make the Carmel shoreline accessible and enjoyable to the public, keeping the entire beach and bluff as natural appearing as possible consistent with public access, habitat protection, safety and provision of limited recreational support facilities.
- d. Recognize and respect that Carmel-by-the-Sea's streets are narrow in width, 26 to 34 feet, with few gutters or sidewalks and that this lack of formal development of streets throughout Carmel (with the exception of some of the downtown thoroughfares) has been a conscious effort on the part of residents to maintain a "village in a forest" atmosphere, and gives rise to many unique situations relating to traffic, circulation, parking and pedestrian safety.

2. Personal wireless services can serve as an important and effective part of Carmel-by-the-Sea's emergency response and communications.

3. The regulations contained herein are designed to promote public health, safety and community welfare, preserve the natural resources and scenic quality of Carmel-by-the-Sea and protect the character of the City's residential neighborhoods, recognizing that the preservation of the residential character in Carmel is central to all land uses, consistent with the findings in (1) and (2), while regulating managed development of wireless infrastructure throughout the City.

4. The provisions of this chapter are intended to:

- a. Comply with all applicable goals, objectives and policies of the General Plan, the City's Local Coastal Program and the California Coastal Act.

b. Minimize adverse aesthetic impacts associated with wireless facilities in all districts.

c. Preserve Carmel's primarily residential character by keeping business and commerce subordinate to its residential character.

d. Comply with all federal law, Federal Communications Commission rules, regulations and standards, California law, and California Public Utilities Commission regulations and standards.

e. Ensure the safe installation and maintenance of wireless facilities to protect against fire hazards made more prevalent by Carmel's unique urbanized forest, topography and accessibility.

### 17.46.020 Definitions.

The definitions in this Section apply to this chapter. Undefined terms shall have the meaning assigned to them in Chapter 17.70. Per Section 17.02.090(C), to the extent that this chapter quotes or paraphrases any State or Federal Statute for convenience and any conflict is discovered, or is created through amendment, the State or Federal Statute shall control and shall be cause for an amendment to this chapter.

#### A. Generally Applicable Definitions

1. **"accessory equipment"** means equipment other than antennas used in connection with a wireless facility. The term includes transmission equipment.
2. **"amateur station"** means the same as defined by the FCC in 47 C.F.R. § 97.3, which means a station in an amateur radio service consisting of the apparatus necessary for carrying on radio communications. This term includes amateur radio antennas and related facilities used for amateur radio services.
3. **"antenna"** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), which means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services.
4. **"base station"** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(1), which means:

A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a

communications network. The term does not encompass a tower or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.6100(b)(1)(i) through (ii) of 47 C.F.R. § 1.6100 that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.6100(b)(1)(i)–(ii) of 47 C.F.R. § 1.6100.

5. **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), which means (1) Mounting or installing an antenna facility on a pre-existing structure; and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure. For eligible facilities requests, the definition of collocation in B.1 below applies instead of this definition.
6. **“CPUC”** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
7. **“Director”** means the City of Carmel-by-the-Sea Community Planning and Building Director or the Director’s designee.
8. **“EFR” or “eligible facilities request”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(3) which means any request for modification of an existing tower or base station that does not substantially change the physical

dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

9. **“FCC” or “Commission”** means the Federal Communications Commission, as constituted by the Communications Act of 1934, Pub. L: 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.

10. **“Fire Safety Authority”** means the Chief Building Official of the City of Carmel-by-the-Sea or the Fire Safety Authority’s designee.

11. **“historic resource”** means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources, the “Carmel Inventory of Historic Resources” or the “Carmel Inventory” as defined in code Section 17.32.230, the “Carmel Register of Historic Resources” or the “Carmel Register” as defined in code Section 17.32.230, or any “historic resource” or “historical resource” as defined in code Section 17.32.230. The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.

~~12. **“non-pole concealment structure”** means a structure within the public rights-of-way, other than a pole, that can be adapted (either in its current form or through a replacement) to conceal antennas and/or accessory equipment for wireless facilities. Examples may include, without limitation, monuments, kiosks, bus shelters and other street furniture.~~

~~13-12.~~ **“OTARD”** means any “over-the-air reception device” subject to the FCC rules in 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and antennas, and certain fixed wireless antennas not greater than one meter in diameter.

~~14-13.~~ **“personal wireless service facility”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(i) which means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

~~15-14.~~ **“personal wireless services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i) which means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.



~~16-15.~~ **“public right-of-way”** or **“public rights-of-way”** means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.

~~17-16.~~ **“reviewing authority”** means the City official or appointed/elected body responsible for application review and vested with authority to approve, approve with modifications and/or conditions, or deny such applications.

~~18-17.~~ **“RF”** means radiofrequency.

~~19-18.~~ **“small wireless facility”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), which means a personal wireless service facility that meets each of the following conditions:

(a) The facilities (i) are mounted on structures 50 feet or less in height including their antennas; or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures; or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(b) Each antenna associated with the deployment is no more than three (3) cubic feet in volume, excluding associated antenna equipment;

(c) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume;

(d) The facility does not require antenna structure registration under 47 CFR Part 17 (Construction, Marking and Lighting of Antenna Structures);

(e) The facility is not located on tribal land; and

(f) The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1).

~~20-19.~~ **“FCC shot clock”** means the time defined by the FCC in 47 C.F.R. § 1.6003 or 1.6100(c) (as applicable) in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless services facilities.

~~21-20.~~ **“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 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 adjacent uses

22-21. **“structure”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(m) which means a pole, tower, base station, or other building, - whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services). A tree including live, dead, partially cut down or limbed tree is not a structure and may not be used for placement of wireless facilities.

23-22. **“tower”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(9) which means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

24-23. **“transmission equipment”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(8) which means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

25-24. **“Type I application”** means ~~a collocation of a small wireless facility on an existing structure.~~ an application type described in 17.46.050(A)(1)(a).

26-25. **“Type II application”** means ~~a collocation on an existing structure which does not qualify as a Type I small wireless facility collocation or a Type V EFR.~~ application type described in 17.46.050(A)(1)(b).

27-26. **“Type III application”** means ~~a new small wireless facility on new or replacement structure.~~ an application type described in 17.46.050(A)(1)(c).

~~28-27.~~ **“Type IV application”** means ~~a new tower or any other wireless facility that is not a Type I, II, III, or V application.~~ an application type described in 17.46.050(A)(1)(d).

~~29-28.~~ **“Type V application”** means an eligible facilities request or EFR.

~~30-29.~~ **“utility pole”** means a wood or steel vertical structure in the public right-of-way designed to support electric, telephone and similar utility lines. A tower is not a utility pole.

~~31-30.~~ **“visibility triangle”** means that portion of both the public and private property at any corner bounded by the curb line or edge of roadway of the intersecting streets and a line joining points on the curb or edge of roadway a distance in feet equivalent to the width of the roadway from the point of intersection of the extended curb lines or edges of roadway.

~~32-31.~~ **“wireless facility”** means the transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), structure(s), and base station(s).

## B. **Additional Definitions Applicable to Eligible Facilities Requests (EFRs) Only**

1. **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), which means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

2. **“eligible support structure”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4) which means any tower or base station, provided that it is existing at the time the relevant eligible facilities request application is filed with the State or local government.

3. **“existing”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4) which means a constructed tower or base station is “existing” for purposes of an EFR, if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

4. **“site”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(6), which means that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and

any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.

5. “**substantial change**” or “**substantially change**” means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(7), which establishes different criteria based on the particular facility type and location. For clarity, the definition in this chapter reorganizes the FCC’s criteria and thresholds for a substantial change according to the facility type and location.

- a. For towers outside the public rights-of-way, a substantial change occurs when:
  - i. the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array with separation from the nearest antenna not to exceed 20 feet (whichever is greater); or
  - ii. the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
  - iii. the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
  - iv. the proposed collocation or modification involves excavation or deployment outside the current boundaries of the leased or owned property surrounding the wireless tower by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
- b. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
  - i. the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or

- ii. the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
  - iii. the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
  - iv. the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
  - v. the proposed collocation or modification involves excavation or deployment outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- 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 eligible support structure as determined by the reviewing authority; or
  - ii. the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this definition.
- d. The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits from the originally-permitted eligible support structure. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted eligible support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites that existed prior to February 22, 2012, the cumulative limit for vertically separated deployments is measured from the permitted site dimensions as they existed on February 22, 2012—the date that P.L. 112-96 was signed into law.

#### **17.46.030 Applicability.**

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- A. **General.** This chapter applies to all requests for the City's regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities on property within the City's territorial and jurisdictional boundaries, unless expressly exempted pursuant to subsection (B). This includes permit applications submitted to the City for decision in its regulatory capacity for wireless facilities on property or structures owned or controlled by the City and located within the City, including in public rights-of-way; provided, however, that this chapter does not govern whether or under what terms and conditions the City, in its capacity as the property or structure owner, would lease, license or otherwise allow a wireless facility on such property or structures.
- B. This chapter shall not be applicable to the following:
- ~~1. wireless facilities operated by the City for public purposes;~~
  - ~~3.1.~~ wireless facilities installed completely indoors and used to extend personal wireless services into a business or the subscriber's private residence, such as a "femtocell" or indoor distributed antenna system;
  - ~~4.2.~~ OTARD antennas which are regulated pursuant to Chapter 15.40 (Antennas and Satellite Dishes);
  - ~~5.3.~~ antennas and related transmission equipment used in connection with a duly authorized amateur station operated by a federally licensed amateur radio operator as part of the Amateur Radio Service; provided, that its maximum height does not exceed the height requirements of the zoning district;
  - ~~6.4.~~ wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D;
  - ~~7.5.~~ temporary wireless facilities parked in a fixed location within the public rights-of-way for no longer than 10 days under an approved special events permit pursuant to Chapter 12.48.

#### **17.46.040 General Development Standards.**

- A. **Location Standards.** When considering compatibility of a location and structure for Type I, Type II, Type III and Type IV wireless facilities, the City requires applicants to propose those that will be the least intrusive to community character and values. Subsection B provides a ranking that describes Zoning Districts where wireless facilities are least compatible to most compatible with other uses.

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Subsection C provides the City's preference for placements on parcels over public rights-of-way. Subsection D provides structure rankings. Subsection E provides additional special considerations for site selection on public right-of-way.

- B. **Ranked Locations.** Applicants must propose placement in locations with the least intrusive land use designation (i.e.: Zoning) technically feasible and potentially available. Applications proposing placement in Tier I or II must include a written justification as part of the application submittal, supported by factual and verifiable evidence, that shows no location in a Tier III land use tier is technically feasible and available. The following land use tiers are ranked from least compatible to most compatible:

*Tier I (Least Compatible):*

Senior Citizen Facility (A-3), Multi-Family Residential (R-4), and Single-Family Residential (R-1).

*Tier II:*

Improved Parklands (P-2), Natural Parklands and Preserves (P-1), and Theatrical (A-1).

*Tier III (Most Compatible):*

Central Commercial (CC), Service Commercial (SC), Community and Cultural (A-2), Residential and Limited Commercial (RC)

- C. **Preference for Placement on Public and Private Parcels Over on Public Right-of-Way.**

Placement on public and private parcels is strongly preferred over placements in the public rights-of-way because Carmel's public rights-of-way are narrow in width (26 to 34 feet), with few gutters or sidewalks. Limiting wireless facilities in public rights-of-way is necessary: (i) to ensure that the flow of pedestrian and vehicular traffic, including ingress to, or egress from, any residence, public building, or place of business or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles is maintained; (ii) to provide reasonable access for the use and maintenance of sidewalks, pathways, hydrants, restrooms, trash receptacles, firefighting apparatus, as well as access to locations used for public transportation services; (iii) to ensure no interference to the performance of police, firefighter, and other emergency medical personal; and (iv) to maximize public access in the commercial districts and along the coast which have unusually high pedestrian and vehicular traffic volumes. Applications proposing placement in the public right-of-way must include a written justification as part of the application submittal, supported by factual and

verifiable evidence, that shows placement on a parcel is not technically feasible and available

- D. **Structure Selection.** Applicants shall propose placement on the most-compatible structure that is technically feasible and available. Any application to place a wireless facility on a structure other than the most compatible structure must include a written justification, based on factual and verifiable evidence, that shows no more compatible structure is technically feasible and available.
1. **Structure Selection on Parcels.** The following structures are ranked from least compatible to most compatible on parcels:
    - a. new (non-replacement) structures.
    - b. residential historic structures
    - c. existing building rooftops.
    - d. existing (or replacement) non-building structures without existing wireless facilities.
    - e. existing non-building structures with existing wireless facilities.
  2. **Structure Selection on Public Rights-of-Way.** New (non-replacement) structures of any type (pole or non-pole) are the least compatible structures to use on public rights-of-way. Existing (or replacement) utility poles are the most compatible structures. Selection of structures/locations in the public right-of-way is also subject to the limitations in Subsection E below.
- E. **Additional Special Considerations for Locations in the Public Right-of-Way.**
1. **Highly Incompatible Locations in the Public Right-of-Way.** Applicants shall not propose to install wireless facilities in/on a highly incompatible location in the public right-of-way unless the application is accompanied by a request for a special exception finding under Subsection 17.46.080(C). The following is a list of highly incompatible locations:
    - a. any location in the public right-of-way within the Single-Family Residential Zoning District.
    - b. any location in the public right-of-way that would trigger review of consistency with the Secretary of the Interior's Standards for potential impacts to a historic resource on a residential parcel in any Tier I zone in B above;
    - c. any location in the public right-of-way within the area depicted in Figure 1 below.



**FIGURE 1**

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 wireless facility within the public rights-of-way.
3. **Public Right-of-Way Location Safety Considerations.** Applicants shall not propose adding new structures in the following locations:
  - a. Any location that would create a hazard to public health or safety.
  - b. Any location that would adversely affect the normal drainage of surface water, unless an acceptable mitigation is included that will be advantageous to the general public.
  - c. Any location that would adversely affect vehicular and/or pedestrian traffic or the parking of vehicles including placements in any visibility triangle that obstructs or restricts the view necessary for the safe operation of motor vehicles as determined by the Traffic Safety Committee.
  - d. Any location that would adversely affect any public property, including existing vegetation or itsthe root structure of any existing trees, or significantly reduce greenbelt area that may be used for tree planting.

- e. Any location within 10 feet away from any driveways for police stations, fire stations, or other emergency responder facilities.
- f. Any location that would physically interfere with or impede access to any:
  - (i) above-ground or underground infrastructure for traffic control, or public transportation, including, without limitation, any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors;
  - (ii) public transportation vehicles, shelters, street furniture, or other improvements at any public transportation stop;
  - (iii) above-ground or underground infrastructure owned or operated by any public or private utility agency;
  - (iv) fire hydrant or water valve;
  - (v) doors, gates, sidewalk doors, passage doors, stoops, or other ingress and egress points to any building appurtenant to the right-of-way; or
  - (vi) fire escape.

~~4. **Encroachments Over Parcels.** No wireless facility, antenna, accessory equipment, or other improvements associated with a wireless facility placed in the public right-of-way, and no RF emissions that would render any portion of any private or public parcel outside the public right-of-way inaccessible to the general public or hinder future development of the parcel, may extend onto or over such parcel without the property owner's prior written consent.~~

## F. Design Standards

- 1. **General Requirements.** This subsection establishes generally applicable design standards for all Type I, Type II, Type III and Type IV wireless facilities in all locations. The design of Type I, Type II, Type III and Type IV wireless facilities must also comply with applicable administrative guidelines adopted by the Planning Commission pursuant to subsection 17.46.040(B)(2), Chapter 17.58, and the City Council pursuant to subsection 17.58.020(E).
  - a. **Stealth/Concealment.** All wireless facilities must be stealth to the maximum extent feasible. Colors and materials for wireless facilities shall be muted, subdued, non-reflective and chosen to minimize visibility to the greatest extent feasible.
  - b. **Overall Height.** ~~To maintain the natural forested character of the community~~On public and private parcels, wireless facilities may not exceed more than 10 feet above ~~the average height of mature natural trees within the vicinity or~~ the maximum height allowed by this code for the underlying zoning district where the facility is proposed, ~~whichever is more restrictive.~~ 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.

- c. **Finishes.** All exterior surfaces shall be painted, colored, and/or wrapped in flat, muted, subdued, non-reflective hues that match the underlying structure or blend with the surrounding environment. All exterior surfaces on wireless facilities shall be constructed from, or coated with, graffiti-resistant materials. All finishes shall be subject to the reviewing authority's prior approval.
- d. **Noise.** All wireless facilities must be compliant with all applicable noise regulations, which includes, without limitation, any noise regulations in this code. The reviewing authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
- e. **Lights.** Wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC, other applicable federal or state governmental regulations. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible. Any lights associated with the electronic equipment shall be appropriately shielded from public view. Any light beacons or lightning arresters shall be included in the overall height calculation.
- 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 existing native vegetation shall be maintained to the maximum extent feasible. The reviewing authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the stealth techniques required under this chapter. All plants proposed or required must be reviewed as part of a formal landscaping plan and approved by the City.
- g. **Signage; Advertisements.** All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the reviewing authority, required by law or recommended under FCC or other federal governmental agencies for compliance with RF emissions regulations.
- h. **Security Measures.** To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security

- measures, such as fences, walls and anti-climbing devices, may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall stealth, and the reviewing authority may condition approval on additional stealth elements to mitigate any aesthetic impacts, which may include, without limitation, additional landscape or hardscape features. Barbed wire, razor ribbon, electrified fences or any similar security measures are prohibited. Alarm systems shall not include any audible sirens or other sounds.
- i. **Fire Safety.** All wireless facilities shall be designed by qualified, licensed persons to provide the maximum protection that is technically feasible to prevent electrical and fire hazards. All wireless facilities should be proactively monitored and maintained to continue and if possible, improve the safety design.
  - j. **Compliance with Laws.** All wireless facilities must be designed and sited in compliance with all applicable federal, state, regional, and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, general plan and any applicable specific plan, this code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
  - k. **View Protection.** Wireless facilities shall be located and designed to preserve significant coastal views from the public right-of-way in conformance with Section 30251 of the California Coastal Act. The protection of public views should not prevent reasonable development of the site, yet development shall not preclude reasonable protection of any significant coastal view. ~~Designs should respect views enjoyed by neighboring parcels.~~ Designs should respect views enjoyed by neighboring parcels and should not present excess visual mass or bulk to public view or to adjoining properties. 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. Collocation is encouraged when it will decrease visual impact. This objective is intended to balance the private rights to views from all parcels that will be affected by a proposed wireless facility. No single parcel should enjoy a greater right than other parcels except the natural advantages of each site's topography. Wireless facilities which substantially eliminate an existing significant view enjoyed on another parcel should be avoided.
2. **Administrative Detailed Wireless Facility Design Guidelines.** The Planning Commission may develop, and from time to time amend, Administrative Detailed Wireless Facility Design Guidelines consistent with

the generally applicable design standards contained in this ordinance to clarify the aesthetic and public safety goals and standards in this chapter for City staff, applicants and the public. The Administrative Detailed Wireless Facility Design Guidelines shall provide more detailed standards to implement the general principals articulated in this section and may include specific standards for particular wireless facilities or site locations, but shall not unreasonably discriminate between functionally equivalent service providers. If a conflict arises between the development standards specified in this chapter and the Administrative Detailed Wireless Facility Design Guidelines, the development standards specified in this chapter shall control.

**G. Standards Applicable to Type V Wireless Facilities.** Type V applications are evaluated under the criteria for an eligible facilities request established by federal law and FCC regulations to determine whether or not the request involves a “substantial change” to an “eligible support structure” as these terms are defined in Section 17.46.020. Type V applications also must comply with any generally applicable law, regulation, rule or standard or permit condition reasonably related to public health or safety.

#### **17.46.050 Wireless Application Types and Submittal Requirements.**

##### **A. Application Types**

1. **Conditional Use Permit Applications.** There shall be four (4) specific types of applications for conditional use permits under this section, which shall include Type I, Type II, Type III, and Type IV applications. The Planning Commission is the initial reviewing authority for Type I-IV applications. Decisions of the Planning Commission may be appealed to the City Council.

a. **Type I Applications: Collocations of Small Wireless Facilities.** Type I applications shall be limited to applications wherein an applicant seeks to place a new small wireless facility upon an existing structure and either (i) the structure is not an existing tower or base station (as defined for EFR purposes) or (ii) the structure is an existing tower or base station (as defined for EFR purposes) but the proposed facility does not qualify as an EFR. If the completed facility would still meet the physical limits and requirements to meet the definition of a small wireless facility after the installation of the new equipment, then the application to install such new equipment is a Type I application.

b. **Type II Applications: Collocations which do not qualify as a Small Wireless Facility Collocation or EFR.** Type II applications shall be limited to applications wherein an applicant is seeking to place a new personal wireless service facility upon an existing structure which does not meet the definition of a small wireless facility or which will not meet the definition of a small wireless facility if and when the proposed new personal wireless service equipment is installed upon the

existing facility and/or structure and either (i) the structure is not an existing tower or base station (as defined for EFR purposes) or (ii) the structure is an existing tower or base station (as defined for EFR purposes) but the proposed facility does not qualify as an EFR.

- 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.
  - d. **Type IV Applications: New Towers and All Other Wireless Facilities, Except EFRs.** Type IV applications shall include any applications for the installation of a new personal wireless service facility which does not meet the criteria for Type I, Type II, Type III or Type V applications.
2. **Administrative Use Permit Applications.** There shall be one type of application for an administrative use permit under this section, which shall be a Type V application. The Director is the initial reviewing authority for Type V applications. Decisions of the Director may be appealed to the City Council.
    - a. **Type V Applications: Eligible Facilities Requests or EFRs.** Type V applications shall include any applications that purport to meet the criteria for an eligible facilities request under federal law and FCC regulations.

## B. Submittal Requirements.

1. **Application Content.** All applications for a permit under this Chapter must include all the information and materials required by the Application for Wireless Facility form and the applicable Wireless Facility Application Checklist adopted by resolution of the Planning Commission. The Planning Commission is authorized to develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Planning Commission finds necessary, appropriate or useful for processing any application governed under this chapter. All such requirements must be in written form and publicly stated and available. All applications shall, at a minimum, require the applicant to submit probative evidence to demonstrate that the proposed project will be in compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions. It shall be the obligation of any applicant to use the correct forms and explicitly and correctly identify which type of application they are filing.
2. **Application Fee/Deposit.** The applicant shall submit with its written materials the full application fee or deposit amount established by City Council resolution. If

no application fee has been adopted at the time of application, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a 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. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be refunded to the applicant.

3. **Application Submittal.** All applications submitted under this chapter must be submitted to the City at a pre-scheduled appointment with the Community Planning and Building Department. Applicants may submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The Community Planning and Building Department shall use reasonable efforts to provide the applicant with an appointment in writing within five working days after the Community Planning and Building Department receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed whether the City retains the submitted materials or not.
4. **Other Permits and Reviews That May Be Required.** In addition to any permit required by this Chapter, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state, or local laws or regulations for the construction of the proposed facility, which includes, without limitation, any applicable permits or reviews listed below:
  - a. **Forest and Beach Commission Review.** Any proposed project that involves a request to remove or prune any tree type identified in Chapter 17.48 must be approved by the Forest and Beach Commission prior to determining completeness of the application.
  - b. **Historic Resources Board Review.** In accordance with Section 17.32.220, facilities proposed within a historic district or within the boundaries of an historic property included in the inventory are subject to additional review under Chapter 17.32 prior to consideration by the Planning Commission.
  - c. **Coastal Development Permit Review.** In accordance with Section 17.52.090, any person wishing to undertake any development in the coastal zone shall obtain a coastal development permit unless excluded from coastal permit requirements pursuant to Section 17.52.100.
5. **Voluntary Community Meetings.** The City strongly encourages, but does not require, prospective applicants and applicants to schedule, notice, arrange, and attend one or more voluntary community meetings with all interested members of

the public. Community meetings may be conducted before or after application submittal. This community meeting is intended to give applicants the opportunity to hear from members of the public regarding the proposed project and any alternative locations or designs. Voluntary community meetings do not cause any FCC shot clock to begin.

#### **17.46.060 Application Review Procedures.**

##### **A. Completeness Review By Director**

1. In addition to exercising other duties and powers listed in Section 17.52.030 and elsewhere in this Title relevant to the application, the Director shall review each application and determine whether or not the application is complete and inform the applicant in writing that the application is complete or that additional information is needed to complete the application consistent with timeline in Section 17.52.020 and the applicable FCC shot clock.
2. If the Director determines that the application is defective or incomplete, they shall promptly deliver a Notice of Incompleteness to the applicant in order to pause the applicable FCC shot clock.
3. The Director may take such other steps as may be required for the City to timely act upon applications for placement of wireless facilities, including entering into agreements with applicants to extend the time for action on any application under the applicable FCC shot clock.

##### **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. 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 Council shall establish policies and procedures for the fixing of escrow deposits and the management of payment from them. When it appears that there may be insufficient funds in the account established for the applicant or landowner by the City to pay current or anticipated vouchers, the City shall cause the applicant or landowner to deposit additional sums to meet such expenses or anticipated expenses in accordance with policies and procedures established by



the City Council. No reviewing agency shall be obligated to proceed unless the applicant complies with escrow deposit requirements.

3. **Liability for Consultant Expenses.** 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. 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.
4. **Independent Consultants Retained by Fire Safety Authority.** The Fire Safety Authority has the authority to select and retain an independent consultant with expertise and/or specialized training in fire safety and fire hazard mitigation and prevention satisfactory to the Fire Safety Authority in connection with any application. The Fire Safety Authority may request independent consultant review on any matter committed to the Fire Safety Authority for review or approval.

Subject to applicable laws, if the Fire Safety Authority elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the actual and reasonable costs in connection with the services provided, which may include without limitation any actual and reasonable costs incurred by the independent consultant to attend and participate in any meetings or hearings. The same procedures for fee deposits, cost reimbursements and refunds to the applicant as described in this Section shall be applicable to independent consultant review required by the Fire Safety Authority.

**D. Director Denial Without Prejudice Due to Failure to Respond to Notice(s) of Incompleteness.** To promote efficient review and timely decisions, any application governed under this chapter regardless of type may be denied by the Director without prejudice when the applicant fails to tender a substantive response to the City within 120 calendar days after the Director deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 120th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

**E. Environmental Review.** Environmental review of the proposed project to protect and assure that citizens of the community contribute to the preservation and the enhancement of the environment shall be performed in accordance with Chapter 17.60 of the City's Municipal Code.

**F. Fire Safety Authority Review.** After submittal by the applicant, the relevant application materials shall be transmitted to the Fire Safety Authority for their review and any recommended conditions.

**G. Staff Report and Recommendations.** A staff report shall be prepared for Type I-IV applications involving a public hearing. Staff reports shall evaluate the compliance of the proposed project with the applicable City policies, regulations and requirements. The report shall recommend, with appropriate findings, the approval, approval with conditions, or disapproval of the application, based on the project evaluation. The report and supporting materials will be made available to the public in advance of the public hearing.

#### **17.46.070 Public Notices, Public Hearings, Decision Notices and Appeals.**

##### **A. Application Submittal Notices – For Types I-V**

- 1. Posted and Hand-Delivered Notices.** Within five days after an application is duly filed with the Director, the applicant shall (1) post notice on the proposed project site in a location near to and visible from the

public rights-of-way or in the public right-of-way if the project site is in the public right-of-way; (2) provide a hand-delivered postcard notice to neighbors within 100-foot radius of the site; and (3) provide the Director an affidavit that such notice has been posted and hand-delivered. The applicant is responsible for maintaining and replacing the posted notice as necessary during the duration of the application review process until the reviewing authority acts on the application. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for the duration of the notice period. The posted notice shall be no more than two square feet and not violate Section 17.40.070. The notice/sign shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, pedestrians or other users in the public right-of-way. The City encourages applicants to consult with the department on placement locations to avoid any potential hazards.

2. **City Website Notice.** Within 10 days after an application is duly filed with the department, the Director shall post notice of the submittal on the City's website.
3. **Notice Content.** The notices required by this Section 17.46.070(A) shall include: (1) the project location with both an approximate street address and GPS coordinates; (2) the City's permit application number; (3) the application type and a general project description with photo simulations; (4) the applicant's contact information as provided on the application submitted to the City; (5) a URL for the City's website page where application information can be obtained once uploaded in accordance with Section 17.46.070(A)(2); and (6) a statement as to whether a public hearing will be required for the application.

B. **Public Hearing Notices (For Types I-IV).** Public hearing notices shall be provided consistent with the requirements of Section 17.52.110.

C. **Public Hearings (For Types I-IV).** The Planning Commission shall conduct a public hearing upon each conditional use permit application, consistent with the procedures in §17.52.160.

D. **Decision Notices.**

1. **For Types I-V.** Within five calendar days after the Planning Commission makes a decision on a Type I, II, III or IV application or the Director makes a decision on a Type V application, the Director shall: (1) deliver a written decision notice to the applicant; (2) post written notice of the decision at the proposed project site; (3) provide a hand-delivered written notice of the decision to neighbors within 100-foot radius of the site; and (4) post the decision on the City's website.

2. **Content of Decision Notices for Types I-V.** The written notice sent to the applicant, posted at the proposed project site and hand-delivered to neighbors must contain: (1) the decision made (approval or denial); (2) either the reasons for the decision or where the reasons for the decision are available; (3) if the decision is a denial, a statement whether the denial is with prejudice or without prejudice for the purposes of CMC 17.52.170(D); and (4) instructions for how and when to file any appeal.
3. **For Director Denials Without Prejudice.** The Director must send a written notice to the applicant to deny an application without prejudice due to failure to respond to notice(s) of incompleteness pursuant to Section 17.46.060(D)(1). The written notice shall state: (1) the number of days that have passed without the applicant tendering a substantive response to the City after the Director last deemed the application incomplete in a written notice to the applicant; (2) a statement that denial is without prejudice; and (3) instructions for how and when to file any appeal.

#### E. Appeals.

1. **For Types I-V.** Within ten calendar days after the Director issues the decision notices pursuant to Section 17.46.070(D)(1) or (3), any interested person may file a written appeal for cause in accordance with the provisions in Chapter 17.54; provided, however, that (1) the time for filing an appeal and the notice provisions in this chapter shall control over those in Chapter 17.54 and (2) appeals from an approval shall not be permitted when based solely on environmental effects from RF emissions exposure from the approved facility that was found compliant with applicable FCC regulations and guidelines.
2. **For Director Denials Without Prejudice.** Within ten calendar days after the Director issues the decision notice pursuant to Section 17.46.070(D)(3) denying an application without prejudice, the applicant may file a written appeal for cause in accordance with the provisions in Chapter 17.54; provided, however, that the time for filing an appeal and notice provisions in this chapter shall control over those in Chapter 17.54.
3. **Appeals to City Council.** The City Council shall be the appellate authority for all appeals in accordance with the provisions of Chapter 17.54. The City Council shall issue a written decision that contains the reasons for the decision, and such decision shall be the final action of the City and not subject to any further administrative appeals.

#### **17.46.080 Findings Required.**

**A. Types I to IV Applications**

1. **Required Findings for Approval.** The reviewing authority may approve wireless facility applications only when the reviewing authority makes all the following findings:
  - a. the proposed wireless facility will not result in adverse visual impacts because it complies with all applicable development standards in Section 17.46.040 and the Administrative Detailed Wireless Facility Design Guidelines;
  - b. if applicable, to the extent the proposed wireless facility does not comply with all applicable development standards in Section 17.46.040 and the Administrative Detailed Wireless Facility Design Guidelines, the applicant has requested a special exception and the findings for granting a special exception pursuant to Section 17.46.080(C) can be made;
  - c. the proposed wireless facility will comply with all applicable FCC regulations and guidelines for human exposure to RF emissions and will not, either individually or cumulatively with other transmitters in the vicinity, result in RF exposures that exceed the FCC's maximum permissible exposure level for the general population;
  - d. the proposed wireless facility will comply with all applicable fire safety and public safety standards;
  - e. the proposed wireless facility will comply with fall zone requirements in the Administrative Detailed Wireless Facility Design Guidelines;
  - f. all public notices required for the application have been given;
  - g. all the findings required for a use permit pursuant to Section 17.64.010;
  - h. all the findings for discretionary design review approval pursuant to Section 17.58.060;
  - i. if applicable, all the findings required for a Coastal Development Permit.
2. **Conditional Approvals.** Subject to any applicable federal or state laws, nothing in this chapter is intended to limit the reviewing authority's ability to conditionally approve any application governed under this chapter as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, this code, or this chapter.

**B. Type V Applications (EFRs)**

1. **Required Findings for Approval.** The reviewing authority may approve or conditionally approve an application for an EFR administrative design review approval when the reviewing authority finds that the proposed project:
  - a. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
  - b. does not substantially change the physical dimensions of the existing wireless tower or base station in that it meets each and every one of the applicable criteria for an eligible facilities request stated in the definition of “substantial change,” after application of the definitions in 47 C.F.R. 1.6100(b). The reviewing authority shall make an express finding for each criterion.
2. **Findings for Denial.** The reviewing authority may deny without prejudice any application for an EFR administrative design review approval when the reviewing authority finds that the proposed project:
  - a. does not meet the findings required in Section 17.46.080(B)(1);
  - b. involves the replacement of the entire eligible support structure; or
  - c. violates any generally applicable law, regulation, rule or standard or permit condition reasonably related to public health or safety.
3. **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this chapter is intended to limit the reviewing authority’s authority to conditionally approve an application for an EFR administrative design review approval to comply with all generally applicable laws and to protect and promote the public health and safety.

**C. Special Exceptions for Federal or State Preemption (Types I to IV only)**

1. **Preface.** The provisions in this section establish 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, but only if specifically requested by the applicant in writing at the time of application submittal and only to the extent necessary to avoid conflict with applicable federal or state law. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.

2. **Required Findings.** The reviewing authority shall not grant any special exception unless the reviewing authority finds the following:
  - a. the applicant has shown that denial of an application will result in an effective prohibition or otherwise violate federal law; OR the applicant has shown that denial of an application will violate state law.
  - b. the special exception requested by the applicant does not compromise or excuse compliance with any fire safety or other public health and safety requirements; and
  - c. the special exception is narrowly tailored such that any deviation from the requirements of this chapter is only to extent necessary for compliance with federal or state law.
3. **Evidentiary Standard.** The applicant shall have the burden to prove to the reviewing authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for a special exception.

#### **17.46.090 Standard Conditions of Approval.**

A. **Wireless Facility Standard Terms and Conditions.** All wireless facilities approved under this chapter or deemed approved by the operation of law shall be automatically subject to the Wireless Facility Standard Terms and Conditions adopted by the Planning Commission by resolution, unless modified by the reviewing authority in an approval decision.

B. **Modified Approval Conditions.** The reviewing authority, when granting approval of a permit application, may modify, add to or remove standard conditions set forth in the Wireless Facility Standard Terms and Conditions adopted by the Planning Commission by resolution, as the reviewing authority deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions to the particular facts and circumstances associated with the project; and/or (3) memorialize any changes to the proposed project needed for compliance with the City's Municipal Code, generally applicable health and safety requirements and any other applicable laws.

#### **17.46.100 Violations**

Any use or condition caused or permitted to exist in violation of any provision of this chapter shall be and hereby is declared a public nuisance and may be subject to administrative citations as set forth in Chapter 18.04 of this code, summary abatement

pursuant to Chapter 15.57 of this code, California Code of Civil Procedure § 731, or any other remedy available to the City.

**SECTION 3.** Conforming Amendments To Code. [TBD]-Title 17. The following Sections of Title 17 of the Carmel-by-the-Sea Municipal Code are amended as follows (all other sections remain unchanged):

**SECTION 4.** Section 17.08.040: the residential uses table listing for “Communications” uses in the Transportation, Communications and Utilities uses table shall read:

<b>Transportation, Communication and Utilities</b>			
<u>Antennas and Transmission Towers – Telecommunications</u>	<u>C</u>	<u>C</u>	<u>See Chapter 17.46 for findings</u>
<u>Antennas and Transmission Towers – Other</u>	<u>-</u>	<u>C</u>	
<u>Facilities Within Buildings</u>	<u>C</u>	<u>C</u>	

**Section 17.12.020.H.** shall read:

“H. Outdoor Antennas. Except as provided in Chapter 17.46 CMC, Telecommunications and Wireless Facilities and antennas used by Federal Communications Commission licensed ham operators or operators certified by RACES or ARES, both of which are excluded from the application of these provisions, antennas erected in the R-4 land use district shall be subject to the following standards:

1. No antenna or its supporting structure shall be located in the area between the front property line and the portion of the main structure or building located closest to the front property line.
2. No antenna shall be roof-mounted except on a flat portion of the roof structure with parapets, and/or architecturally matching screening plan.
3. All ground-mounted antennas shall be camouflaged by walls, antenna color, fences, or landscaping. Landscaping shall be of a type and variety capable of growth within one year to a landscape screen that obscures the visibility of the antenna. The landscaping plan shall be approved by the City Forester before it is implemented.
4. No antenna shall be erected within the public viewshed as identified in CMC 17.12.050, Preservation of Public Viewshed.
5. No part of any antenna shall be higher than 24 feet.”

**Section 17.14.030:** the commercial uses table listing “Communications” uses in the Transportation, Communications and Utilities uses table shall read:



<u>Transportation, Communication and Utilities</u>			
<u>Antennas and Transmission Towers – Telecommunications</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Antennas and Transmission Towers – Other</u>	<u>-</u>	<u>-</u>	<u>-</u>
<u>Facilities Within Buildings</u>	<u>P</u>	<u>P</u>	<u>C</u>

**Section 17.14.220.F.** shall read:

“F. Antennas. Except for antennas preempted by Federal law, antennas in the commercial districts shall be located and screened to reduce their visibility from the public right of way and adjacent properties. All antenna installations must be reviewed and approved through the commercial design review procedures. Except as provided in Chapter 17.46 CMC, Telecommunications and Wireless Facilities, antennas located in any commercial land use district shall conform to the following standards:

1. All ground-mounted antennas shall be required to maintain their supporting structures at least three feet from any property line.
2. All ground-mounted antennas shall be screened by walls, color, fences or landscaping. Landscaping shall be of a type and variety capable of growing within one year to a landscape screen, which obscures the visibility of the antenna. The landscaping plan shall be approved by the City Forester before it is implemented.
3. No part of any antenna shall be higher than the maximum height allowed in the underlying land use district.
4. A maximum of one antenna shall be allowed on a building site.
5. All roof-mounted antennas are prohibited except as provided in CMC 17.46.020(E)17.46.030(B) (general development standards).”

**Section 17.18.030:** the public and quasi-public uses table listing for “Communications” uses in the Transportation, Communications and Utilities uses table shall read:

<u>Transportation, Communication and Utilities</u>		
<u>Communication Facilities</u>	<u>-</u>	<u>-</u>
<u>Antennas and Transmission Towers – Telecommunications</u>	<u>C</u>	<u>See Chapter 17.46 CMC</u>
<u>Antennas and Transmission Towers – Other</u>	<u>-</u>	<u>C</u>
<u>Facilities Within Buildings</u>	<u>C</u>	<u>C</u>

**Section 17.40.070.H.** shall read:

“H. Signs in the public right-of-way, except for signs posted by a Federal, State, or local governmental entity with permission of the City and application notices posted in accordance with CMC 17.46.070(A)(1).”

**Section 17.52.150.C** shall read:

“C. Appeals. All final actions of the Director may be appealed to the Planning Commission in accordance with Chapter 17.54 CMC, Appeals, except for Director decisions pursuant to CMC 17.46.050(A)(2) and 17.46.060(D) which may only be appealed to the City Council.”

**Section 17.54.010.E.** shall read:

“E. The findings and actions of the Planning Director shall be final and conclusive from and after the date of final action unless an appeal is filed with the Planning Commission Secretary pursuant to CMC 17.54.040(A), Appeals to the Forest and Beach Commission or the Planning Commission, or CMC 17.54.040(B), Appeals to the Historic Resources Board, or with the Coastal Commission pursuant to CMC 17.54.040(D) and 17.54.050, or with the City Clerk pursuant to CMC 17.54.040(C), Appeals to City Council. “

**Section 17.54.040.C.** shall read:

“C. Appeals to the City Council. Decisions to approve or deny projects made by the Planning Commission, Forest and Beach Commission, or the Historic Resources Board may be appealed to the City Council by filing a notice of appeal in writing in the office of the City Clerk within 10 working days following the date of action by the decision-making body and paying the required filing fee as established by City Council resolution. Notwithstanding the foregoing, decisions for projects subject to Chapter 17.46 (Telecommunications and Wireless Facilities) made by the Planning Director or by the Planning Commission must be appealed within the time periods specified in CMC 17.46.070(E).“

**Section 17.54.080.A.** shall read:

“A. Appeals of Decisions on Permits. Any decision to approve, deny or conditionally approve any permit made by the Director (except for denials without prejudice made pursuant to CMC 17.46.060(D)), the City Forester, the Planning Commission, or the Historic Resources Board may be appealed by any aggrieved party. Coastal Commissioners may appeal these decisions pursuant to CMC 17.54.020 and 17.54.050.”

**Section 17.58.030.B.1.d.** shall read:

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“d. Installation of antennas and associated equipment.”

**Section 17.58.040.B.1 and the introductory part of B.2 shall read:**

B. Residential Track Two Design Study. Track two is a discretionary review process for projects that require a public hearing with the Planning Commission. All track two projects shall require public notice and a hearing pursuant to CMC 17.52.110, Notice of Public Hearing.

1. Applicability. Residential district track two design review is for the construction of new dwellings, rebuilds, substantial alterations, installation of antennas and associated equipment, and other projects that comply with applicable zoning standards and design review guidelines but do not qualify for track one processing.

2. Procedures. Except for the installation of antennas and associated equipment which shall be subject to the procedures in CMC 17.58.030.B.2, dDesign review for track two projects is a three-phase process requiring: (1) preliminary site assessment, (2) design concept review, and (3) final details review. The application shall not be deemed complete until the preliminary site assessment has occurred and the City has received a complete application for design concept review. When a use permit, variance, or other land use permit is required, the application shall not be deemed complete until design concept review is completed and the City has received a complete application for final details review and for the applicable land use permit. The procedure for track two projects includes the following:

**Section 17.68.070 “Communication Facilities” uses shall read:**

*Antennas and Transmission Towers - Telecommunications.* Communication services accomplished through electronic or telephonic mechanisms, as well as structures designed to support one or more reception or transmission systems. Examples of transmission towers - telecommunications are limited to telephone exchange or microwave relay towers, and cellular telephone transmission or personal communications systems towers.

*Antennas and Transmission Towers - Other.* Broadcasting, recording, and other ~~communication services accomplished through electronic or telephonic mechanisms, as well as structures designed to support one or more reception or transmission systems. Examples of transmission towers- other are limited to radio towers, television towers, telephone exchange or microwave relay towers, and cellular telephone transmission or personal communications systems towers~~ and other towers that are not used for telecommunications.

*Facilities Within Buildings.* Includes radio, television, or recording studios and telephone switching centers; excludes antennas and transmission devices.

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**Section 17.70.010 and Section 17.70.020** shall be amended to repeal the following listed terms and corresponding definitions:

Amateur Radio Antenna (See Antenna);

Antenna; Monopole (See Telecommunications Terms);

Satellite Antenna (See Antenna);

Telecommunications Facility, Co-Located (See Telecommunications Terms);

Telecommunications Facility (See Telecommunications Terms);

Telecommunications Terms (Building-Mounted Telecommunications Facility; Monopole; Telecommunications Facility; Telecommunications Facility, Co-Located).

**Section 17.70.010** shall be further amended to add to the listed terms the following:

“Telecommunications and Wireless Terms. See Chapter 17.46.”

**SECTION 4.** Conforming Amendments to Titles 12 and 13. The following Sections of Title 12 and 13 of the Carmel-by-the-Sea Municipal Code are amended to read (all other sections remain unchanged):

**Section 12.08.050** shall be amended to add a new subsection E as follows:

“E. Notwithstanding Section 12.080.040.A. and Section 12.08.050.A, B, C and D, for applications that are subject to both Ch. 17.46 and Ch. 12.08, the reviewing authority under Ch. 17.46 shall process and decide both applications concurrently under the procedures in Ch. 17.46, including any appeals.”

**Section 12.08.060** shall be amended to add a new subsection I as follows:

“I. For applications that are subject to both Ch. 17.46 and Ch. 12.08, only the standards in Ch. 17.46 and the applicable administrative guidelines shall apply.”

**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.”

**SECTION 5.** Effective Date. This Ordinance shall take effect 30 days after its adoption by the City Council of the City of Carmel-by-the-Sea and after approval by the California Coastal Commission.

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**SECTION 6.** Severability. If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining sections, subsections, provisions, sentences, clauses, phrases or words of this Ordinance.

**INTRODUCED** at a Regular City Council Meeting on \_\_\_\_\_, 2023.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA** this \_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

Mayor

City Clerk



**City of Carmel-by-the-Sea  
Community Planning & Building Department  
Planning Division**

**APPLICATION FOR WIRELESS FACILITY**

Fee/Deposit: \$ \_\_\_\_\_  
 Receipt: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Application No. \_\_\_\_\_

**INSTRUCTIONS:**

Applicants that wish to submit an application for a wireless facility must fill out this Application for Wireless Facility form and not the General Planning Application form. All applications must be submitted in person to the Community Planning and Building Department at a pre-scheduled appointment.

To schedule an appointment email: [planning@ci.carmel.ca.us](mailto:planning@ci.carmel.ca.us). For questions about the application requirements or process call: (831) 620-2010. Emails and calls will be responded to during normal City business hours.

**Applicant:**

Name: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 City Business License Number: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

**Applicant's Authorized Representative:**

Name: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 City Business License Number: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

**Site Location and Description:**

Project Location: \_\_\_\_\_  
 Project Name: \_\_\_\_\_  
 Zoning Description: \_\_\_\_\_  
 Current Use: \_\_\_\_\_  
*For Parcels:*  
 Block: \_\_\_\_\_  
 Lot(s): \_\_\_\_\_  
 Assessor Parcel No(s): \_\_\_\_\_

*For Public Right-of-Way:*

Pole Coordinates: \_\_\_\_\_  
 Pole Number (if applicable): \_\_\_\_\_

**Property Owner / Pole Owner/ Structure Owner:**

Name: \_\_\_\_\_  
 City Business License Number: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

**OFFICE USE ONLY**

**Permit/Application Number:** \_\_\_\_\_  
**Assigned Staff Member:** \_\_\_\_\_

**Decision Maker:** \_\_\_\_\_  
**Date of Action:** \_\_\_\_\_  
**Action:** \_\_\_\_\_

**WIRELESS APPLICATION TYPE:****CHECK THE APPLICABLE BOX AND PROVIDE THE MATERIALS LISTED IN THE APPLICATION CHECKLIST**

- Type I: Collocation of Small Wireless Facility (Existing Structure).** Applicant asserts that the application is being submitted for approval to place a new small wireless facility upon an existing structure and either (i) the structure is not an existing tower or base station (as defined for EFR purposes) or (ii) the structure is an existing tower or base station (as defined for EFR purposes) but the proposed facility does not qualify as an EFR. If the completed facility would still meet the physical limits and requirements to meet the definition of a small wireless facility after the installation of the new equipment, then the application to install such new equipment is a Type I application. ***The applicable FCC shot clock is sixty (60) days.***
- Type II Collocation (Non-Small Wireless Facility, Non-EFR).** Applicant asserts that the application is being submitted for approval to place a new personal wireless service facility upon an existing structure which does not meet the definition of a small wireless facility or which will not meet the definition of a small wireless facility if and when the proposed new personal wireless service equipment is installed upon the existing facility and/or structure and either (i) the structure is not an existing tower or base station (as defined for EFR purposes) or (ii) the structure is an existing tower or base station (as defined for EFR purposes) but the proposed facility does not qualify as an EFR.. ***The applicable shot clock is ninety (90) days.***
- Type III: New Small Wireless Facility (New/Replacement Structure).** Applicant asserts that the application is being submitted for approval to install and/or construct a new Small wireless facility that involves placement of a new or replacement structure. ***The applicable FCC shot clock is ninety (90) days.***
- Type IV: New Towers and All Other.** Applicant asserts that the application is being submitted for approval to install a new personal wireless service facility which does not meet the criteria for Type I, Type II, Type III or Type V applications. ***The applicable FCC shot clock is one hundred and fifty (150) days.***
- Type V: Eligible Facilities Request (EFR).** Applicant asserts that the application meets the criteria for an eligible facilities request under federal law and FCC regulations. ***The applicable FCC shot clock is sixty (60) days.***

**WIRELESS APPLICATION CHECKLISTS AND FORMS:**

- Type I-IV: Wireless Application Checklist**
- Type V: Eligible Facilities Request Checklist**
- Affidavit of Owner Authorization (for private parcels)**

**WIRELESS APPLICATION FEE/DEPOSIT:**

The Applicant must submit the appropriate permit application fee/deposit based on the City's Fee Schedule for current year, available on the City's website at [https://ci.carmel.ca.us/sites/main/files/fy\\_22-23\\_fee\\_schedule\\_0.pdf](https://ci.carmel.ca.us/sites/main/files/fy_22-23_fee_schedule_0.pdf). The permit application fee/deposit will be based on a "time and material" calculation and will require the applicant to fund a deposit with the City for further assessed fees related to the application.

**OTHER PERMITS AND AUTHORIZATIONS:**

Below, please either sign the acknowledgment OR identify other permits and/or authorizations which will be needed for this proposed facility:

- By signing below, the applicant hereby agrees that, should this application be granted, or granted subject to conditions, the FCC Shot Clock applicable to this application does not apply to any other permits, regulatory authorizations or agreements needed from the City, and that no work may be undertaken on the applied-for personal wireless services facility until all such permits, regulatory authorizations and agreements required from the City have been applied for and obtained.

Agreed: \_\_\_\_\_

--OR--

- Identify any and all additional permits, regulatory authorizations and agreements you contend the City must issue (absent agreement) within the time period that the City must take action on this application under the applicable FCC shot clock. It is the applicant's responsibility to review the CBTS Code, CBTS policies and all state and federal regulations (including, but not limited to, FCC regulations) applicable to the deployment of this personal wireless services facility and to thereby identify all additional permits, regulatory authorizations and agreements that will be needed from the City. The applicant's failure to identify and list any permits, regulatory authorizations or agreements required from the City below will be deemed a waiver of any claim by the applicant that the City was required to act on any of those permits, regulatory authorizations or agreements not so identified within the FCC shot clock applicable to this application.
- For each of the permits, authorizations or agreements you identify below, if you have the required authorization, attach and mark a copy as "**Attachment – Other Permits and Authorizations**". If you do not have the required authorization, indicate whether you have applied for it or not, and either submit the application and all fees or submit proof of previous submittal and previous payment of all such fees, as applicable.
  - Forest and Beach Commission Review
  - Historic Resources Board Review
  - Coastal Development Review
  - Building Permit
  - Electrical Permit
  - Traffic Control Permit
  - Excavation Permit
  - Other Permit(s). Identify: \_\_\_\_\_

**CERTIFICATION:**

By signing and submitting this application, the applicant agrees to the following:

1. At its sole expense, to defend, indemnify, and hold harmless the City, its public officials, officers, employees, and assigns, from any liability; and shall reimburse the City for any expense incurred, resulting from, or in connection with any project approvals. This includes any appeal, claim, suit, or other legal proceeding, to attack, set aside, void, or annul any project approval. The City shall promptly notify the applicant of any legal proceeding, and shall cooperate fully in the defense. The City may, at its sole discretion, participate in any such legal action, but participation shall not relieve the applicant of any obligation under this condition. Should any party bring any legal action in connection with this project, the Superior Court of the County of Monterey, California, shall be the situs and have jurisdiction for the resolution of all such actions by the parties hereto.
2. That all materials submitted as part of this application package are considered to be public



information, may be posted on the internet, distributed to the necessary Committees, Commissions and Council as part of the approval process, and reviewed by the public.

3. To comply with all City ordinances and State laws relating to building construction for any and all aspects of the project proposed in this application and authorizes representatives of the City and Advisory Agencies to enter the above mentioned property at reasonable times for inspection purposes related to the project for which this application is submitted.
  
4. The City's review relies on the written and/or oral statements by applicant and/or persons authorized to act on applicant's behalf. In any matter before the City in connection with the application, neither the applicant nor any person authorized to act on applicant's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.

I declare under penalty of perjury that I am the owner or authorized agent for this property and that the foregoing statements and answers and all data information, documents and evidence herewith submitted are to the best of my knowledge and belief, true and correct.

\_\_\_\_\_  
Applicant's Signature/Authorized Representative's Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date



**City of Carmel-by-the-Sea  
Community Planning & Building Department  
Planning Division**

**APPLICATION FOR WIRELESS FACILITY**

Fee/Deposit: \$ \_\_\_\_\_  
Receipt: \_\_\_\_\_  
Date: \_\_\_\_\_  
Application No. \_\_\_\_\_

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**Applicant:**

Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
City Business License Number: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Applicant's Authorized Representative:**

Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
City Business License Number: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Site Location and Description:**

Project Location: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Zoning Description: \_\_\_\_\_  
Current Use: \_\_\_\_\_  
*For Parcels:*  
Block: \_\_\_\_\_  
Lot(s): \_\_\_\_\_  
Assessor Parcel No(s): \_\_\_\_\_

*For Public Right-of-Way:*

Pole Coordinates: \_\_\_\_\_  
Pole Number (if applicable): \_\_\_\_\_

**Property Owner / Pole Owner/ Structure Owner:**

Name: \_\_\_\_\_  
City Business License Number: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**OFFICE USE ONLY**

Permit/Application Number: \_\_\_\_\_  
Assigned Staff Member: \_\_\_\_\_

Decision Maker: \_\_\_\_\_  
Date of Action: \_\_\_\_\_  
Action: \_\_\_\_\_

## WIRELESS APPLICATION TYPE:

## CHECK THE APPLICABLE BOX AND PROVIDE THE MATERIALS LISTED IN THE APPLICATION CHECKLIST

- Type I: Collocation of Small Wireless Facility (Existing Structure).** Applicant asserts that the application is being submitted for approval to ~~deploy~~ place a new small wireless facility ~~on~~ upon an existing structure and either (i) the structure is not an existing tower or base station (as defined for EFR purposes) or (ii) the structure is an existing tower or base station (as defined for EFR purposes) but the proposed facility does not qualify as an EFR. If the completed facility would still meet the physical limits and requirements to meet the definition of a small wireless facility after the installation of the new equipment, then the application to install such new equipment is a Type I application. *The applicable FCC shot clock is sixty (60) days.*
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- Type III: New Small Cell Wireless Facility (New/Replacement Structure).** Applicant asserts that the application is being submitted for approval to ~~deploy a small~~ install and/or construct a new Small wireless facility ~~involving~~ that involves placement of a new or replacement structure. ~~Replacements of existing structures are considered new structures.~~ *The applicable FCC shot clock is ninety (90) days.*
- Type IV: New Towers and All Other.** Applicant asserts that the application is being submitted for approval to ~~deploy~~ install a new personal wireless ~~communications~~ service facility ~~that~~ which does not ~~fall in any other category~~ meet the criteria for Type I, Type II, Type III or Type V applications. *The applicable FCC shot clock is one hundred and fifty (150) days.*
- Type V: Eligible Facilities Request (EFR).** Applicant asserts that the application ~~qualifies as~~ meets the criteria for an eligible facilities request under federal law and FCC regulations. *The applicable FCC shot clock is sixty (60) days.*

## WIRELESS APPLICATION CHECKLISTS AND FORMS:

- Type I-IV: Wireless Application Checklist
- Type V: Eligible Facilities Request Checklist
- Affidavit of Owner Authorization (for private parcels)

## WIRELESS APPLICATION FEE/DEPOSIT:

The Applicant must submit the appropriate permit application fee/deposit based on the City's Fee Schedule for current year, available on the City's website at [https://ci.carmel.ca.us/sites/main/files/fy\\_22-23\\_fee\\_schedule\\_0.pdf](https://ci.carmel.ca.us/sites/main/files/fy_22-23_fee_schedule_0.pdf). The permit application fee/deposit will be based on a "time and material" calculation and will require the applicant to fund a deposit with the City for further assessed fees related to the application.

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Agreed: \_\_\_\_\_

--OR--

- Identify any and all additional permits, regulatory authorizations and agreements you contend the City must issue (absent agreement) within the time period that the City must take action on this application under the applicable FCC shot clock. It is the applicant's responsibility to review the CBTS Code, CBTS policies and all state and federal regulations (including, but not limited to, FCC regulations) applicable to the deployment of this personal wireless services facility and to thereby identify all additional permits, regulatory authorizations and agreements that will be needed from the City. The applicant's failure to identify and list any permits, regulatory authorizations or agreements required from the City below will be deemed a waiver of any claim by the applicant that the City was required to act on any of those permits, regulatory authorizations or agreements not so identified within the FCC shot clock applicable to this application.
- For each of the permits, authorizations or agreements you identify below, if you have the required authorization, attach and mark a copy as "**Attachment – Other Permits and Authorizations**". If you do not have the required authorization, indicate whether you have applied for it or not, and either submit the application and all fees or submit proof of previous submittal and previous payment of all such fees, as applicable.
- Forest and Beach Commission Review
  - Historic Resources Board Review
  - Coastal Development Review
  - Building Permit
  - Electrical Permit
  - Traffic Control Permit
  - Excavation Permit
  - Other Permit(s). Identify: \_\_\_\_\_

**CERTIFICATION**

By signing and submitting this application, the applicant agrees to the following:

1. At its sole expense, to defend, indemnify, and hold harmless the City, its public officials, officers, employees, and assigns, from any liability; and shall reimburse the City for any expense incurred, resulting from, or in connection with any project approvals. This includes any appeal, claim, suit, or other legal proceeding, to attack, set aside, void, or annul any project approval. The City shall promptly notify the applicant of any legal proceeding, and shall cooperate fully in the defense. The City may, at its sole discretion, participate in any such legal action, but participation shall not relieve the applicant of any obligation under this condition. Should any party bring any legal action in connection with this project, the Superior Court of the County of Monterey, California, shall be the situs and have jurisdiction for the resolution of all such actions by the parties hereto.

2. That all materials submitted as part of this application package are considered to be public information, may be posted on the internet, distributed to the necessary Committees, Commissions and Council as part of the approval process, and reviewed by the public.
3. To comply with all City ordinances and State laws relating to building construction for any and all aspects of the project proposed in this application and authorizes representatives of the City and Advisory Agencies to enter the above mentioned property at reasonable times for inspection purposes related to the project for which this application is submitted.
4. The City's review relies on the written and/or oral statements by applicant and/or persons authorized to act on applicant's behalf. In any matter before the City in connection with the application, neither the applicant nor any person authorized to act on applicant's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.

I declare under penalty of perjury that I am the owner or authorized agent for this property and that the foregoing statements and answers and all data information, documents and evidence herewith submitted are to the best of my knowledge and belief, true and correct.

\_\_\_\_\_  
Applicant's Signature/Authorized Representative's Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date



## **CITY OF CARMEL-BY-THE-SEA**

Community Planning & Building Department  
Planning Division

### **WIRELESS FACILITY APPLICATION CHECKLIST**

#### **TYPE I - IV**

**NOTE:** All applications must be submitted to the City at a pre-scheduled appointment with the Community Planning and Building Department. The Community Planning and Building Department shall use reasonable efforts to provide the applicant with an appointment in a reasonable amount of time after a written request is received. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed whether the City retains the submitted materials or not.

Please check the applicable box and provide the information required below.

#### **1. PROJECT DESCRIPTION**

Provide a detailed description of the proposed facility, and how it complies with the requirements in the Carmel-by-the-Sea Municipal Code Chapter 17.46, the Administrative Detailed Wireless Facility Design Guidelines, and other City design guidelines, as applicable. Label this description "**Attachment 1 – Project Description**" and attach it to this application.

#### **2. PROJECT PLANS**

Provide complete PDF (USB Drive or CD) set of complete project plans. PDF plans shall be combined as a single PDF optimized for web viewing. Individual plan sheets will not be accepted. Attach to application and mark as "**Attachment 2 – Project Plans**". The project plans must contain all of the following:

- 2.1 Cover Sheet.** A complete cover sheet must include at a minimum:
  - a detailed project description that specifies the proposed installation and/or modifications;
  - site information that includes the site address, assessor's parcel number, block, lot(s), site latitude and longitude, zoning description, pole number (if applicable), site map, and project team contact information.
- 2.2 Site Development Plan.** Only a California Registered Civil Engineer or licensed surveyor may prepare the site development plan. A complete site development plan must include:

- a north arrow, date, scale and legend;
- plan-view drawings, which include:
  - the entire property or right-of-way block with the proposed project improvements;
  - detailed before-and-after views of the any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features;
  - detailed before-and-after views for each antenna sector;
  - detailed before-and-after views for any equipment pads, shelters, enclosures, rooms, vaults and/or platforms;
  - all existing and proposed equipment (including the point of origin and point of connection for all power and telco utilities) with all dimensions, labels and ownership identifications clearly called out;
  - boundaries for all areas leased/licensed in connection with the wireless site with all dimensions clearly shown and called out;
  - boundaries for all easements, encroachments and/or other rights-of-way for access and utilities in connection with the wireless site with all dimensions clearly shown and called out;
  - all existing and proposed primary and backup utilities, including without limitation all cables, connectors, risers, conduits, cable shrouds, trays, bridges and/or doghouses, transformers, disconnect switches, panels, meters, pedestals, cabinets, vaults, handholes, generators and/or generator sockets;
- detailed before-and-after elevation drawings from all four cardinal directions, which include:
  - all existing and proposed structures, improvements and/or fixtures with all dimensions clearly called out within 500 feet of the proposed project site;
  - detailed before-and-after depictions of the any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features;
  - all existing and proposed equipment with all dimensions, labels and ownership identifications clearly called out;
  - for projects in the public right-of-way, all existing and proposed fiber optic cables, conduits, risers, guy wires, anchors, primary and secondary power lines clearly called out;
- callouts and notes for any proposed new or extended concealment elements;
- depictions of the applicant's plan for electric and data backhaul utilities, which includes the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches and points of connection;

- a demonstration that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
- 2.3 **Equipment Inventory.** All equipment must be inventoried with the following information for each component in a separate cut sheet:
  - manufacturer and model number;
  - basic dimensions (height, width, length and weight).
- 2.4 **Site Survey.** Only a California Registered Civil Engineer or licensed surveyor may prepare the site survey. A complete site survey must include:
  - a north arrow, date, scale and legend;
  - private and public property boundaries and right-of-way boundaries with all bearings, distances, monuments, iron rods, caps or other markers clearly shown and called out within 75 feet from the proposed project site;
  - location of all traffic lanes within 75 feet from the proposed project site;
  - location of above and below-grade utilities and related structures and infrastructure within 75 feet from the proposed project site;
  - location of all fire hydrants, roadside call boxes and other public safety infrastructure within 75 feet from the proposed project site;
  - location of all streetlights, decorative poles, traffic signals and permanent signage, sidewalks, driveways, parkways, curbs, gutters and storm drains, benches, trash cans, mailboxes, kiosks and other street furniture within 75 feet from the proposed project site;
  - location of all existing trees, planters and other landscaping features within 75 feet from the proposed project site, including any trees at least 4 inches in diameter at a point approximately 4.5 feet above ground;
  - boundaries for all areas leased/licensed in connection with the wireless site with all dimensions clearly shown and called out;
  - boundaries for all easements and/or dedications with all dimensions clearly shown and called out;
  - all access points and/or access routes to the nearest public right-of-way;
  - approximate topographical contour lines with elevations called out;
  - all structures or improvements on the property;
  - all structures or improvements within the public right-of-way within any block partially or entirely occupied by the project and any elements thereof;
  - all structures or improvements on adjacent parcels within 75 feet from the property line;
  - wet stamp and wet signature from preparer;
  - general specifications and notes identifying the applicable public health and safety codes



and standards.

- 2.5 **Fiber Network Plan.** To the extent that the project requires running new fiber optic cables to the proposed facility, the plans must include a street map view that shows all the proposed facilities in the deployment, clearly labeled with pole number and/or site ID, the hub or base station that serves the facilities in the deployment, all fiber optic cable routes that connect the facilities to the hub, and a legend that identifies any symbols, colors or other items on the map. The fiber plans should clearly identify all meet-me points and points of connection. Even if the fiber deployment will be performed by a third-party vendor, the applicant for wireless facilities must disclose all known or reasonably foreseeable fiber network elements. This plan is not required for an application that is limited to a Small Wireless Facility.
- 2.6 **Fire Safety.** All proposed facility plans must include, describe and depict that the facility meets the fire safety requirements in Chapter 17.46, the Administrative Detailed Wireless Facility Design Guidelines, and applicable fire safety and electrical codes and standards.
- 2.7 **Electrical and Structural Safety Information.** The following engineering documents prepared under the responsible charge of and sealed by a California licensed Professional Engineer:
  - A short circuit and coordination study (“SCCS”) calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
  - A one-line diagram of the electrical system;
  - Voltage Drop & Load Flow Study;
  - Load Calculation;
  - Panel Directories;
  - A plot plan showing the location of the mounting structure including address, or structure designation, or GPS location on the front sheet;
  - A plot plan showing the location of the service disconnecting means;
  - An elevation drawing of the equipment and the service disconnecting means

### 3. SITE PHOTOS AND PHOTO SIMULATIONS

Provide site photos and photo simulations that would allow the City to visualize the applicant's proposed project as constructed. The photo simulations must be in a high-resolution format and show the proposed facility from reasonable line-of-sight locations that would accurately and reliably reflect the appearance of the proposed facility and/or modifications as-built. Attach and mark as "**Attachment 3- Site Photos and Photo Simulations**". Except as otherwise provided, photo simulations must contain all the following:

- 3.1 Current Site Photos.** Current site photos must include:
  - photos of the existing site from at least three different reasonable line-of-sight locations from public streets or other publicly available areas. These should show 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. Applicant should also attempt to get permission from adjacent property owners to take photos that can be used to show potential impacts to their views. If unable to obtain permission to photograph from adjacent properties, applicant shall include a written statement identifying the properties for which consent was requested and not obtained.
  - a map detail showing each location where a photograph was taken, the proposed site and the direction to the site from each photo location.
- 3.2 Photo Simulations.** Photo simulations must include:
  - an accurate and reliable visual representation of the proposed facility from the same reasonable line-of-sight locations used in the current site photos and must include without limitation all interconnecting cables, conduits, brackets, and electronic equipment such as antennas, radio units and powering equipment;
  - at least one photo simulation depicting the proposed facility from a vantage point approximately 50 feet from the proposed support structure or location;
  - at least one photo simulation that demonstrates the impact of the proposed modification on the all the concealment elements, if any, of the support structure. Concealment elements include but are not limited to screen walls, architectural elements, radomes, landscape features, equipment enclosures and designs and/or techniques intended to mimic the natural or built environment;
  - a map detail showing each location where a photograph was taken, the proposed site and the direction to the site from each photo location.

**4. REGULATORY AUTHORIZATIONS AND APPROVALS**

Provide true and correct copies of all the following:

 **4.1 FCC Licenses.**

If the applicant proposes to operate in FCC-licensed spectrum, provide proof of licenses for all planned operating bands in the applicable geographic market(s). Alternatively, the applicant may provide a URL address or written instructions on where to find such licenses in publicly available FCC resources. Attach and mark as “**Attachment 4.1 – FCC Licenses**” and attach it to this application.

 **4.2 FAA Forms.**

If the proposed wireless facility requires the applicant to file FAA form 7460 or other documentation under Federal Aviation Regulation Part 77.13 *et seq.*, or under other FCC rules, provide such documentation. Label this documentation “**Attachment 4.2 – FAA Forms**” and attach it to this application.

If not applicable, check this box

 **4.3 State Regulatory Authorization.**

For facilities proposed in the public rights-of-way, the applicant must submit evidence of the applicant’s regulatory status under California law to provide the services and construct the facility proposed in the application. Applicants may provide a URL address or written instructions on where to find the regulatory status (*e.g.*, CPCN or WIR) in publicly available resources. Attach and mark as “**Attachment 4.3 – State Regulatory Authorization**”.

If not applicable, check this box

 **4.4 Underground Service Alert Membership.**

Provide evidence that the applicant is a member in good standing with the Underground Service Alert of Northern California and Nevada. Attach and mark as “**Attachment 4.4 – Underground Service Alert Membership**”.

**5. STRUCTURE OR POLE OWNER'S AUTHORIZATION**

If the applicant does not own the structure or pole, provide a written authorization executed by the property owner(s) that authorizes the applicant to file the application and perform the work to the extent described in the application. For facilities on utility poles, the applicant may submit the standard authorization form the pole owner or joint utility association uses to demonstrate that the applicant has the authority to perform the installation or modification. For facilities on any structure owned or controlled by the City located within the public rights-of-way, the applicant must submit a copy of the executed license agreement with the written authorization from the City to demonstrate that the applicant has the authority to perform the installation or modification. Attach and label as **"Attachment 5 – Structure/Pole Owner's Authorization"**.

If not applicable, check this box

 **6. RADIO FREQUENCY COMPLIANCE REPORT**

Provide a radio frequency ("RF") exposure compliance report prepared and certified by an RF engineer that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. Attach and mark as **"Attachment 6 – RF Compliance Report"** and attach it to this application.

The RF compliance report must include:

- the actual frequency and power levels (in watts effective radiated power, not effective isotropic radiated power) for all existing and proposed antennas at the site;
- exhibits that show:
  - the location and orientation (degree azimuths) of all transmitting antennas;
  - the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC);
  - the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC);

*Note:* Each such boundary must be clearly marked and identified for every transmitting antenna at the project site. No RF emissions that would render any portion of any private or public parcel outside the public right-of-way inaccessible to the general public or hinder future development of the parcel, may extend onto or over such parcel without the property owner's prior written consent.

- an affirmation that the proposed installation will be operated in compliance with 47 U.S.C. § 324.

**7. ACOUSTIC ANALYSIS**

Provide a report prepared and certified by an engineer (or other qualified personnel acceptable to the City) that measures all noise-emitting equipment related to the wireless facility and would operate at the site. Such equipment includes without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators. The acoustic analysis must include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.

In lieu of a certified report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable ambient noise limits. In addition, describe whether the equipment will be passively or actively cooled if any equipment will be enclosed in a shroud, cabinet, pedestal or other enclosure. If the equipment will be actively cooled, the applicant must include the manufacturer's specifications for all active cooling mechanisms. Attach and mark as "**Attachment 7 – Acoustic Analysis**" and attach it to this application.

 **8. STRUCTURAL ANALYSIS**

Provide a report prepared and certified by an engineer (or other qualified personnel acceptable to the City) that evaluates whether the underlying pole, support structure or base station has the structural integrity to support all the proposed equipment and attachments. At a minimum, the analysis must be consistent with all applicable requirements in the most current versions of the CPUC General Order 95 (including, but not limited to, load and pole overturning calculations), the National Electric Safety Code, the California Building Code and any safety and construction standards required by all state and local regulations. Attach and mark as "**Attachment 8 – Structural Analysis**" and attach it to this application.

 **9. LANDSCAPE PLANS**

Provide a detailed written landscape plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Attach and mark as "**Attachment 9 – Landscape Plans**" and attach it to this application.

If not applicable, check this box

 **10. HAZARD ASSESSMENT**

A full assessment of the hazards posed by the proposed facility in the event of failure due to flood, high wind, high heat, outage, lightning strike or fire must be conducted that includes the presence of nearby vegetation and structures at applicant's cost. All materials in the proposed facility must be disclosed, including hazardous materials in any and all equipment. The assessment must identify if any tree removal or tree trimming is required or necessary in order to reduce fire hazard. Attach and mark as "**Attachment 10 – Hazard Assessment**" and attach it to this application.

**11. PROJECT PURPOSE**

Provide the following information and mark as “**Attachment 11 – Project Purpose**” and attach it to this application.

Identify and describe the dominant project purpose. Possible responses analyze whether the proposed facility or modification will:

- add new personal wireless service coverage to an area in which the licensee does not currently provide any personal wireless service coverage;
- add new personal wireless service capacity to an area in which the licensee currently provides personal wireless service coverage.

Check all that apply and explain why one or both apply. If the project has a different dominant purpose from the options described above, provide such purpose in full detail.

**12. TECHNICALLY FEASIBLE AND AVAILABLE ALTERNATIVES ANALYSIS**

If any of the items below apply to the project, check the box(es) and attach and mark as “**Attachment 12 – Technically Feasible and Available Alternatives Analysis**” the information required by this section.

If no items below are applicable, check this box

**12.1 Incompatibility Items (Code Section 17.46.040(B), (C) and (D))**

The project is proposed in a location that it is:

- In a Tier I or Tier II location in Code Section 17.46.040(B).
- In the public right-of-way anywhere within the City. *Note: If in a highly incompatible location in the public right-of-way (as defined in Code Section 17.46.040(E)(1)), the applicant must also provide a complete answer to Item 15 below.*
- In the public right-of-way directly in front of the areas which are five feet in either direction from the centerline of each entry door or window on the front façade of any residential building.
- In the public right-of-way within a 250-foot radius from another wireless facility within the public right-of-way.

The project is proposed to be placed on:

- A new (non-replacement) structure
- A residential historic structure
- An existing building rooftop
- An existing (or replacement) non-building structure without existing wireless facilities.

**12.2 Incompatible Design (Code Section 17.46.040(F) and Design Guidelines)**

If the project does not comply with any of the applicable standards in Code Section 17.46.040(F) or the Administrative Detailed Wireless Facility Design Guidelines, identify those specific items below:

- \_\_\_\_\_
- If not applicable, check this box.

**12.3 Justification**

- 12.3.1** If you checked any boxes in 12.1 (other than not applicable), submit a justification for deviating from the most compatible location and/or structure. The analysis must include all the following required information and/or materials:

- an aerial map that shows the general geographic area of the proposed location annotated to show:
  - all existing wireless facilities within the search ring used for this particular project;
  - the search ring used for this particular project;
  - all locations for each alternative considered for this particular project;
- for each alternative site considered, a detailed written description that includes, without limitation all the following:
  - the physical address or coordinates;
  - zoning district or plan area designation;
  - the property owner's name, contact information used in attempts to inquire about interest in a lease or other agreement to use the property for a wireless facility, when such attempts were made and the response, if any, received from the property owner;
  - support structure type considered;
  - general design concept and concealment elements/techniques considered;
  - overall height and achievable antenna centerline height;
  - the reasons why the applicant considered the potential alternative site location and/or design to be technically infeasible or unavailable or otherwise less compatible with the standards in the Carmel-by-the-Sea Municipal Code than this application.
- If the applicant did not locate any alternatives within the search ring, the analysis must expressly

state that no such alternatives were considered.

- 12.3.2** If you checked any boxes in 12.2 (other than not applicable) and listed items you claim to be technically infeasible, submit a justification for deviating from the identified design standards. The analysis must include a feasibility study that clearly demonstrates that compliance with each standard would be technically infeasible and the proposed wireless facility complies with the standards to the greatest extent technically feasible.

- 13. ENVIRONMENTAL INFORMATION**

- 13.1 CEQA Documentation**

Provide an environmental impact assessment to determine whether the proposed project is categorically exempt under Article 19 of the CEQA Guidelines, or whether the proposed project will require a Negative Declaration, Mitigated Negative Declaration or an Environmental Impact Report. If a request has been made to the CPUC for a CEQA determination for the proposed project (for example, under the CPUC's 21-day expedited review process in Decision 21-04-006), provide a copy of that submittal and any CPUC staff determination. Attach and mark as "**Attachment 13.1 – CEQA Documentation**".

- 13.2 NEPA/NHPA Documentation**

Provide confirmation that an environmental assessment, or other application determination, has been completed by or on behalf of the FCC for any facility proposed in a location identified in 47 C.F.R. 1.307 (including a floodplain) or as otherwise required by National Environmental Policy Act or the National Historic Preservation Act. Attach and mark as "**Attachment 13.2 – NEPA/NHPA Documentation**".

- 14. PUBLIC NOTICE MAILING INFORMATION AND MATERIALS**

Using a mailing list obtained from the City of all properties within a 300-foot radius of the subject site keyed to a list of names and addresses of the current property owner(s), provide two sets of adhesive mailing labels for all properties and property owners within the required radius; and unaddressed business envelopes sufficient for two mailings, stamped with first class postage, of sufficient number to contact every property owner within the required radius, the subject property owner(s), and the applicants. Label this information and materials and attach as "**Attachment 14 – Public Notice Mailing Information and Materials.**"

- 15. SPECIAL EXCEPTION REQUESTS (CODE SECTION 17.46.080)**

- 15.1 General Information Required for All Special Exception Requests**

If the applicant claims a special exception to the requirements in Chapter 17.46, Chapter 17.58 or the Administrative Detailed Wireless Facility Design Guidelines, provide an explanation of the special exception request and applicable supporting data, information and studies necessary for the City to evaluate the request, including but not limited to:

- provide a list of the specific requirements in Chapter 17.46, Chapter 17.58 or the Administrative



- Detailed Wireless Facility Design Guidelines to which the special exception request applies.
- for each requirement listed in response to the above, identify whether a denial based on the application's noncompliance with that specific requirement would violate a specific provision of federal law, state law or both and list the provision(s) that would be violated.
  - if any federal law provisions allegedly would be violated by a denial,
    - provide an explanation as to why the proposed wireless facility qualifies as a "personal wireless service facility" as defined in 47 U.S.C. § 332(c)(7)(C)(ii).
    - provide detailed information to demonstrate that the denial of the application will prohibit or have the effect of prohibiting the provision of personal wireless services or otherwise violate identified federal laws. A simple statement unsupported by any evidence will be considered incomplete. See Item 15.2 for required information.
  - if any state law provisions allegedly would be violated by a denial,
    - provide information to demonstrate that the denial of the application will violate identified state laws.
  - provide information to demonstrate the special exception requested will not compromise or excuse compliance with any fire safety, or other public health and safety requirements.
  - provide information to demonstrate how the exception request is narrowly tailored such that any deviation from Chapter 17.46, 17.58 or the Administrative Detailed Wireless Facility Design Guidelines is only to the extent necessary for compliance with federal or state law.
  - 15.2 Specific Information Required for Special Exception Requests Claiming an Effective Prohibition**

For effective prohibition claims, the statement must include all the following information and/or materials for the applicable claim (check applicable claim(s)):

**15.2.1 SIGNIFICANT GAP/LEAST INTRUSIVE MEANS CLAIM**

If an applicant asserts that: (i) an identified wireless provider suffers from a significant gap in its personal wireless services within the City, (ii) that the applicant's proposed facility is the least intrusive means of remedying such gap in services, having considered alternatives and (iii) that under the circumstances pertaining to the application, a denial of the application would constitute an "effective prohibition" under Section 47 U.S.C. §332, then, the applicant shall be required to file the following information:

If an applicant makes a significant gap/least intrusive means claim, then the applicant shall be required to submit:

**(a) Drive Test Data and Maps**

The applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which the applicant is claiming such significant gap or gaps exist, for each frequency at which the carrier provides personal wireless services. The applicant shall provide the actual drive test data recorded during such drive test, in a simple format which shall include, in table format:

- (i) the date and time for the test or test,
- (ii) the location, in longitude and latitude of each point at which signal strength was recorded and
- (iii) each signal strength recorded, measured in DBM, for each frequency. Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers.
- (iv) the applicant shall also submit drive test maps, depicting the actual signal strengths recorded during the actual drive test, for each frequency at which the carrier provides personal wireless services to its end-use customers.

If an applicant claims that it needs a “minimum” signal strength (measured in DBM) to remedy its significant gap or gaps in service, then for each frequency, the applicant shall provide three (3) signal strength coverage maps reflecting actual signal strengths in three (3) DBM bins, the first being at the alleged minimum signal strength, and two (2) additional three (3) DBM bin maps depicting signal strengths immediately below the alleged minimum signal strength claimed to be required. By way of example, if the applicant claims that it needs a minimum signal strength of – 95 DBM to remedy its alleged gap in service, then the applicant shall provide maps depicting the geographic area where the gap is alleged to exist, showing the carrier’s coverage at – 95 to -98 DBM, -99 to -101 DBM and -102 to -104 DBM, for each frequency at which the carrier provides personal wireless services to its end-use customers.

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

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

#### (c) Alternatives Analysis

The applicant shall conduct and provide an analysis of a minimum of three (3) alternative sites and designs that shows that the proposed facility is the least intrusive means of filing the identified significant gap. Where the applicant asserts that a potential less intrusive alternative location for a proposed facility is unavailable because the owner of the potential alternative site is incapable or unwilling to lease space upon such site to the applicant, the applicant shall provide proof of such unwillingness in the form of communications to and from such property owner, and/or a sworn affidavit wherein a representative of the applicant affirms, under penalty of perjury, that they attempted to negotiate a lease with the property owner, what the material terms of any such offer to the property owner were, when the offer was tendered, and how, if at all, the property owner responded to such offer.

#### 15.2.2 MATERIALLY INHIBITS CLAIM

If an applicant asserts that (i) one or more City requirement(s) will have the effect of prohibiting wireless telecommunications services because it inhibits the provision of personal wireless services because, for example, it inhibits an identified wireless provider’s ability to densify a wireless network, introduce new services to a new or existing geographic area or otherwise improve existing service capabilities, or restricts

the entry of a new wireless provider in providing personal wireless service in a particular area, and (ii) the inability to meet the identified service and performance goals materially inhibits the wireless provider's ability to compete in a fair and balanced legal and regulatory environment, and (iii) that under the circumstances pertaining to the application, a denial of the application would constitute an "effective prohibition" under Section 47 U.S.C. §332, then, the applicant shall be required to file the following information:

If the materially inhibits claim is based on a claim of the existence of a significant gap, the applicant shall provide the information in 15.2.1 above.

If the materially inhibits claim is based on grounds other than the existence of a significant gap, the applicant shall provide:

- a street-level map that shows the general geographic area of the service area(s) to be densified, to be improved, to receive new services through the proposed wireless facility (the "Service Area");
- full-color signal propagation maps in scale with the street level map that show current and predicted service coverage in the area for all active frequencies in RSRP (or other relevant signal level or quality indicator) and with a legend that describes the objective signal levels in dBm that correspond to any colors used to depict signal levels on such propagation maps. Graduations between signal levels shown on the map shall not exceed 3 dBm;
- a written narrative that describes the new services and/or minimum service levels the applicant seeks to provide within the Service Area, the uses (commercial, residential, primary thoroughfare, highway, etc.) within the Service Area, and the manner in which those uses would be negatively affected if the Service Area were to remain unaddressed;
- a statement as to whether the applicant conducted any drive test(s) and, if so, all drive test results and data (in .XLS or .CSV or similar format) together with a report that describes how and when the applicant conducted such test(s).
- an explanation of how the inability to meet the identified service and performance goals due to a City denial on the basis of the City requirement materially inhibits the wireless provider's ability to compete in a fair and balanced legal and regulatory environment.

Label this information and analysis and attach as "**Attachment 15 – Special Exception Requests.**"



## **CITY OF CARMEL-BY-THE-SEA**

Community Planning & Building Department  
Planning Division

### **WIRELESS FACILITY APPLICATION CHECKLIST**

#### **TYPE I - IV**

**NOTE:** All applications must be submitted to the City at a pre-scheduled appointment with the Community Planning and Building Department. The Community Planning and Building Department shall use reasonable efforts to provide the applicant with an appointment in a reasonable amount of time after a written request is received. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed whether the City retains the submitted materials or not.

Please check the applicable box and provide the information required below.

#### **1. PROJECT DESCRIPTION**

Provide a detailed description of the proposed facility, and how it complies with the requirements in the Carmel-by-the-Sea Municipal Code Chapter 17.46, the Administrative Detailed Wireless Facility Design Guidelines, and other City design guidelines, as applicable. Label this description "**Attachment 1 – Project Description**" and attach it to this application.

#### **2. PROJECT PLANS**

Provide complete PDF (USB Drive or CD) set of complete project plans. PDF plans shall be combined as a single PDF optimized for web viewing. Individual plan sheets will not be accepted. Attach to application and mark as "**Attachment 2 – Project Plans**". The project plans must contain all of the following:

- 2.1 Cover Sheet.** A complete cover sheet must include at a minimum:
  - a detailed project description that specifies the proposed installation and/or modifications;
  - site information that includes the site address, assessor's parcel number, block, lot(s), site latitude and longitude, zoning description, pole number (if applicable), site map, and project team contact information.
  
- 2.2 Site Development Plan.** Only a California Registered Civil Engineer or licensed surveyor

may prepare the site development plan. A complete site development plan must include:

- a north arrow, date, scale and legend;
- plan-view drawings, which include:
  - the entire property or right-of-way block with the proposed project improvements;
  - detailed before-and-after views of the any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features;
  - detailed before-and-after views for each antenna sector;
  - detailed before-and-after views for any equipment pads, shelters, enclosures, rooms, vaults and/or platforms;
  - all existing and proposed equipment (including the point of origin and point of connection for all power and telco utilities) with all dimensions, labels and ownership identifications clearly called out;
  - boundaries for all areas leased/licensed in connection with the wireless site with all dimensions clearly shown and called out;
  - boundaries for all easements, encroachments and/or other rights-of-way for access and utilities in connection with the wireless site with all dimensions clearly shown and called out;
  - all existing and proposed primary and backup utilities, including without limitation all cables, connectors, risers, conduits, cable shrouds, trays, bridges and/or doghouses, transformers, disconnect switches, panels, meters, pedestals, cabinets, vaults, handholes, generators and/or generator sockets;
- detailed before-and-after elevation drawings from all four cardinal directions, which include:
  - all existing and proposed structures, improvements and/or fixtures with all dimensions clearly called out within 500 feet of the proposed project site;
  - detailed before-and-after depictions of the any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features;
  - all existing and proposed equipment with all dimensions, labels and ownership identifications clearly called out;
  - for projects in the public right-of-way, all existing and proposed fiber optic cables, conduits, risers, guy wires, anchors, primary and secondary power lines clearly called out;
- callouts and notes for any proposed new or extended concealment elements;

- depictions of the applicant's plan for electric and data backhaul utilities, which includes the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches and points of connection;
  - a demonstration that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
- 2.3 **Equipment Inventory.** All equipment must be inventoried with the following information for each component in a separate cut sheet:
- manufacturer and model number;
  - basic dimensions (height, width, length and weight).
- 2.4 **Site Survey.** Only a California Registered Civil Engineer or licensed surveyor may prepare the site survey. A complete site survey must include:
- a north arrow, date, scale and legend;
  - private and public property boundaries and right-of-way boundaries with all bearings, distances, monuments, iron rods, caps or other markers clearly shown and called out within 75 feet from the proposed project site;
  - location of all traffic lanes within 75 feet from the proposed project site;
  - location of above and below-grade utilities and related structures and infrastructure within 75 feet from the proposed project site;
  - location of all fire hydrants, roadside call boxes and other public safety infrastructure within 75 feet from the proposed project site;
  - location of all streetlights, decorative poles, traffic signals and permanent signage, sidewalks, driveways, parkways, curbs, gutters and storm drains, benches, trash cans, mailboxes, kiosks and other street furniture within 75 feet from the proposed project site;
  - location of all existing trees, planters and other landscaping features within 75 feet from the proposed project site, including any trees at least 4 inches in diameter at a point approximately 4.5 feet above ground;
  - boundaries for all areas leased/licensed in connection with the wireless site with all dimensions clearly shown and called out;
  - boundaries for all easements and/or dedications with all dimensions clearly shown and called out;
  - all access points and/or access routes to the nearest public right-of-way;
  - approximate topographical contour lines with elevations called out;
  - all structures or improvements on the property;
  - all structures or improvements within the public right-of-way within any block partially or

- entirely occupied by the project and any elements thereof;
- all structures or improvements on adjacent parcels within 75 feet from the property line;
  - wet stamp and wet signature from preparer;
  - general specifications and notes identifying the applicable public health and safety codes and standards.
- 2.5 **Fiber Network Plan.** To the extent that the project requires running new fiber optic cables to the proposed facility, the plans must include a street map view that shows all the proposed nodes/facilities in the deployment, clearly labeled with pole number and/or site ID, the hub or base station that serves the nodes/facilities in the deployment, all fiber optic cable routes that connect the nodes/facilities to the hub, and a legend that identifies any symbols, colors or other items on the map. The fiber plans should clearly identify all meet-me points and points of connection. Even if the fiber deployment will be performed by a third-party vendor, the applicant for wireless nodes/facilities must disclose all known or reasonably foreseeable fiber network elements. This plan is not required for an application that is limited to a Small Wireless Facility.
- 2.6 **Fire Safety.** All proposed facility plans must include, describe and depict that the facility meets the fire safety requirements in Chapter 17.46, the Administrative Detailed Wireless Facility Design Guidelines, and applicable fire safety and electrical codes and standards.
- 2.7 **Electrical and Structural Safety Information.** The following engineering documents prepared under the responsible charge of and sealed by a California licensed Professional Engineer:
- A short circuit and coordination study (“SCCS”) calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
  - A one-line diagram of the electrical system;
  - Voltage Drop & Load Flow Study;
  - Load Calculation;
  - Panel Directories;
  - A plot plan showing the location of the mounting structure including address, or structure designation, or GPS location on the front sheet;
  - A plot plan showing the location of the service disconnecting means;
  - An elevation drawing of the equipment and the service disconnecting means

### □ 3. SITE PHOTOS AND PHOTO SIMULATIONS

Provide site photos and photo simulations that would allow the City to visualize the applicant's proposed project as constructed. The photo simulations must be in a high-resolution format and show the proposed facility from reasonable line-of-sight locations that would accurately and reliably reflect the appearance of the proposed facility and/or modifications as-built. Attach and mark as "Attachment 3- Site Photos and Photo Simulations". Except as otherwise provided, photo simulations must contain all the following:

- **3.1 Current Site Photos.** Current site photos must include:
  - photos of the existing site from at least three different reasonable line-of-sight locations from public streets or other publicly available areas; These should show 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. Applicant should also attempt to get permission from adjacent property owners to take photos that can be used to show potential impacts to their views. If unable to obtain permission to photograph from adjacent properties, applicant shall include a written statement identifying the properties for which consent was requested and not obtained.
  - a map detail showing each location where a photograph was taken, the proposed site and the direction to the site from each photo location.
- **3.2 Photo Simulations.** Photo simulations must include:
  - an accurate and reliable visual representation of the proposed facility from the same reasonable line-of-sight locations used in the current site photos and must include without limitation all interconnecting cables, conduits, brackets, and electronic equipment such as antennas, radio units and powering equipment;
  - at least one photo simulation depicting the proposed facility from a vantage point approximately 50 feet from the proposed support structure or location;
  - at least one photo simulation that demonstrates the impact of the proposed modification on the all the concealment elements, if any, of the support structure. Concealment elements include but are not limited to screen walls, architectural elements, radomes, landscape features, equipment enclosures and designs and/or techniques intended to mimic the natural or built environment;
  - a map detail showing each location where a photograph was taken, the proposed site and the direction to the site from each photo location.



4. REGULATORY AUTHORIZATIONS AND APPROVALS

Provide true and correct copies of all the following:

 4.1 **FCC Licenses.**

If the applicant proposes to operate in FCC-licensed spectrum, provide proof of licenses for all planned operating bands in the applicable geographic market(s). Alternatively, the applicant may provide a URL address or written instructions on where to find such licenses in publicly available FCC resources. Attach and mark as "**Attachment 4.1 – FCC Licenses**" and attach it to this application.

 4.2 **FAA Forms.**

If the proposed wireless facility requires the applicant to file FAA form 7460 or other documentation under Federal Aviation Regulation Part 77.13 *et seq.*, or under other FCC rules, provide such documentation. Label this documentation "**Attachment 4.2 – FAA Forms**" and attach it to this application.

If not applicable, check this box

 4.3 **State Regulatory Authorization.**

For facilities proposed in the public rights-of-way, the applicant must submit evidence of the applicant's regulatory status under California law to provide the services and construct the facility proposed in the application. Applicants may provide a URL address or written instructions on where to find the regulatory status (*e.g.*, CPCN or WIR) in publicly available resources. Attach and mark as "**Attachment 4.3 – State Regulatory Authorization**".

If not applicable, check this box

 4.4 **Underground Service Alert Membership.**

Provide evidence that the applicant is a member in good standing with the Underground Service Alert of Northern California and Nevada. Attach and mark as "**Attachment 4.4 – Underground Service Alert Membership**".

**5. STRUCTURE OR POLE OWNER'S AUTHORIZATION**

If the applicant does not own the structure or pole, provide a written authorization executed by the property owner(s) that authorizes the applicant to file the application and perform the work to the extent described in the application. For facilities on utility poles, the applicant may submit the standard authorization form the pole owner or joint utility association uses to demonstrate that the applicant has the authority to perform the installation or modification. For facilities on any structure owned or controlled by the City located within the public rights-of-way, the applicant must submit a copy of the executed license agreement with the written authorization from the City to demonstrate that the applicant has the authority to perform the installation or modification. Attach and label as **"Attachment 5 – Structure/Pole Owner's Authorization"**.

If not applicable, check this box

 **6. RADIO FREQUENCY COMPLIANCE REPORT**

Provide a radio frequency ("RF") exposure compliance report prepared and certified by an RF engineer that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. Attach and mark as **"Attachment 6 – RF Compliance Report"** and attach it to this application.

The RF compliance report must include:

- the actual frequency and power levels (in watts effective radiated power, not effective isotropic radiated power) for all existing and proposed antennas at the site;
- exhibits that show:
  - the location and orientation (degree azimuths) of all transmitting antennas;
  - the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC);
  - the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC);

*Note:* Each such boundary must be clearly marked and identified for every transmitting antenna at the project site. No RF emissions that would render any portion of any private or public parcel outside the public right-of-way inaccessible to the general public or hinder future development of the parcel, may extend onto or over such parcel without the property owner's prior written consent.

- an affirmation that the proposed installation will be operated in compliance with 47 U.S.C. § 324.

7. ACOUSTIC ANALYSIS

Provide a report prepared and certified by an engineer (or other qualified personnel acceptable to the City) that measures all noise-emitting equipment related to the wireless facility and would operate at the site. Such equipment includes without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators. The acoustic analysis must include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.

In lieu of a certified report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable ambient noise limits. In addition, describe whether the equipment will be passively or actively cooled if any equipment will be enclosed in a shroud, cabinet, pedestal or other enclosure. If the equipment will be actively cooled, the applicant must include the manufacturer's specifications for all active cooling mechanisms. Attach and mark as "**Attachment 7 – Acoustic Analysis**" and attach it to this application.

 8. STRUCTURAL ANALYSIS

Provide a report prepared and certified by an engineer (or other qualified personnel acceptable to the City) that evaluates whether the underlying pole, support structure or base station has the structural integrity to support all the proposed equipment and attachments. At a minimum, the analysis must be consistent with all applicable requirements in the most current versions of the CPUC General Order 95 (including, but not limited to, load and pole overturning calculations), the National Electric Safety Code, the California Building Code and any safety and construction standards required by all state and local regulations. Attach and mark as "**Attachment 8 – Structural Analysis**" and attach it to this application.

 9. LANDSCAPE PLANS

Provide a detailed written landscape plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Attach and mark as "**Attachment 9 – Landscape Plans**" and attach it to this application.

If not applicable, check this box

 10. HAZARD ASSESSMENT

A full assessment of the hazards posed by the proposed facility in the event of failure due to flood, high wind, high heat, outage, lightning strike or fire must be conducted that includes the presence of nearby vegetation and structures at applicant's cost. All materials in the proposed facility must be disclosed, including hazardous materials in any and all equipment. The assessment must identify if any tree removal or tree trimming is required or necessary in order to reduce fire hazard. Attach and mark as "**Attachment 10 – Hazard Assessment**" and attach it to this application.

**11. PROJECT PURPOSE ~~AND TECHNICAL OBJECTIVES~~**

Provide the following information and mark as “**Attachment 11 – Project Purpose**” and attach it to this application.

Identify and describe the dominant project purpose. Possible responses analyze whether the proposed facility or modification will:

- add new personal wireless service coverage to an area in which the licensee does not currently provide any personal wireless service coverage;
- add new personal wireless service capacity to an area in which the licensee currently provides personal wireless service coverage.

Check all that apply and explain why one or both apply. If the project has a different dominant purpose from the options described above, provide such purpose in full detail.

 **12. TECHNICALLY FEASIBLE AND AVAILABLE ALTERNATIVES ANALYSIS**

If any of the items below apply to the project, check the box(es) and attach and mark as “**Attachment 12 – Technically Feasible and Available Alternatives Analysis**” the information required by this section.

If no items below are applicable, check this box

 **12.1 Incompatibility Items (Code Section 17.46.040(B), (C) and (D))**

The project is proposed in a location that it is:

- In a Tier I or Tier II location in Code Section 17.46.040(B).
- In the public right-of-way anywhere within the City. *Note: If in a highly incompatible location in the public right-of-way (as defined in Code Section 17.46.040(E)(1)), the applicant must also provide a complete answer to Item 15 below.*
- In the public right-of-way directly in front of the areas which are five feet in either direction from the centerline of each entry door or window on the front façade of any residential building.
- In the public right-of-way within a 250-foot radius from another wireless facility within the public right-of-way.

The project is proposed to be placed on:

- A new (non-replacement) structure
- A residential historic structure
- An existing building rooftop
- An existing (or replacement) non-building structure without existing wireless facilities.

**12.2 Incompatible Design (Code Section 17.46.040(F) and Design Guidelines)**

If the project does not comply with any of the applicable standards in Code Section 17.46.040(F) or the Administrative Detailed Wireless Facility Design Guidelines, identify those specific items below:

- \_\_\_\_\_
- If not applicable, check this box.

 **12.3 Justification**

- 12.3.1** If you checked any boxes in 12.1 (other than not applicable), submit a justification for deviating from the most compatible location and/or structure. The analysis must include all the following required information and/or materials:

- an aerial map that shows the general geographic area of the proposed location annotated to show:
  - all existing wireless facilities within the Citysearch ring used for this particular project;
  - the search ring used for this particular project;
  - all locations for each alternative considered for this particular project;
- for each alternative site considered, a detailed written description that includes, without limitation all the following:
  - the physical address or coordinates;
  - zoning district or plan area designation;
  - the property owner's name, contact information used in attempts to inquire about interest in a lease or other agreement to use the property for a wireless facility, when such attempts were made and the response, if any, received from the property owner;
  - support structure type considered;
  - general design concept and concealment elements/techniques considered;
  - overall height and achievable antenna centerline height;
  - the reasons why the applicant considered the potential alternative site location and/or design to be technically infeasible or unavailable or otherwise less compatible with the standards in the Carmel-by-the-Sea Municipal Code than this application.
- If the applicant did not locate any alternatives within the search ring, the analysis must expressly

state that no such alternatives were considered.

- 12.3.2** If you checked any boxes in 12.2 (other than not applicable) and listed items you claim to be technically infeasible, submit a justification for deviating from the identified design standards. The analysis must include a feasibility study that clearly demonstrates that compliance with each standard would be technically infeasible and the proposed wireless facility complies with the standards to the greatest extent technically feasible.

- 13. ENVIRONMENTAL INFORMATION**

- 13.1 CEQA Documentation**

Provide an environmental impact assessment to determine whether the proposed project is categorically exempt under Article 19 of the CEQA Guidelines, or whether the proposed project will require a Negative Declaration, Mitigated Negative Declaration or an Environmental Impact Report. If a request has been made to the CPUC for a CEQA determination for the proposed project (for example, under the CPUC's 21-day expedited review process in Decision 21-04-006), provide a copy of that submittal and any CPUC staff determination. Attach and mark as "**Attachment 13.1 – CEQA Documentation**".

- 13.2 NEPA/NHPA Documentation**

Provide confirmation that an environmental assessment, or other application determination, has been completed by or on behalf of the FCC for any facility proposed in a location identified in 47 C.F.R. 1.307 (including a floodplain) or as otherwise required by National Environmental Policy Act or the National Historic Preservation Act. Attach and mark as "**Attachment 13.2 – NEPA/NHPA Documentation**".

- 14. PUBLIC NOTICE MAILING INFORMATION AND MATERIALS**

Using a mailing list obtained from the City of all properties within a 300-foot radius of the subject site keyed to a list of names and addresses of the current property owner(s), provide two sets of adhesive mailing labels for all properties and property owners within the required radius; and unaddressed business envelopes sufficient for two mailings, stamped with first class postage, of sufficient number to contact every property owner within the required radius, the subject property owner(s), and the applicants. Label this information and materials and attach as "**Attachment 14 – Public Notice Mailing Information and Materials.**"

- 15. SPECIAL EXCEPTION REQUESTS (CODE SECTION 17.46.080)**

- 15.1 General Information Required for All Special Exception Requests**

If the applicant claims a special exception to the requirements in Chapter 17.46, Chapter 17.58 or the Administrative Detailed Wireless Facility Design Guidelines, provide an explanation of the special exception request and applicable supporting data, information and studies necessary for the City to evaluate the request, including but not limited to:

- provide a list of the specific requirements in Chapter 17.46, Chapter 17.58 or the Administrative Detailed Wireless Facility Design Guidelines to which the special exception request applies.
- for each requirement listed in response to the above, identify whether a denial based on the application's noncompliance with that specific requirement would violate a specific provision of federal law, state law or both and list the provision(s) that would be violated.
- if any federal law provisions allegedly would be violated by a denial,
  - provide an explanation as to why the proposed wireless facility qualifies as a "personal wireless service facility" as defined in 47 U.S.C. § 332(c)(7)(C)(ii).
  - provide detailed information to demonstrate that the denial of the application will prohibit or have the effect of prohibiting the provision of personal wireless services or otherwise violate identified federal laws. A simple statement unsupported by any evidence will be considered incomplete. See Item 15.2 for required information.
- if any state law provisions allegedly would be violated by a denial,
  - provide information to demonstrate that the denial of the application will violate identified state laws.
- provide information to demonstrate the special exception requested will not compromise or excuse compliance with any fire safety, or other public health and safety requirements.
- provide information to demonstrate how the exception request is narrowly tailored such that any deviation from Chapter 17.46, 17.58 or the Administrative Detailed Wireless Facility Design Guidelines is only to the extent necessary for compliance with federal or state law.

**15.2 Specific Information Required for Special Exception Requests Claiming an Effective Prohibition**

For any effective prohibition claims, the statement should must include all the following information and/or materials: for the applicable claim (check applicable claim(s)):

**15.2.1 SIGNIFICANT GAP/LEAST INTRUSIVE MEANS CLAIM**

If an applicant asserts that: (i) an identified wireless provider suffers from a significant gap in its personal wireless services within the City, (ii) that the applicant's proposed facility is the least intrusive means of remedying such gap in services, having considered alternatives and (iii) that under the circumstances pertaining to the application, a denial of the application would constitute an "effective prohibition" under Section 47 U.S.C. §332, then, the applicant shall be required to file the following information:

If an applicant makes a significant gap/least intrusive means claim, then the applicant shall be required to submit:

(a) Drive Test Data and Maps

The applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which the applicant is claiming such significant gap or gaps exist, for each frequency at which the carrier

provides personal wireless services. The applicant shall provide the actual drive test data recorded during such drive test, in a simple format which shall include, in table format:

- (i) the date and time for the test or test,
- (ii) the location, in longitude and latitude of each point at which signal strength was recorded and
- (iii) each signal strength recorded, measured in DBM, for each frequency. Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers.
- (iv) the applicant shall also submit drive test maps, depicting the actual signal strengths recorded during the actual drive test, for each frequency at which the carrier provides personal wireless services to its end-use customers.

If an applicant claims that it needs a "minimum" signal strength (measured in DBM) to remedy its significant gap or gaps in service, then for each frequency, the applicant shall provide three (3) signal strength coverage maps reflecting actual signal strengths in three (3) DBM bins, the first being at the alleged minimum signal strength, and two (2) additional three (3) DBM bin maps depicting signal strengths immediately below the alleged minimum signal strength claimed to be required. By way of example, if the applicant claims that it needs a minimum signal strength of – 95 DBM to remedy its alleged gap in service, then the applicant shall provide maps depicting the geographic area where the gap is alleged to exist, showing the carrier's coverage at – 95 to -98 DBM, -99 to -101 DBM and -102 to -104 DBM, for each frequency at which the carrier provides personal wireless services to its end-use customers.

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

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

#### (c) Alternatives Analysis

The applicant shall conduct and provide an analysis of a minimum of three (3) alternative sites and designs that shows that the proposed facility is the least intrusive means of filling the identified significant gap. Where the applicant asserts that a potential less intrusive alternative location for a proposed facility is unavailable because the owner of the potential alternative site is incapable or unwilling to lease space upon such site to the applicant, the applicant shall provide proof of such unwillingness in the form of communications to and from such property owner, and/or a sworn affidavit wherein a representative of the applicant affirms, under penalty of perjury, that they attempted to negotiate a lease with the property owner, what the material terms of any such offer to the property owner were, when the offer was tendered, and how, if at all, the property owner responded to such offer.

#### 15.2.2 MATERIALLY INHIBITS CLAIM

If an applicant asserts that (i) one or more City requirement(s) will have the effect of prohibiting wireless



telecommunications services because it inhibits the provision of personal wireless services because, for example, it inhibits an identified wireless provider's ability to densify a wireless network, introduce new services to a new or existing geographic area or otherwise improve existing service capabilities, or restricts the entry of a new wireless provider in providing personal wireless service in a particular area, and (ii) the inability to meet the identified service and performance goals materially inhibits the wireless provider's ability to compete in a fair and balanced legal and regulatory environment, and (iii) that under the circumstances pertaining to the application, a denial of the application would constitute an "effective prohibition" under Section 47 U.S.C. §332, then, the applicant shall be required to file the following information:

If the materially inhibits claim is based on a claim of the existence of a significant gap, the applicant shall provide the information in 15.2.1 above.

If the materially inhibits claim is based on grounds other than the existence of a significant gap, the applicant shall provide:

- a street-level map that shows the general geographic area of the service area(s) to be densified, to be improved, to receive new services through the proposed wireless facility (the "Service Area");
- full-color signal propagation maps in scale with the street level map that show current and predicted service coverage in the area for all active frequencies in RSRP (or other relevant signal level or quality indicator) and with a legend that describes the objective signal levels in dBm that correspond to any colors used to depict signal levels on such propagation maps. Graduations between signal levels shown on the map shall not exceed 3 dBm;
- a written narrative that describes the new services and/or minimum service levels the applicant seeks to provide within the Service Area, the uses (commercial, residential, primary thoroughfare, highway, etc.) within the Service Area, and the manner in which those uses would be negatively affected if the Service Area were to remain unaddressed;
- a statement as to whether the applicant conducted any drive test(s) and, if so, all drive test results and data (in .XLS or .CSV or similar format) together with a report that describes how and when the applicant conducted such test(s).
- an explanation of how the inability to meet the identified service and performance goals due to a City denial on the basis of the City requirement materially inhibits the wireless provider's ability to compete in a fair and balanced legal and regulatory environment.

Label this information and analysis and attach as "**Attachment 15 – Special Exception Requests.**"



## **CITY OF CARMEL-BY-THE-SEA**

Community Planning & Building Department  
Planning Division

### **WIRELESS FACILITY APPLICATION CHECKLIST**

#### **TYPE V ELIGIBLE FACILITIES REQUEST**

**NOTE:** All applications must be submitted to the City at a pre-scheduled appointment with the Community Planning and Building Department. The Community Planning and Building Department shall use reasonable efforts to provide the applicant with an appointment in a reasonable amount of time after a written request is received. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed whether the City retains the submitted materials or not.

#### **1. EFR PROJECT DESCRIPTION**

Provide a detailed description of the proposed project and how it complies with the requirements in the Carmel-by-the-Sea Municipal Code Chapter 17.46 for an Eligible Facilities Request. Label this description "**Attachment 1 – EFR Project Description**" and attach it to this application. The project description must address all of the following items as applicable to the proposed project:

- For existing towers outside the public rights-of-way:
  - The overall height of the existing tower will increase by \_\_\_\_\_ (must be less than 10% or the height of 1 additional antenna array with separation from the nearest existing antenna not to exceed 20 feet (whichever is greater)).
  - Any added appurtenance to the body of the existing tower will protrude from the edge of the tower by \_\_\_\_\_ (must be not exceed 20 feet or the width of the tower at the level of the appurtenance (whichever is greater)).
  - The number of equipment cabinets for the technology involved is \_\_\_\_\_ (must not exceed the standard number of new equipment cabinets for the technology involved or exceed 4 cabinets).
  - Excavation or deployment is within the current boundaries of the leased or owned property surrounding the existing tower or is outside the current boundaries by no more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
- For existing towers in the public rights-of-way and for all existing base stations:
  - The overall height will increase by \_\_\_\_\_ (must not exceed 10% or 10 feet (whichever is greater)).

- Any added appurtenance to the body of the base station will protrude from the edge of that structure by \_\_\_\_\_ (must be less than 6 feet).
- Any ground cabinets to be installed are \_\_\_\_\_ in size (must not exceed 10% larger in height or overall volume than any other ground cabinets associated with the base station).
- There will be \_\_\_\_\_ new equipment cabinets installed on the ground (if there is no pre-existing ground cabinet associated with the base station, no new equipment cabinets may be installed on the ground). Provide cabinet dimensions on plans.
- There is no excavation or deployment outside the current site.
- For all applications:
  - The modification does not defeat the preexisting concealment elements of the eligible support structure.
  - The proposed modification does not violate a prior condition of approval, provided however that it need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the permitted thresholds for a non-substantial change described above.

*NOTE: The thresholds for height increases are cumulative limits.*

## 2. PROJECT PLANS

Provide complete PDF (USB Drive or CD) set of complete project plans. PDF plans shall be combined as a single PDF optimized for web viewing. Individual plan sheets will not be accepted. Attach to application and mark as "**Attachment 2 – Project Plans**". The project plans must contain all of the following:

### 2.1 Cover Sheet

A complete cover sheet must include at a minimum:

- a detailed project description that specifies the proposed installation and/or modifications;
- site information that includes the site address, assessor's parcel number, block, lot(s), site latitude and longitude, zoning description, pole number (if applicable), site map, and project team contact information.

### 2.2 Site Development Plan

Only a California Registered Civil Engineer or licensed surveyor may prepare the site development plan. A complete site development plan must include:

- a north arrow, date, scale and legend;
- plan-view drawings, which include:
  - the entire property or right-of-way block with the proposed project improvements;

- detailed before-and-after views of the any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps,, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, and other landscape features;
- detailed before-and-after views for each antenna sector;
- detailed before-and-after views for any equipment pads, shelters, enclosures, rooms, vaults and/or platforms;
- all existing and proposed equipment (including the point of origin and point of connection for all power and telco utilities) with all dimensions, labels and ownership identifications clearly called out;
- boundaries for all areas leased/licensed in connection with the wireless site with all dimensions clearly shown and called out;
- boundaries for all easements, encroachments and/or other rights-of-way for access and utilities in connection with the wireless site with all dimensions clearly shown and called out;
- all existing and proposed primary and backup utilities, including without limitation all cables, connectors, risers, conduits, cable shrouds, trays, bridges and/or doghouses, transformers, disconnect switches, panels, meters, pedestals, cabinets, vaults, handholes, generators and/or generator sockets;
- detailed before-and-after elevation drawings from all four cardinal directions, which include:
  - all existing and proposed structures, improvements and/or fixtures with all dimensions clearly called out within the project site;
  - detailed before-and-after depictions of the any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features;
  - all existing and proposed equipment with all dimensions, labels and ownership identifications clearly called out;
  - for projects in the public right-of-way, all existing and proposed fiber optic cables, conduits, risers, guy wires, anchors, primary and secondary power lines clearly called out;
- callouts and notes for any proposed new or extended concealment elements;
- depictions of the applicant's plan for electric and data backhaul utilities, which includes the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches and points of connection;

- a demonstration that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

### **2.3 Equipment Inventory**

All equipment must be inventoried with the following information for each component in a separate cut sheet:

- manufacturer and model number;
- basic dimensions (height, width, length and weight).

### **2.4 Site Survey**

Only a California Registered Civil Engineer or licensed surveyor may prepare the site survey. A complete site survey must include:

- a north arrow, date, scale and legend;
- private and public property boundaries and right-of-way boundaries with all bearings, distances, monuments, iron rods, caps or other markers clearly shown and called out within 75 feet from the project site;
- location of all traffic lanes within 75 feet from the project site;
- location of above and below-grade utilities and related structures and infrastructure within 75 feet from the project site;
- location of all fire hydrants, roadside call boxes and other public safety infrastructure within 75 feet from the project site;
- location of all streetlights, decorative poles, traffic signals and permanent signage, sidewalks, driveways, parkways, curbs, gutters and storm drains, within 25 feet from the project site;
- location of all existing trees, planters and other landscaping features within 25 feet from the project site, including any trees at least 4 inches in diameter at a point approximately 4.5 feet above ground;
- boundaries for all areas leased/licensed in connection with the wireless site with all dimensions clearly shown and called out;
- boundaries for all easements and/or dedications with all dimensions clearly shown and called out;
- all access points and/or access routes to the nearest public right-of-way;
- all structures or improvements on the property;
- all structures or improvements within 75 feet from the project site, including but not limited to adjacent parcels;
- 
- general specifications and notes identifying the applicable public health and safety codes and standards.

**2.5 Fiber Network Plan**

To the extent that the project requires running new fiber optic cables to the proposed facility, the plans must include a street map view that shows all the proposed facility in the deployment, clearly labeled with pole number and/or site ID, the hub or base station that serves the facility in the deployment, all fiber optic cable routes that connect the facility to the hub, and a legend that identifies any symbols, colors or other items on the map. The fiber plans should clearly identify all meet-me points and points of connection. Even if the fiber deployment will be performed by a third-party vendor, the applicant for wireless facility must disclose all known or reasonably foreseeable fiber network elements.

- 2.6 Fire Safety.** All proposed facility plans must include, describe and depict that the facility meets the fire safety requirements in Chapter 17.46, and applicable fire safety and electrical codes and standards.

- 2.7 Electrical and Structural Safety Information.** The following engineering documents prepared under the responsible charge of and sealed by a California licensed Professional Engineer:

- A short circuit and coordination study (“SCCS”) calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
- A one-line diagram of the electrical system;
- Voltage Drop & Load Flow Study;
- Load Calculation;
- Panel Directories;
- A plot plan showing the location of the mounting structure including address, or structure designation, or GPS location on the front sheet;
- A plot plan showing the location of the service disconnecting means;
- An elevation drawing of the equipment and the service disconnecting means

 **3. SITE PHOTOS AND PHOTO SIMULATIONS**

Provide site photos and photo simulations that would allow the City to visualize the applicant’s proposed project as constructed. The photo simulations must be in a high-resolution format and show the proposed facility from reasonable line-of-sight locations that would accurately and reliably reflect the appearance of the proposed facility and/or modifications as-built. Label these photo simulations “**Attachment 3 – Site Photos and Photo Simulations**” and attach them to this application. Except as otherwise provided, photo simulations must contain all the following:

- 3.1 Current Site Photos.** Current site photos must include:
  - photos of the existing site from at least three different reasonable line-of-sight locations from public streets or other publicly available areas;

- a map detail showing each location where a photograph was taken, the proposed site and the direction to the site from each photo location.
- 3.2 Photo Simulations.** Photo simulations must include:
  - an accurate and reliable visual representation of the proposed facility from the same reasonable line-of-sight locations used in the current site photos and must include without limitation all interconnecting cables, conduits, brackets, and electronic equipment such as antennas, radio units and powering equipment;
  - at least one photo simulation depicting the proposed facility from a vantage point approximately 50 feet from the proposed support structure or location;
  - at least one photo simulation that demonstrates the impact of the proposed modification on the all the concealment elements, if any, of the support structure. Concealment elements include but are not limited to screen walls, architectural elements, radomes, landscape features, equipment enclosures and designs and/or techniques intended to mimic the natural or built environment;
  - a map detail showing each location where a photograph was taken, the proposed site and the direction to the site from each photo location.

**4. REGULATORY AUTHORIZATIONS AND APPROVALS**

Provide true and correct copies of all the following:

**4.1 Prior Local Regulatory Approvals**

Provide copies of all permits and/or other regulatory approvals issued by the City (or other local public agency with jurisdiction over the subject wireless tower or base station) in connection with the initial construction or installation and any subsequent collocations, modifications or permit renewals of the subject wireless tower or base station. Alternatively, the applicant may submit a written justification that sets forth reasons why prior permits or other regulatory approvals were not required for the wireless tower or base station at the time it was constructed or modified. Label this documentation "**Attachment 4.1 – Local Regulatory Approvals**" and attach it to this application.

**4.2 FCC Licenses**

If the applicant proposes to operate in FCC-licensed spectrum, provide proof of licenses for all planned operating bands in the applicable geographic market(s). Alternatively, the applicant may provide a URL address or written instructions on where to find such licenses in publicly available FCC resources. Label this documentation "**Attachment 4.2 – FCC Licenses**" and attach it to this application.

**4.3 FAA Forms**

If the proposed wireless facility requires the applicant to file FAA form 7460 or other documentation under

Federal Aviation Regulation Part 77.13 *et seq.*, or under other FCC rules, provide such documentation. Label this documentation “**Attachment 4.3 – FAA Forms**” and attach it to this application.

If not applicable, check this box

**4.4 State Regulatory Authorization**

For facilities proposed in the public rights-of-way, the applicant must submit evidence of the applicant’s regulatory status under California law to provide the services and construct the facility proposed in the application. Applicants may provide a URL address or written instructions on where to find the regulatory status (*e.g.*, CPCN or WIR) in publicly available resources. Label this documentation “**Attachment 4.4 – State Regulatory Authorization**” and attach it to this application.

If not applicable, check this box

**4.5 Underground Service Alert Membership**

Provide evidence that the applicant is a member in good standing with the Underground Service Alert of Northern California and Nevada. Label this documentation “**Attachment 4.5 – Underground Service Alert Membership**” and attach it to this application.

**5. STRUCTURE OR POLE OWNER’S AUTHORIZATION**

If the applicant does not own the structure or pole, provide a written authorization executed by the property owner(s) that authorizes the applicant to file the application and perform the work to the extent described in the application. For facilities on utility poles, the applicant may submit the standard authorization form the pole owner or joint utility association uses to demonstrate that the applicant has the authority to perform the installation or modification. For facilities on any structure owned or controlled by the City located within the public rights-of-way, the applicant must submit a copy of the executed license agreement with the written authorization from the City to demonstrate that the applicant has the authority to perform the installation or modification. Attach and label as “**Attachment 5 – Structure/Pole Owner’s Authorization**”.

If not applicable, check this box

**6. RADIO FREQUENCY COMPLIANCE REPORT**

Provide a radio frequency (“RF”) exposure compliance report prepared and certified by an RF engineer that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. Label this report “**Attachment 6 – RF Compliance Report**” and attach it to this application.

The RF compliance report must include:

- the actual frequency and power levels (in watts effective radiated power, not effective isotropic



radiated power) for all existing and proposed antennas at the site;

- exhibits that show:
    - the location and orientation (degree azimuths) of all transmitting antennas;
    - the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC);
    - the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC);
- Note:** Each such boundary must be clearly marked and identified for every transmitting antenna at the project site.
- an affirmation that the proposed installation will be operated in compliance with 47 U.S.C. § 324.

#### 7. ACOUSTIC ANALYSIS

Provide a report prepared and certified by an engineer (or other qualified personnel acceptable to the City) that measures all noise-emitting equipment related to the wireless facility and would operate at the site. Such equipment includes without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators. The acoustic analysis must include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.

In lieu of a certified report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable ambient noise limits. In addition, describe whether the equipment will be passively or actively cooled if any equipment will be enclosed in a shroud, cabinet, pedestal or other enclosure. If the equipment will be actively cooled, the applicant must include the manufacturer's specifications for all active cooling mechanisms. Label this analysis "**Attachment 7 – Acoustic Analysis**" and attach it to this application.

#### 8. STRUCTURAL ANALYSIS

Provide a report prepared and certified by an engineer (or other qualified personnel acceptable to the City) that evaluates whether the underlying pole, support structure or base station has the structural integrity to support all the proposed equipment and attachments. At a minimum, the analysis must be consistent with all applicable requirements in the most current versions of the CPUC General Order 95 (including, but not limited to, load and pole overturning calculations), the National Electric Safety Code, the California Building Code and any safety and construction standards required by all state and local regulations. Label this analysis "**Attachment 8 – Structural Analysis**" and attach it to this application.

**9. LANDSCAPE PLANS**

Provide a detailed written landscape plan with landscape features when the facility is proposed to be placed in a landscaped area. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Label this analysis “**Attachment 9 – Landscape Plans**” and attach it to this application.

If not applicable, check this box

 **10. HAZARD ASSESSMENT**

A full assessment of the hazards posed by the proposed facility in the event of failure due to flood, high wind, high heat, outage, lightning strike or fire must be conducted that includes the presence of nearby vegetation and structures at applicant’s cost. All materials in the proposed facility must be disclosed, including hazardous materials in any and all equipment. The assessment must identify if any tree removal or tree trimming is required or necessary in order to reduce fire hazard. Label this documentation “**Attachment 10 – Hazard Assessment**” and attach it to this application.

 **11. PUBLIC NOTICE MAILING INFORMATION AND MATERIALS**

Using a mailing list obtained from the City of all properties within a 300-foot radius of the subject site keyed to a list of names and addresses of the current property owner(s), provide two sets of adhesive mailing labels for all properties and property owners within the required radius; and unaddressed business envelopes sufficient for two mailings, stamped with first class postage, of sufficient number to contact every property owner within the required radius, the subject property owner(s), and the applicants. Label this information and materials “**Attachment 11 – Public Notice Mailing Information and Materials**” and attach it to this application.



## **CITY OF CARMEL-BY-THE-SEA**

Community Planning & Building Department  
Planning Division

### **WIRELESS FACILITY APPLICATION CHECKLIST**

#### **TYPE V ELIGIBLE FACILITIES REQUEST**

**NOTE:** All applications must be submitted to the City at a pre-scheduled appointment with the Community Planning and Building Department. The Community Planning and Building Department shall use reasonable efforts to provide the applicant with an appointment in a reasonable amount of time after a written request is received. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed whether the City retains the submitted materials or not.

#### **1. EFR PROJECT DESCRIPTION**

Provide a detailed description of the proposed project and how it complies with the requirements in the Carmel-by-the-Sea Municipal Code Chapter 17.46 for an Eligible Facilities Request. Label this description "**Attachment 1 – EFR Project Description**" and attach it to this application. The project description must address all of the following items as applicable to the proposed project:

- For existing towers outside the public rights-of-way:
  - The overall height of the existing tower will increase by \_\_\_\_\_ (must be less than 10% or the height of 1 additional antenna array with separation from the nearest existing antenna not to exceed 20 feet (whichever is greater)).
  - Any added appurtenance to the body of the existing tower will protrude from the edge of the tower by \_\_\_\_\_ (must be not exceed 20 feet or the width of the tower at the level of the appurtenance (whichever is greater)).
  - The number of equipment cabinets for the technology involved is \_\_\_\_\_ (must not exceed the standard number of new equipment cabinets for the technology involved or exceed 4 cabinets).
  - Excavation or deployment is within the current boundaries of the leased or owned property surrounding the existing tower or is outside the current boundaries by no more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
- For existing towers in the public rights-of-way and for all existing base stations:
  - The overall height will increase by \_\_\_\_\_ (must not exceed 10% or 10 feet (whichever is greater)).

- Any added appurtenance to the body of the base station will protrude from the edge of that structure by \_\_\_\_\_ (must be less than 6 feet).
- Any ground cabinets to be installed are \_\_\_\_\_ in size (must not exceed 10% larger in height or overall volume than any other ground cabinets associated with the base station).
- There will be \_\_\_\_\_ new equipment cabinets installed on the ground (if there is no pre-existing ground cabinet associated with the base station, no new equipment cabinets may be installed on the ground). Provide cabinet dimensions on plans.
- There is no excavation or deployment outside the current site.
- For all applications:
  - The modification does not defeat the preexisting concealment elements of the eligible support structure.
  - The proposed modification does not violate a prior condition of approval, provided however that it need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the permitted thresholds for a non-substantial change described above.

*NOTE: The thresholds for height increases are cumulative limits.*

## 2. PROJECT PLANS

Provide complete PDF (USB Drive or CD) set of complete project plans. PDF plans shall be combined as a single PDF optimized for web viewing. Individual plan sheets will not be accepted. Attach to application and mark as "**Attachment 2 – Project Plans**". The project plans must contain all of the following:

### 2.1 Cover Sheet

A complete cover sheet must include at a minimum:

- a detailed project description that specifies the proposed installation and/or modifications;
- site information that includes the site address, assessor's parcel number, block, lot(s), site latitude and longitude, zoning description, pole number (if applicable), site map, and project team contact information.

### 2.2 Site Development Plan

Only a California Registered Civil Engineer or licensed surveyor may prepare the site development plan. A complete site development plan must include:

- a north arrow, date, scale and legend;
- plan-view drawings, which include:
  - the entire property or right-of-way block with the proposed project improvements;

- detailed before-and-after views of the any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, ~~driveways, curbs, gutters,~~ drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, ~~trees~~ and other landscape features;
- detailed before-and-after views for each antenna sector;
- detailed before-and-after views for any equipment pads, shelters, enclosures, rooms, vaults and/or platforms;
- all existing and proposed equipment (including the point of origin and point of connection for all power and telco utilities) with all dimensions, labels and ownership identifications clearly called out;
- boundaries for all areas leased/licensed in connection with the wireless site with all dimensions clearly shown and called out;
- boundaries for all easements, encroachments and/or other rights-of-way for access and utilities in connection with the wireless site with all dimensions clearly shown and called out;
- all existing and proposed primary and backup utilities, including without limitation all cables, connectors, risers, conduits, cable shrouds, trays, bridges and/or doghouses, transformers, disconnect switches, panels, meters, pedestals, cabinets, vaults, handholes, generators and/or generator sockets;
- detailed before-and-after elevation drawings from all four cardinal directions, which include:
  - all existing and proposed structures, improvements and/or fixtures with all dimensions clearly called out within ~~500 feet of the proposed~~ project site;
  - detailed before-and-after depictions of the any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features;
  - all existing and proposed equipment with all dimensions, labels and ownership identifications clearly called out;
  - for projects in the public right-of-way, all existing and proposed fiber optic cables, conduits, risers, guy wires, anchors, primary and secondary power lines clearly called out;
- callouts and notes for any proposed new or extended concealment elements;

- depictions of the applicant's plan for electric and data backhaul utilities, which includes the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches and points of connection;
- a demonstration that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

### 2.3 Equipment Inventory

All equipment must be inventoried with the following information for each component in a separate cut sheet:

- manufacturer and model number;
- basic dimensions (height, width, length and weight).

### 2.4 Site Survey

Only a California Registered Civil Engineer or licensed surveyor may prepare the site survey. A complete site survey must include:

- a north arrow, date, scale and legend;
- private and public property boundaries and right-of-way boundaries with all bearings, distances, monuments, iron rods, caps or other markers clearly shown and called out within 75 feet from the ~~proposed~~ project site;
- location of all traffic lanes within 75 feet from the ~~proposed~~ project site;
- location of above and below-grade utilities and related structures and infrastructure within 75 feet from the ~~proposed~~ project site;
- location of all fire hydrants, roadside call boxes and other public safety infrastructure within 75 feet from the ~~proposed~~ project site;
- location of all streetlights, decorative poles, traffic signals and permanent signage, sidewalks, driveways, parkways, curbs, gutters and storm drains, ~~benches, trash cans, mailboxes, kiosks and other street furniture~~ within 7525 feet from the ~~proposed~~ project site;
- location of all existing trees, planters and other landscaping features within 7525 feet from the ~~proposed~~ project site, including any trees at least 4 inches in diameter at a point approximately 4.5 feet above ground;
- boundaries for all areas leased/licensed in connection with the wireless site with all dimensions clearly shown and called out;
- boundaries for all easements and/or dedications with all dimensions clearly shown and called out;
- all access points and/or access routes to the nearest public right-of-way;
- ~~approximate topographical contour lines with elevations called out;~~
- all structures or improvements on the property;
- ~~all structures or improvements within the public right-of-way within any block partially or entirely occupied by the 75 feet from the project and any elements thereof;~~
- ~~all structures or improvements onsite, including but not limited to adjacent parcels within 75 feet~~

- ~~from the property line;~~
- ~~wet stamp and wet signature from preparer;~~
- general specifications and notes identifying the applicable public health and safety codes and standards.

### 2.5 Fiber Network Plan

To the extent that the project requires running new fiber optic cables to the proposed ~~node~~ facility, the plans must include a street map view that shows all the proposed ~~node~~ facility in the deployment, clearly labeled with pole number and/or site ID, the hub or base station that serves the ~~node~~ facility in the deployment, all fiber optic cable routes that connect the ~~node~~ facility to the hub, and a legend that identifies any symbols, colors or other items on the map. The fiber plans should clearly identify all meet-me points and points of connection. Even if the fiber deployment will be performed by a third-party vendor, the applicant for wireless ~~node~~ facility must disclose all known or reasonably foreseeable fiber network elements.

- 2.6 Fire Safety.** All proposed facility plans must include, describe and depict that the facility meets the fire safety requirements in Chapter 17.46, and applicable fire safety and electrical codes and standards.
- 2.7 Electrical and Structural Safety Information.** The following engineering documents prepared under the responsible charge of and sealed by a California licensed Professional Engineer:
  - A short circuit and coordination study ("SCCS") calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
  - A one-line diagram of the electrical system;
  - Voltage Drop & Load Flow Study;
  - Load Calculation;
  - Panel Directories;
  - A plot plan showing the location of the mounting structure including address, or structure designation, or GPS location on the front sheet;
  - A plot plan showing the location of the service disconnecting means;
  - An elevation drawing of the equipment and the service disconnecting means

### 3. SITE PHOTOS AND PHOTO SIMULATIONS

Provide site photos and photo simulations that would allow the City to visualize the applicant's proposed project as constructed. The photo simulations must be in a high-resolution format and show the proposed facility from reasonable line-of-sight locations that would accurately and reliably reflect the appearance of the proposed facility and/or modifications as-built. Label these photo simulations "**Attachment 3 – Site Photos**

and Photo Simulations” and attach them to this application. Except as otherwise provided, photo simulations must contain all the following:

- 3.1 Current Site Photos.** Current site photos must include:
  - photos of the existing site from at least three different reasonable line-of-sight locations from public streets or other publicly available areas;
  - a map detail showing each location where a photograph was taken, the proposed site and the direction to the site from each photo location.
- 3.2 Photo Simulations.** Photo simulations must include:
  - an accurate and reliable visual representation of the proposed facility from the same reasonable line-of-sight locations used in the current site photos and must include without limitation all interconnecting cables, conduits, brackets, and electronic equipment such as antennas, radio units and powering equipment;
  - at least one photo simulation depicting the proposed facility from a vantage point approximately 50 feet from the proposed support structure or location;
  - at least one photo simulation that demonstrates the impact of the proposed modification on the all the concealment elements, if any, of the support structure. Concealment elements include but are not limited to screen walls, architectural elements, radomes, landscape features, equipment enclosures and designs and/or techniques intended to mimic the natural or built environment;
  - a map detail showing each location where a photograph was taken, the proposed site and the direction to the site from each photo location.

**4. REGULATORY AUTHORIZATIONS AND APPROVALS**

Provide true and correct copies of all the following:

**4.1 Prior Local Regulatory Approvals**

Provide copies of all permits and/or other regulatory approvals issued by the City (or other local public agency with jurisdiction over the subject wireless tower or base station) in connection with the initial construction or installation and any subsequent collocations, modifications or permit renewals of the subject wireless tower or base station. Alternatively, the applicant may submit a written justification that sets forth reasons why prior permits or other regulatory approvals were not required for the wireless tower or base station at the time it was constructed or modified. Label this documentation “**Attachment 4.1 – Local Regulatory Approvals**” and attach it to this application.

**4.2 FCC Licenses**



If the applicant proposes to operate in FCC-licensed spectrum, provide proof of licenses for all planned operating bands in the applicable geographic market(s). Alternatively, the applicant may provide a URL address or written instructions on where to find such licenses in publicly available FCC resources. Label this documentation “**Attachment 4.2 – FCC Licenses**” and attach it to this application.

**4.3 FAA Forms**

If the proposed wireless facility requires the applicant to file FAA form 7460 or other documentation under Federal Aviation Regulation Part 77.13 *et seq.*, or under other FCC rules, provide such documentation. Label this documentation “**Attachment 4.3 – FAA Forms**” and attach it to this application.

If not applicable, check this box

**4.4 State Regulatory Authorization**

For facilities proposed in the public rights-of-way, the applicant must submit evidence of the applicant’s regulatory status under California law to provide the services and construct the facility proposed in the application. Applicants may provide a URL address or written instructions on where to find the regulatory status (*e.g.*, CPCN or WIR) in publicly available resources. Label this documentation “**Attachment 4.4 – State Regulatory Authorization**” and attach it to this application.

If not applicable, check this box

**4.5 Underground Service Alert Membership**

Provide evidence that the applicant is a member in good standing with the Underground Service Alert of Northern California and Nevada. Label this documentation “**Attachment 4.5 – Underground Service Alert Membership**” and attach it to this application.

**5. STRUCTURE OR POLE OWNER’S AUTHORIZATION**

If the applicant does not own the structure or pole, provide a written authorization executed by the property owner(s) that authorizes the applicant to file the application and perform the work to the extent described in the application. For facilities on utility poles, the applicant may submit the standard authorization form the pole owner or joint utility association uses to demonstrate that the applicant has the authority to perform the installation or modification. For facilities on any structure owned or controlled by the City located within the public rights-of-way, the applicant must submit a copy of the executed license agreement with the written authorization from the City to demonstrate that the applicant has the authority to perform the installation or modification. Attach and label as “**Attachment 5 – Structure/Pole Owner’s Authorization**”.

If not applicable, check this box

**6. RADIO FREQUENCY COMPLIANCE REPORT**

Provide a radio frequency (“RF”) exposure compliance report prepared and certified by an RF engineer that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. Label this report “**Attachment 6 – RF Compliance Report**” and attach it to this application.

The RF compliance report must include:

- the actual frequency and power levels (in watts effective radiated power, not effective isotropic radiated power) for all existing and proposed antennas at the site;
- exhibits that show:
  - the location and orientation (degree azimuths) of all transmitting antennas;
  - the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC);
  - the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC);

**Note:** Each such boundary must be clearly marked and identified for every transmitting antenna at the project site.
- an affirmation that the proposed installation will be operated in compliance with 47 U.S.C. § 324.

 **7. ACOUSTIC ANALYSIS**

Provide a report prepared and certified by an engineer (or other qualified personnel acceptable to the City) that measures all noise-emitting equipment related to the wireless facility and would operate at the site. Such equipment includes without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators. The acoustic analysis must include an analysis of the manufacturers’ specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.

In lieu of a certified report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable ambient noise limits. In addition, describe whether the equipment will be passively or actively cooled if any equipment will be enclosed in a shroud, cabinet, pedestal or other enclosure. If the equipment will be actively cooled, the applicant must include the manufacturer’s specifications for all active cooling mechanisms. Label this analysis “**Attachment 7 – Acoustic Analysis**” and attach it to this application.

 **8. STRUCTURAL ANALYSIS**

Provide a report prepared and certified by an engineer (or other qualified personnel acceptable to the City) that evaluates whether the underlying pole, support structure or base station has the structural integrity to support all the proposed equipment and attachments. At a minimum, the analysis must be consistent with all applicable requirements in the most current versions of the CPUC General Order 95 (including, but not limited to, load and pole overturning calculations), the National Electric Safety Code, the California Building Code and any safety and construction standards required by all state and local regulations. Label this analysis “**Attachment 8 – Structural Analysis**” and attach it to this application.

**9. LANDSCAPE PLANS**

Provide a detailed written landscape plan with landscape features when the facility is proposed to be placed in a landscaped area. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Label this analysis “**Attachment 9 – Landscape Plans**” and attach it to this application.

If not applicable, check this box

**10. HAZARD ASSESSMENT**

A full assessment of the hazards posed by the proposed facility in the event of failure due to flood, high wind, high heat, outage, lightning strike or fire must be conducted that includes the presence of nearby vegetation and structures at applicant’s cost. All materials in the proposed facility must be disclosed, including hazardous materials in any and all equipment. The assessment must identify if any tree removal or tree trimming is required or necessary in order to reduce fire hazard. Label this documentation “**Attachment 10 – Hazard Assessment**” and attach it to this application.

**11. PUBLIC NOTICE MAILING INFORMATION AND MATERIALS**

Using a mailing list obtained from the City of all properties within a 300-foot radius of the subject site keyed to a list of names and addresses of the current property owner(s), provide two sets of adhesive mailing labels for all properties and property owners within the required radius; and unaddressed business envelopes sufficient for two mailings, stamped with first class postage, of sufficient number to contact every property owner within the required radius, the subject property owner(s), and the applicants. Label this information and materials “**Attachment 11 – Public Notice Mailing Information and Materials**” and attach it to this application.

## **Administrative Detailed Wireless Facility Design Guidelines**

All type I-IV wireless facilities must be consistent with all requirements of Chapters 17.46, 17.58 as well as those contained within these Administrative Guidelines.

The intent of these guidelines is to promote and maintain the City's special character as a residential village with a compact development pattern that respects and has been strongly influenced by the natural setting and is typified by a visually rich and creative mix of architectural styles. The execution of design details can substantially affect the perceived character of a wireless facility, including its mass and scale and its design compatibility within the neighborhood context. Therefore, compliance with these guidelines is important.

### **I. Facilities on Parcels**

- A. **Towers.** The following requirements shall be applied to an application for a tower:
1. **Quantity.** No more than one tower shall be permitted on any one parcel.
  2. **Fall Zone.** All towers must be set back from habitable structures approved for residential occupancy by a distance equal to one hundred and ten percent (110%) of the height of the tower. The reviewing authority may reduce the setback requirement for freestanding towers that meet Class 3 structural standards for critical infrastructure as defined in the most current revision of the ANSI/TIA-222 Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures.
  3. **Setbacks.** All wireless facilities must be compliant with all setback requirements applicable to structures on the underlying parcel; notwithstanding the foregoing, no wireless facilities shall be installed (in whole or in part) in the front setback applicable to structures on the underlying parcel.
  4. **Secondary Power Sources.** The reviewing authority may approve secondary or backup power sources and/or generators on a case-by-case basis. 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 feasible in conduits large enough to accommodate future collocated wireless facilities. To the extent feasible, undergrounded cables and wires must

- transition directly into the pole base without any external doghouse or similar enclosure. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible. No new overhead utility lines or service drops are permitted merely because compliance with the undergrounding requirements would increase the project cost. Microwave or other wireless backhaul is discouraged when it would involve a separate and non-stealth antenna. Undergrounding of utilities will not be required when it is determined by the City Forester that the undergrounding operation will damage or destroy significant tree(s); provided, that the property owner posts a bond in an amount equal to the estimated cost of the undergrounding work. The bond shall be maintained until such time that the service lateral is placed underground.
6. **Parking; Access.** Any equipment or improvements constructed or installed in connection with any wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, existing parking and access should be used for ingress to and egress from new wireless facilities rather than constructing new parking or access improvements to access the wireless facility. Any new parking or access improvements should be the minimum size necessary to reasonably accommodate the proposed use and comply with applicable safety codes.
  7. **Tower-Mounted Antennas and Accessory Equipment.** All tower-mounted antennas and equipment must be mounted as close to the tower structure as possible to reduce its overall visual profile. Applicants must mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors and utility demarcation boxes) directly behind the antennas to the maximum extent feasible.
  8. **Ground-Mounted Accessory Equipment.** All accessory equipment not mounted on the tower must either be concealed underground in an environmentally controlled vault, or concealed within an existing or new structure, or other enclosure(s) subject to the reviewing authority's prior approval. The reviewing authority may require additional stealth elements as the reviewing authority finds necessary or appropriate to blend the ground-mounted equipment, enclosure and/or other improvements into the natural and/or built environment consistent with the underlying design guidelines of its zoning district. An "environmentally controlled underground equipment vault" means a below-grade chamber for electronic equipment that protects against heat, humidity, water intrusion and fire. Undergrounding of accessory equipment will not be required when it is determined by the City Forester that the undergrounding operation will damage or destroy significant tree(s); provided, that the property owner posts a bond in an amount equal to the estimated cost of the undergrounding work. The bond shall be maintained until such time that the service lateral is placed underground.

**B. Building-Mounted Wireless Facilities.**

1. **Rooftop Wireless Facilities.** All building-mounted equipment must be placed on the rooftop, screened from public view, stealth, completely concealed and architecturally integrated into rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls replaced with RF-transparent material and finished to mimic the replaced materials). When integration with existing rooftop building features is not feasible, the facilities shall be stealth, completely concealed new structures or appurtenances designed to mimic the support structure's existing architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks). Facilities must be located behind existing parapet walls or other existing screening elements to the maximum extent feasible.
2. **Height Limitations.** Building-mounted wireless facilities shall not exceed the height limit for structures in the applicable zoning district unless the facility is fully screened as required by Section I(B)(1), in which case the facility may exceed the height limit by up to 10 feet. All equipment mounted on rooftops shall be as low as necessary to achieve the desired architectural integration.

**C. Fire and Electrical Safety Standards.** The wireless communications facility shall contain:

1. Surge protection for lightning discharge and other significant electrical disturbances.
2. Signage as required by the permit conditions, the National Electric Code or the Fire Safety Authority.

**II. Facilities In Public Rights-of-Way****A. Poles**

1. **Replacement Poles.** All replacement poles must be: (1) located as close to the removed pole's location as possible, unless relocation would be in a more compatible location; (2) aligned with the other existing poles along the public right-of-way; (3) designed to resemble existing poles, including an overall height that is no greater than 10 feet taller than the replaced pole, or the additional height necessary to comply with CPUC safety standards such as General Order 95.
2. **New Poles.** All new poles must be: (1) aligned with the other existing poles along the public right-of-way; (2) designed to be aesthetically consistent with the proposed location; (3) placed as close as possible to alignment with the property line that divides two parcels abutting the public rights-of-way; and (4) compliant with all applicable standards and specifications issued by the City,

which may include, without limitation, requirements related to aesthetics, materials and safety.

## B. Antennas

1. **Placement.** Antennas should be placed at the location(s) on the pole that do not significantly impair public or private views described in CMC 17.46.040(F)(1)(k), and that result in the least intrusive and most compatible aesthetic design based on site-specific circumstances.
2. **Concealment.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a unified shroud or “radome” to the extent technically feasible. Antenna shrouds must be visually consistent with the underlying pole’s design, color and scale and painted with matte non-reflective paint. Antenna shrouds placed above a pole must taper down to the point where the shroud and pole connect to conceal the cables below the antennas and create a smooth transition into the pole. All antenna mounting posts shall be trimmed so that the post does not extend above the antenna. For antennas approved to be affixed to the side of the pole within a shroud, all cables must be concealed within the shroud and the extension arm, if any, to create a smooth transition into the pole, to the maximum extent feasible, or back into the external conduit on the pole, if any.
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.

## C. Accessory Equipment.

1. **Placement.** The placement of accessory equipment is ordered from least compatible to most compatible, as follows:
  - a. within a separate surface-mounted equipment cabinet.
  - b. within a shroud that exceeds 6 cubic feet in volume mounted above ground level on the pole.
  - c. within a shroud that is 6 cubic feet in volume or less mounted above ground level on the pole.
  - d. within an environmentally controlled underground equipment vault that does not impact any healthy trees.

- Accessory equipment up to 6 cubic feet in volume is allowed to be mounted on a pole. The City strongly prefers that all accessory equipment in excess of 6 cubic feet be undergrounded whenever technically feasible because it 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 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 requirements are required by CPUC General Order 95.
    - a. **Concealment.** Applicants should propose to place any pole-mounted accessory equipment using concealment elements (e.g. paint, film, shielding) and in the least conspicuous position under the circumstances presented by the proposed pole and location. Pole-mounted accessory equipment may be installed behind street, traffic, or other signs to the extent that the installation complies with applicable public health and safety regulations. Unless placed behind a street sign or some other concealment that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views. If more than one orientation would be technically feasible, the reviewing authority may select the most appropriate orientation.
    - b. **Minimum Ground Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least 8.5 feet above ground level at the base of the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than 8.5 feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.
    - c. **Horizontal Extensions.** Pole-mounted accessory equipment should be as close to flush with the pole as technically feasible and shall not extend over any roadway for vehicular travel, any pedestrian path of travel, or any abutting private property. If applicable laws preclude flush-mounted accessory equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for compliance with such laws and concealed by opaque material (such as cabinet “flaps” or “wings”).



#### 4. **Surface-Mounted Equipment Cabinets.**

- a. **Concealment.** Concealment for surface-mounted equipment cabinets shall be design to be compatible with the location and existing uses and aesthetic elements in the vicinity. In general, the City prefers surface-mounted accessory equipment to be stealth with concealment elements as follows, subject to approval by the reviewing authority: (i) within a landscaped parkway, median, or similar location, behind or among new/existing landscape or hardscape features, and painted, powder coated or wrapped in flat natural colors to blend with the landscape features; (ii) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure; and (iii) if neither landscaping concealment or street furniture is available, accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing surface-mounted accessory equipment cabinets in the vicinity.
- b. **Public Safety.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, individual surface-mounted accessory equipment cabinet may not exceed four feet in height or four feet in width.

#### D. **Utilities Serving the Wireless Facility.**

1. **Vertical Cable Risers.** All cables, wires, and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires, and other connectors must be concealed from public view. To the extent that cables, wires, and other connectors cannot be routed through the pole, such as with wood utility poles, applicants shall route them through external conduits or shrouds that have been finished to match the underlying pole. The applicant shall minimize the number and size of external conduits to the extent technically feasible.
2. **Electric Meters.** Wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a smart meter, which shall be placed in a shroud unless not allowed by the safety rules of the electric utility. A separate meter pedestal may only be installed if the electric utility service rules do not allow other options. If the proposed facility involves a surface-mounted equipment cabinet, an electric meter may be integrated with the cabinet, but the reviewing authority shall not approve a separate surface-mounted electric meter pedestal. In no case shall the applicant be permitted to use electricity/power provided by a City-owned circuit without separate written authorization from the City.

3. **Existing Underground Conduits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing underground conduits whenever available and technically feasible.

E. **Fire Safety.** The wireless facility shall contain:

1. A power shut off readily accessible to fire service personnel for emergencies;
2. Surge protection for lightning discharge and other significant electrical disturbances;
3. Signage as required by the permit conditions, the National Electric Code or the Fire Safety Authority; and
4. Instructions for first responders to de-energize the equipment.

DRAFT

**Planning Commission**  
**Administrative Detailed Wireless Facility Design Guidelines**

~~In addition to All type I-IV wireless facilities must be consistent with all other design requirements in of Chapters 17.46 and 17.58, the following requirements shall be applied to an application for a wireless facility, as applicable, well as those contained within these Administrative Guidelines.~~

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  3. **Setbacks.** All wireless facilities must be compliant with all setback requirements applicable to structures on the underlying parcel; notwithstanding the foregoing, no wireless facilities shall be installed (in whole or in part) in the front setback applicable to structures on the underlying parcel.
  4. **Secondary Power Sources.** The reviewing authority may approve secondary or backup power sources and/or generators on a case-by-case basis. 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 feasible in conduits large enough to accommodate future collocated wireless facilities. To the extent feasible, undergrounded cables and wires must transition directly into the pole base without any external doghouse or similar enclosure. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible. No new overhead utility lines or service drops are permitted merely because compliance with the undergrounding requirements would increase the project cost. Microwave or other wireless backhaul is discouraged when it would involve a separate and non-stealth antenna. Undergrounding of utilities will not be required when it is determined by the City Forester that the undergrounding operation will damage or destroy significant tree(s); provided, that the property owner posts a bond in an amount equal to the estimated cost of the undergrounding work. The bond shall be maintained until such time that the service lateral is placed underground.
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8. **Ground-Mounted Accessory Equipment.** All accessory equipment not mounted on the tower must either be concealed underground in an environmentally controlled vault, or concealed within an existing or new structure, or other enclosure(s) subject to the reviewing authority's prior approval. The reviewing authority may require additional stealth elements as the reviewing authority finds necessary or appropriate to blend the ground-mounted equipment, enclosure and/or other improvements into the natural and/or built environment consistent with the underlying design guidelines of its zoning district. An "environmentally controlled underground equipment vault" means a below-grade chamber for electronic equipment that protects against heat, humidity, water intrusion and fire. Undergrounding of accessory equipment will not be required when it is determined by the City Forester that the undergrounding operation will damage or destroy significant tree(s);

provided, that the property owner posts a bond in an amount equal to the estimated cost of the undergrounding work. The bond shall be maintained until such time that the service lateral is placed underground.

## B. **Building-Mounted Wireless Facilities.**

1. **Rooftop Wireless Facilities.** All building-mounted equipment must be placed on the rooftop, screened from public view, stealth, completely concealed and architecturally integrated into rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls replaced with RF-transparent material and finished to mimic the replaced materials). When integration with existing rooftop building features is not feasible, the facilities shall be stealth, completely concealed new structures or appurtenances designed to mimic the support structure's existing architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks). Facilities must be located behind existing parapet walls or other existing screening elements to the maximum extent feasible.
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C. **Fire and Electrical Safety Standards.** The wireless communications facility shall contain:

1. Surge protection for lightning discharge and other significant electrical disturbances.
2. Signage as required by the permit conditions, the National Electric Code or the Fire Safety Authority.

## II. **Facilities In Public Rights-of-Way**

### A. **Poles**

1. **Replacement Poles.** All replacement poles must be: (1) located as close to the removed pole's location as possible, unless relocation would be in a more compatible location; (2) aligned with the other existing poles along the public right-of-way; (3) designed to resemble existing poles, including an overall height that is no greater than 10 feet taller than the replaced pole, unless or the additional height ~~is~~ necessary to comply with CPUC safety standards such as General Order 95.

~~4.2.~~ **New Poles.** All new poles must be: (1) aligned with the other existing poles along the public right-of-way; (2) designed to ~~resemble existing poles~~be aesthetically consistent with the proposed location; (3) placed as close as possible to alignment with the property line that divides two parcels abutting the public rights-of-way; and (4) compliant with all applicable standards and specifications issued by the City, which may include, without limitation, requirements related to aesthetics, materials and safety.

## B. Antennas

1. **Placement.** Antennas should be placed at the ~~poletop, unless such placement above location(s) on~~ the pole ~~would that do not~~ significantly impair public or private views described in CMC 17.46.040(F)(1)(k), and ~~instead alternative placement affixed to that result in~~ the ~~side of the pole results in an aesthetically less impactful~~least intrusive and most compatible aesthetic design based on site-specific circumstances.
2. **Concealment.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a unified shroud or “radome” to the extent technically feasible. Antenna shrouds must be visually consistent with the underlying pole’s design, color and scale and painted with matte non-reflective paint. Antenna shrouds placed above a pole must taper down to the point where the shroud and pole connect to conceal the cables below the antennas and create a smooth transition into the pole. All antenna mounting posts shall be trimmed so that the post does not extend above the antenna. For antennas approved to be affixed to the side of the pole within a shroud, all cables must be concealed within the shroud and the extension arm, if any, to create a smooth transition into the pole, to the maximum extent feasible, or back into the external conduit on the pole, if any.
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.

## C. Accessory Equipment.

1. **Placement.** The placement of accessory equipment is ordered from least compatible to most compatible, as follows:
  - a. within a separate surface-mounted equipment cabinet.

- b. within a shroud that exceeds 6 cubic feet in volume mounted above ground level on the pole.
- ~~b.c.~~ within a shroud that is 6 cubic feet in volume or less mounted above ground level on the pole.
- ~~e.d.~~ within an environmentally controlled underground equipment vault that does not impact any healthy trees.

Accessory equipment up to 6 cubic feet in volume is allowed to be mounted on a pole. The City strongly prefers ~~undergrounded~~that all accessory equipment in excess of 6 cubic feet be undergrounded whenever technically feasible because it 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 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 requirements are required by CPUC General Order 95.
  - a. **Concealment.** Applicants should propose to place any pole-mounted accessory equipment using concealment elements (e.g. paint, film, shielding) and in the least conspicuous position under the circumstances presented by the proposed pole and location. Pole-mounted accessory equipment may be installed behind street, traffic, or other signs to the extent that the installation complies with applicable public health and safety regulations. Unless placed behind a street sign or some other concealment that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views. If more than one orientation would be technically feasible, the reviewing authority may select the most appropriate orientation.
  - b. **Minimum Ground Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least 8.5 feet above ground level at the base of the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than 8.5 feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.

- c. **Horizontal Extensions.** Pole-mounted accessory equipment should be as close to flush with the pole as technically feasible and shall not extend over any roadway for vehicular travel, any pedestrian path of travel, or any abutting private property. If applicable laws preclude flush-mounted accessory equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for compliance with such laws and concealed by opaque material (such as cabinet “flaps” or “wings”).

#### 4. **Surface-Mounted Equipment Cabinets.**

- a. **Concealment.** Concealment for surface-mounted equipment cabinets shall be design to be compatible with the location and existing uses and aesthetic elements in the vicinity. In general, the City prefers surface-mounted accessory equipment to be stealth with concealment elements as follows, subject to approval by the reviewing authority: (i) within a landscaped parkway, median, or similar location, behind or among new/existing landscape or hardscape features, and painted, powder coated or wrapped in flat natural colors to blend with the landscape features; (ii) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure; and (iii) if neither landscaping concealment or street furniture is available, accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing surface-mounted accessory equipment cabinets in the vicinity.
- b. **Public Safety.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, individual surface-mounted accessory equipment cabinet may not exceed four feet in height or four feet in width.

#### D. **Utilities Serving the Wireless Facility.**

1. **Vertical Cable Risers.** All cables, wires, and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires, and other connectors must be concealed from public view. To the extent that cables, wires, and other connectors cannot be routed through the pole, such as with wood utility poles, applicants shall route them through external conduits or shrouds that have been finished to match the underlying pole. The applicant shall minimize the number and size of external conduits to the extent technically feasible.
2. **Electric Meters.** Wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a smart meter, which shall be placed in a shroud unless not allowed by the safety rules of the



electric utility. A separate meter pedestal may only be installed if the electric utility service rules do not allow other options. If the proposed facility involves a surface-mounted equipment cabinet, an electric meter may be integrated with the cabinet, but the reviewing authority shall not approve a separate surface-mounted electric meter pedestal. In no case shall the applicant be permitted to use electricity/power provided by a City-owned circuit without separate written authorization from the City.

3. **Existing Underground Conduits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing underground conduits whenever available and technically feasible.

E. **Fire Safety.** The wireless facility shall contain:

1. A power shut off readily accessible to fire service personnel for emergencies;
2. Surge protection for lightning discharge and other significant electrical disturbances;
3. Signage as required by the permit conditions, the National Electric Code or the Fire Safety Authority; and
4. Instructions for first responders to de-energize the equipment.

## Wireless Facility Standard Conditions of Approval

All wireless facilities approved pursuant to Chapter 17.46 or deemed approved by the operation of law shall be automatically subject to these Wireless Facility Standard Conditions of Approval adopted by the Planning Commission by resolution no.\_\_\_\_ dated \_\_\_\_\_, unless modified by the reviewing authority in an approval decision as authorized by code Section 17.46.090(B).

### A. General.

1. **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless pursuant to another provision of the Municipal Code or these conditions, it expires sooner or is terminated. Unless an extension or renewal has been granted, the permittee must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of any structure supporting the wireless facility that is owned by City, a utility, or another entity, need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least ninety (90) days prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility may remain in place under this permit until the City takes final action on the application.
2. **Future Collocations.** The permittee shall be willing to allow other carriers and site operators to collocate transmission equipment with the wireless facility, to the extent such facility or portions thereof are owned or controlled by the permittee, whenever technically feasible and aesthetically desirable in accordance with applicable provisions in the City's Municipal Code.
3. **CPUC GO-159A Certification.** Within 15 business days after the City issues a permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Administrator.
4. **City's Standing Reserved.** The City's grant or grant by operation of law of a permit does not waive, and shall not be construed to waive, any standing by the City to challenge any provision in federal or state law or any interpretation thereof.
5. **Compliance with Approved Plans.** Prior to submission of a building permit application, the permittee must incorporate this permit, all conditions associated with this permit and any approved photo simulations into the project plans (the "**Approved Plans**"). The permittee must construct, install and operate the wireless facility in strict compliance, as determined by the approval authority, with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or

required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the approval authority's prior review and approval.

6. **Build-Out Period.** This permit will automatically expire 36 months from the approval date (the "**Build-Out Period**") unless the permittee commences installation of the wireless facility. The permittee may request in writing, and the Director may grant in writing, one six-month extension to the Build-Out Period if the permittee submits, at least 30 days prior to the automatic expiration date in this condition, justifiable cause for granting the six-month extension. If the Build-Out Period finally expires, the permit shall be automatically void but the permittee may submit a new application, which includes without limitation all application fees, for the same or a substantially similar project.
7. **Pre-Installation Requirements.** In addition to obtaining all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use, the permittee shall, prior to commencement of any installation or construction, attend a pre-grading meeting with the Public Works Department regarding temporary Best Management Practices ("**BMPs**") pertaining to discharges from the construction site. Before the permittee can proceed with installation or construction of the approved wireless facility, the Public Works Department must inspect and approve the permittee's installation of such temporary BMPs.
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, 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.
9. **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences, hardscape and landscape features, in a neat, clean, safe and code

- compliant condition in accordance with the Approved Plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee shall regularly inspect the site to determine whether any maintenance is needed. The permittee shall perform any maintenance requested by the City for compliance with this condition within a reasonable time specified by the Director in a written notice to the permittee. Routine maintenance within residential zones shall be restricted to normal construction work hours specified in the City's Municipal Code. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
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. Any 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.
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. 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 remove its wireless facility or obtain adjacent property owner consent to mitigation measures on the adjacent property if required to maintain compliance with any Laws applicable to human exposure to RF emissions. If the Director finds good cause to believe that the wireless facility is not in compliance with any Laws applicable to human exposure to RF emissions, the Director may require the permittee to submit a written report, signed by an RF engineer under penalty of perjury, 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. The permittee expressly

- acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws.
12. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the City. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part. The permittee shall, at its sole cost and expense, repair and restore any and all damages to public and private properties that result from any activities performed in connection with the installation or maintenance of a wireless facility. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. If the permittee fails to complete such repair within the number of days stated on a written notice by the Director may (but shall not have the obligation to) cause such repair to be completed at permittee's sole cost and expense.
  13. **Noise.** If the Director finds good cause to believe that ambient noise from a facility violates applicable provisions in the City's Municipal Code, the Director, in addition to any other actions or remedies authorized by the permit, the City's Municipal Code or other applicable Laws, may require the permittee to commission a noise study by a qualified professional to evaluate the facility's compliance.
  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. In the event that the wireless facility authorized under this permit is causing interference with any City 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.
  15. **Inspections; Emergencies.** The City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the

- wireless facility upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies threatening actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
16. **Fire Safety Hazard Protocol.** If the Fire Safety Authority finds good cause to believe that the wireless facility presents an immediate fire risk, electrical hazard or other threat to public health and safety in violation of any applicable Laws, the Fire Safety Authority may notify the permittee and may order the facility to be powered down until such time as the fire threat has been mitigated. Any mitigation required shall be at the permittee's sole cost and expense.
  17. **Abandonment.** The permittee shall notify the Director when the permittee intends to abandon or decommission the wireless facility authorized under this permit. In addition, the wireless facility authorized under this permit shall be deemed abandoned if the wireless facility is determined by the Director not to be operating and the permittee fails to resume operations within 90 days from a written notice from the Director. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee, property owner and/or structure owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable Laws, which includes without limitation the City's Municipal Code. The permittee, property owner and/or structure owner may request an extension up to 180 days to complete restoration after a wireless facility is abandoned or deemed abandoned, which the Director may grant for good cause shown. If the removal and restoration obligations under this condition are not complied with within the required period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee, property owner and structure owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
  18. **Permittee's Contact Information.** Prior to final inspection and at all times relevant to this permit, the permittee shall keep on file with the Community Planning and Building Department basic contact and site information. This information shall include, at a minimum, the following:
    - a. the name, physical address, notice address (if different from physical address), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) property owner, (iii) structure

- owner, (iv) site operator, (v) equipment owner, (vi) site manager and (vii) agent for service of process;
- b. the regulatory authorizations held by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment owner and site manager as may be necessary for the facility's continued operation;
  - c. the facility's site identification number and/or name used by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment owner and site manager; and
  - d. a toll-free telephone number to the facility's network operations center where a live person with power-down control over the facility is available 24 hours-per-day, seven days-per-week.

Within 10 business days after a written request by the City, the permittee shall furnish the City with an update that includes all the most-current information described in this condition or any form provided by the City for such updates. Any notices from the City to the permittee shall be deemed given when delivered to the most current address(es) for the permittee on file with the City.

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 reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the permittee and the property owner and/or structure owner (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. Such indemnification obligations will survive the expiration, revocation or other termination of this permit.

20. **Insurance.** The permittee shall obtain and maintain insurance policies as follows:
- a. **Commercial General Liability Insurance.** Insurance Services Office Form CG 00 01 covering Commercial General Liability (“CGL”) on an “occurrence” basis, with limits not less than \$2,000,000 per occurrence or \$4,000,000 in the aggregate. If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground (“UCX”) exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; or (iv) contain any other exclusion contrary to the conditions in this permit.
  - b. **Automotive Insurance.** Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if permittee has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
  - c. **Workers’ Compensation Insurance.** The permittee shall certify that it is aware of the provisions of California Labor Code § 3700, which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and further certifies that the permittee will comply with such provisions before commencing work under this permit. To the extent the permittee has employees at any time during the term of this permit, at all times during the performance of the work under this permit the permittee shall maintain insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
  - d. **Professional Liability Insurance.** The permittee shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the permittee’s profession, with limit no less than \$1,000,000 per occurrence or claim. This insurance shall be endorsed to include contractual liability applicable to this permit and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the permittee. “Covered Professional Services” as designed in the policy must specifically include work performed under this permit.



- e. **Claims-Made Policies.** If the permittee maintains any required insurance under a claims-made form, the permittee shall maintain such coverage continuously throughout the permit term and, without lapse, for at least three years after the permit term expires so that any claims that arise after the expiration in connection with events that occurred during the permit term are covered by such claims-made policies.
- f. **Umbrella or Excess Liability Policies.** If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for CGL or automotive insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be “pay on behalf,” with defense costs payable in addition to policy limits. Permittee shall provide a “follow form” endorsement or schedule of underlying coverage satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- g. **Additional Insured; Separation of Insureds.** The relevant CGL and automotive insurance policies shall name the City, its elected/ appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The required insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees.
- h. **Primary Insurance; Waiver of Subrogation.** The required insurance shall be primary with respect to any insurance programs covering the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees. All policies for the required CGL, automotive and workers’ compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage or harm covered by such policies
- i. **Term; Cancellation Notice.** The permittee shall maintain the required insurance throughout the permit term and shall replace any certificate, policy, or endorsement which will expire prior to that date. The permittee shall use its best efforts to provide 30 calendar days’ prior written notice to the City of the cancellation or material modification of any applicable insurance policy; provided, however, that in no event shall the permittee fail to provide written notice to the City within 10 calendar days after the cancellation or material modification of any applicable insurance policy. The permittee shall promptly take action to prevent cancellation or

suspension, reinstate cancelled coverage or obtain coverage from a different qualified insurer.

- j. **Certificates.** Before the City issues any permit, the permittee shall deliver to the Director insurance certificates and endorsements, in a form satisfactory to the Director, that evidence all the coverage required above. In addition, the permittee shall promptly deliver complete copies of all insurance policies and endorsements upon a written request by the Director.
  - k. **Insurer Rating.** Unless approved in writing by the City, all required insurance shall be placed with insurers authorized to do business in the State of California and with a current A.M. Best rating of at least A-:VIII.
21. **Removal Bond.** Prior to issuance of any building permits, the permittee shall post a bond issued by a surety and in an amount and a form acceptable to the City Attorney. The permittee must provide to the City at least one written estimate of removal and restoration costs from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must cover the cost to remove all equipment and other improvements, including without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable Laws. The bond shall be valid for the term of this permit plus the greater of one year or the time required to complete the removal and restoration in accordance with this condition. If at any time after construction the Director finds good cause to believe that the bond required in this condition no longer adequately covers the removal and restoration costs, the Director may require by written notice that the permittee provide an updated estimate and increase the bond amount to cover any increase.
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**"). 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

- Records not otherwise required to be created or prepared by other applicable Laws. Compliance with this condition shall not excuse the permittee from any other similar record-retention obligations under applicable Laws.
23. **Permit Revocation.** This permit may be revoked in accordance with the provisions and procedures in code Section 17.66.050.
  24. **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the permit or the wireless facility, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
  25. **Successors and Assigns.** The conditions terms contained in this permit will bind and inure to the benefit of the City and permittee and their respective successors and permitted assigns.
  26. **Severable Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (a) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (b) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (c) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
  27. **No Waiver.** No failure or omission by the City to timely notice or promptly enforce compliance with any permit condition shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with this permit.
  28. **No Possessory Interest.** No possessory interest is created by this permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, permittee acknowledges that City has given to permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against permittee's right to possession, occupancy, or use of any public

property pursuant to any right of possession, occupancy, or use created by this permit.

**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. 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.
2. **Electric Meter Upgrades.** If the wireless facility includes a separate or ground-mounted electric meter pedestal and the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee, on its own initiative and at no cost to City, shall arrange for removal of the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall obtain any required encroachment and/or other ministerial permit(s). Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
3. **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may (a) change any street grade, width, or location; (b) add, remove, or otherwise change any improvements in, on, under, or along any street owned by the City or any other public agency, which includes, without limitation, any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles, and utility systems for gas, water, electric, or telecommunications; and/or (c) perform any other work deemed necessary, useful, or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this permit. If the Director determines that any City work will require the permittee's wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's wireless facility within a reasonable time after the Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its

rights to rearrange or relocate the permittee's wireless facility without prior notice to permittee when the Director determines that City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 business days after a written demand for reimbursement and reasonable documentation to support such costs.

**C. For Eligible Facilities Requests, the following condition C.1 replaces condition A.1. above, and additional conditions C.2 and C.3 apply.**

1. **Permit Term.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval constitutes a federally-mandated modification to the subject tower or base station. The City's grant or any approval deemed granted by operation of law of this EFR administrative design review approval will not extend the existing permit term, if any, for the wireless tower or base station to be modified. Accordingly, the term for this EFR administrative design review approval shall be coterminous with the existing permit or other prior regulatory authorization for the subject tower or base station and any renewals thereof.
2. **Permit subject to conditions of existing permit.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval shall be subject to the terms and conditions of the existing permit for the subject tower or base station.
3. **City's Standing Reserved.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval does not waive, and shall not be construed to waive, any standing by the City to challenge 47 U.S.C. Section 1455(a), any FCC rules that interpret 47 U.S.C. Section 1455(a) or any eligible facilities request.

## Wireless Facility Standard ~~Terms and Conditions~~ of Approval

All wireless facilities approved pursuant to Chapter 17.46 or deemed approved by the operation of law shall be automatically subject to these Wireless Facility Standard ~~Terms and Conditions~~ of Approval adopted by the Planning Commission by resolution no. \_\_\_ dated \_\_\_\_\_, unless modified by the reviewing authority in an approval decision as authorized by code Section 17.46.090(B).

### A. **General.**

1. **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless pursuant to another provision of the Municipal Code or these conditions, it expires sooner or is terminated. Unless an extension or renewal has been granted, the permittee must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of any structure supporting the wireless facility that is owned by City, a utility, or another entity, need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least ninety (90) days prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility may remain in place under this permit until the City takes final action on the application.
2. **Future Collocations.** The permittee shall be willing to allow other carriers and site operators to collocate transmission equipment with the wireless facility, to the extent such facility or portions thereof are owned or controlled by the permittee, whenever technically feasible and aesthetically desirable in accordance with applicable provisions in the City's Municipal Code.
3. **CPUC GO-159A Certification.** Within 15 business days after the City issues a permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Administrator.
4. **City's Standing Reserved.** The City's grant or grant by operation of law of a permit does not waive, and shall not be construed to waive, any standing by the City to challenge any provision in federal or state law or any interpretation thereof.
5. **Compliance with Approved Plans.** Prior to submission of a building permit application, the permittee must incorporate this permit, all conditions associated with this permit and any approved photo simulations into the project plans (the "**Approved Plans**"). The permittee must construct, install and operate the wireless facility in strict compliance, as determined by the approval authority, with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or

- required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the approval authority's prior review and approval.
6. **Build-Out Period.** This permit will automatically expire 36 months from the approval date (the "**Build-Out Period**") unless the permittee commences installation of the wireless facility. The permittee may request in writing, and the Director may grant in writing, one six-month extension to the Build-Out Period if the permittee submits, at least 30 days prior to the automatic expiration date in this condition, justifiable cause for granting the six-month extension. If the Build-Out Period finally expires, the permit shall be automatically void but the permittee may submit a new application, which includes without limitation all application fees, for the same or a substantially similar project.
  7. **Pre-Installation Requirements.** In addition to obtaining all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use, the permittee shall, prior to commencement of any installation or construction, attend a pre-grading meeting with the Public Works Department regarding temporary Best Management Practices ("**BMPs**") pertaining to discharges from the construction site. Before the permittee can proceed with installation or construction of the approved wireless facility, the Public Works Department must inspect and approve the permittee's installation of such temporary BMPs.
  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, 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.
  9. **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences, hardscape and landscape features, in a neat, clean, safe and code

- compliant condition in accordance with the Approved Plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee shall regularly inspect the site to determine whether any maintenance is needed. The permittee shall perform any maintenance requested by the City for compliance with this condition within a reasonable time specified by the Director in a written notice to the permittee. Routine maintenance within residential zones shall be restricted to normal construction work hours specified in the City's Municipal Code. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
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. Any 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.
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. 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 remove its wireless facility or obtain adjacent property owner consent to mitigation measures on the adjacent property if required to maintain compliance with any Laws applicable to human exposure to RF emissions. If the Director finds good cause to believe that the wireless facility is not in compliance with any Laws applicable to human exposure to RF emissions, the Director may require the permittee to submit a written report, signed by an RF engineer under penalty of perjury, 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. The permittee expressly



acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws.

12. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the City. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part. The permittee shall, at its sole cost and expense, repair and restore any and all damages to public and private properties that result from any activities performed in connection with the installation or maintenance of a wireless facility. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. If the permittee fails to complete such repair within the number of days stated on a written notice by the Director may (but shall not have the obligation to) cause such repair to be completed at permittee's sole cost and expense.
13. **Noise.** If the Director finds good cause to believe that ambient noise from a facility violates applicable provisions in the City's Municipal Code, the Director, in addition to any other actions or remedies authorized by the permit, the City's Municipal Code or other applicable Laws, may require the permittee to commission a noise study by a qualified professional to evaluate the facility's compliance.
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. In the event that the wireless facility authorized under this permit is causing interference with any City 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.
15. **Inspections; Emergencies.** The City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the

- wireless facility upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies threatening actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
16. **Fire Safety Hazard Protocol.** If the Fire Safety Authority finds good cause to believe that the wireless facility presents an immediate fire risk, electrical hazard or other threat to public health and safety in violation of any applicable Laws, the Fire Safety Authority may notify the permittee and may order the facility to be powered down until such time as the fire threat has been mitigated. Any mitigation required shall be at the permittee's sole cost and expense.
17. **Abandonment.** The permittee shall notify the Director when the permittee intends to abandon or decommission the wireless facility authorized under this permit. In addition, the wireless facility authorized under this permit shall be deemed abandoned if the wireless facility is determined by the Director not to be operating and the permittee fails to resume operations within 90 days from a written notice from the Director. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee, property owner and/or structure owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable Laws, which includes without limitation the City's Municipal Code. The permittee, property owner and/or structure owner may request an extension up to 180 days to complete restoration after a wireless facility is abandoned or deemed abandoned, which the Director may grant for good cause shown. If the removal and restoration obligations under this condition are not complied with within the required period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee, property owner and structure owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
18. **Permittee's Contact Information.** Prior to final inspection and at all times relevant to this permit, the permittee shall keep on file with the Community Planning and Building Department basic contact and site information. This information shall include, at a minimum, the following:
- a. the name, physical address, notice address (if different from physical address), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) property owner, (iii) structure

- owner, (iv) site operator, (v) equipment owner, (vi) site manager and (vii) agent for service of process;
- b. the regulatory authorizations held by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment owner and site manager as may be necessary for the facility's continued operation;
  - c. the facility's site identification number and/or name used by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment owner and site manager; and
  - d. a toll-free telephone number to the facility's network operations center where a live person with power-down control over the facility is available 24 hours-per-day, seven days-per-week.

Within 10 business days after a written request by the City, the permittee shall furnish the City with an update that includes all the most-current information described in this condition or any form provided by the City for such updates. Any notices from the City to the permittee shall be deemed given when delivered to the most current address(es) for the permittee on file with the City.

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 reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the permittee and the property owner and/or structure owner (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. Such indemnification obligations will survive the expiration, revocation or other termination of this permit.

20. **Insurance.** The permittee shall obtain and maintain insurance policies as follows:
- a. **Commercial General Liability Insurance.** Insurance Services Office Form CG 00 01 covering Commercial General Liability (“CGL”) on an “occurrence” basis, with limits not less than \$2,000,000 per occurrence or \$4,000,000 in the aggregate. If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground (“UCX”) exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; or (iv) contain any other exclusion contrary to the conditions in this permit.
  - b. **Automotive Insurance.** Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if permittee has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
  - c. **Workers’ Compensation Insurance.** The permittee shall certify that it is aware of the provisions of California Labor Code § 3700, which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and further certifies that the permittee will comply with such provisions before commencing work under this permit. To the extent the permittee has employees at any time during the term of this permit, at all times during the performance of the work under this permit the permittee shall maintain insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
  - d. **Professional Liability Insurance.** The permittee shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the permittee’s profession, with limit no less than \$1,000,000 per occurrence or claim. This insurance shall be endorsed to include contractual liability applicable to this permit and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the permittee. “Covered Professional Services” as designed in the policy must specifically include work performed under this permit.

- e. **Claims-Made Policies.** If the permittee maintains any required insurance under a claims-made form, the permittee shall maintain such coverage continuously throughout the permit term and, without lapse, for at least three years after the permit term expires so that any claims that arise after the expiration in connection with events that occurred during the permit term are covered by such claims-made policies.
- f. **Umbrella or Excess Liability Policies.** If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for CGL or automotive insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be “pay on behalf,” with defense costs payable in addition to policy limits. Permittee shall provide a “follow form” endorsement or schedule of underlying coverage satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- g. **Additional Insured; Separation of Insureds.** The relevant CGL and automotive insurance policies shall name the City, its elected/ appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The required insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees.
- h. **Primary Insurance; Waiver of Subrogation.** The required insurance shall be primary with respect to any insurance programs covering the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees. All policies for the required CGL, automotive and workers’ compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage or harm covered by such policies
- i. **Term; Cancellation Notice.** The permittee shall maintain the required insurance throughout the permit term and shall replace any certificate, policy, or endorsement which will expire prior to that date. The permittee shall use its best efforts to provide 30 calendar days’ prior written notice to the City of the cancellation or material modification of any applicable insurance policy; provided, however, that in no event shall the permittee fail to provide written notice to the City within 10 calendar days after the cancellation or material modification of any applicable insurance policy. The permittee shall promptly take action to prevent cancellation or

suspension, reinstate cancelled coverage or obtain coverage from a different qualified insurer.

- j. **Certificates.** Before the City issues any permit, the permittee shall deliver to the Director insurance certificates and endorsements, in a form satisfactory to the Director, that evidence all the coverage required above. In addition, the permittee shall promptly deliver complete copies of all insurance policies and endorsements upon a written request by the Director.
  - k. **Insurer Rating.** Unless approved in writing by the City, all required insurance shall be placed with insurers authorized to do business in the State of California and with a current A.M. Best rating of at least A-:VIII.
21. **Removal Bond.** Prior to issuance of any building permits, the permittee shall post a bond issued by a surety and in an amount and a form acceptable to the City Attorney. The permittee must provide to the City at least one written estimate of removal and restoration costs from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must cover the cost to remove all equipment and other improvements, including without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable Laws. The bond shall be valid for the term of this permit plus the greater of one year or the time required to complete the removal and restoration in accordance with this condition. If at any time after construction the Director finds good cause to believe that the bond required in this condition no longer adequately covers the removal and restoration costs, the Director may require by written notice that the permittee provide an updated estimate and increase the bond amount to cover any increase.
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**"). 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

Records not otherwise required to be created or prepared by other applicable Laws. Compliance with this condition shall not excuse the permittee from any other similar record-retention obligations under applicable Laws.

23. **Permit Revocation.** This permit may be revoked in accordance with the provisions and procedures in code Section 17.66.050.
24. **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the permit or the wireless facility, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
25. **Successors and Assigns.** The conditions terms contained in this permit will bind and inure to the benefit of the City and permittee and their respective successors and permitted assigns.
26. **Severable Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (a) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (b) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (c) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
27. **No Waiver.** No failure or omission by the City to timely notice or promptly enforce compliance with any permit condition shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with this permit.
28. **No Possessory Interest.** No possessory interest is created by this permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, permittee acknowledges that City has given to permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against permittee's right to possession, occupancy, or use of any public

property pursuant to any right of possession, occupancy, or use created by this permit.

**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. 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.
2. **Electric Meter Upgrades.** If the wireless facility includes a separate or ground-mounted electric meter pedestal and the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee, on its own initiative and at no cost to City, shall arrange for removal of the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall obtain any required encroachment and/or other ministerial permit(s). Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
3. **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may (a) change any street grade, width, or location; (b) add, remove, or otherwise change any improvements in, on, under, or along any street owned by the City or any other public agency, which includes, without limitation, any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles, and utility systems for gas, water, electric, or telecommunications; and/or (c) perform any other work deemed necessary, useful, or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this permit. If the Director determines that any City work will require the permittee's wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's wireless facility within a reasonable time after the Director's notice, the City may (but



will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's wireless facility without prior notice to permittee when the Director determines that City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 business days after a written demand for reimbursement and reasonable documentation to support such costs.

**C. For Eligible Facilities Requests, the following condition C.1 replaces condition A.1. above, and additional conditions C.2 and C.3 apply.**

1. **Permit Term.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval constitutes a federally-mandated modification to the subject tower or base station. The City's grant or any approval deemed granted by operation of law of this EFR administrative design review approval will not extend the existing permit term, if any, for the wireless tower or base station to be modified. Accordingly, the term for this EFR administrative design review approval shall be coterminous with the existing permit or other prior regulatory authorization for the subject tower or base station and any renewals thereof.
2. **Permit subject to conditions of existing permit.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval shall be subject to the terms and conditions of the existing permit for the subject tower or base station.
3. **City's Standing Reserved.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval does not waive, and shall not be construed to waive, any standing by the City to challenge 47 U.S.C. Section 1455(a), any FCC rules that interpret 47 U.S.C. Section 1455(a) or any eligible facilities request.



# CITY OF CARMEL-BY-THE-SEA PLANNING COMMISSION Staff Report

August 23, 2023  
CORRESPONDENCE

<b>TO:</b>	Chair LePage and Planning Commissioners
<b>SUBMITTED BY:</b>	Leah R. Young, Administrative Coordinator
<b>APPROVED BY:</b>	Brandon Swanson, Director of Community Planning & Building
<b>SUBJECT:</b>	<a href="#">CLICK HERE</a> to view correspondence received AFTER the public workshop held on March 29, 2023.

**Application:**  
**Block:**  
**Location:**  
**Applicant:**

**APN:**  
**Lot:**  
**Property Owner:**

**Executive Summary:**

**Recommendation:**

**Background and Project Description:**

**Staff Analysis:**

**Other Project Components:**



# CITY OF CARMEL-BY-THE-SEA PLANNING COMMISSION Staff Report

August 23, 2023  
CORRESPONDENCE

**TO:** Chair LePage and Planning Commissioners

**SUBMITTED BY:** Brandon Swanson, Director of Community Planning & Building

**APPROVED BY:** Brandon Swanson, Director of Community Planning & Building

**SUBJECT:** Materials Provided to the Commission at the August 23rd Hearing

**Application:** **APN:**  
**Block:** **Lot:**  
**Location:**  
**Applicant:** **Property Owner:**

**Executive Summary:**

**Recommendation:**

**Background and Project Description:**

**Staff Analysis:**

**Other Project Components:**

Attachment 1: 8-23 RESPONSE TO NEW PUBLIC COMMENTS

Attachment 2: 8-23 REDLINE DRAFT CBTS - Wireless Application Checklist TYPE I-IV AUGUST 2023

Attachment 3: 8-23 REDLINE DRAFT CBTS Chapter 17.46 August 2023

Attachment 4: 8-23 REDLINE DRAFT CBTS STANDARD CONDITIONS OF APPROVAL FOR

WIRELESS FACILITIES AUGUST 2023

PC MEETING AUGUST 2023  
 RESPONSE TO NEW COMMENTS

DOC  (ORD/DG/ CL/COA)	COMMENT	EDITS MADE? (Y/N)	RESPONSE AND REFERENCES
INDUSTRY COMMENTS			
#1  ORD	<p><b>AT&amp;T 1. <u>Obstructing Right-of-Way Siting.</u></b> 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.</p> <p>These restrictions are also unlawful as AT&amp;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&amp;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.</p> <p>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.</p>	N	<p><b><i>No changes to preferences are warranted based on these comments as discussed further below.</i></b></p> <p>AT&amp;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&amp;T and Verizon claim supports their positions.</p> <p>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.</p> <p>AT&amp;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 <i>accessing</i> 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 <i>permanent installations</i>.</p> <p>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).</p>

PC MEETING AUGUST 2023  
 RESPONSE TO NEW COMMENTS

DOC  (ORD/DG/ CL/COA)	COMMENT	EDITS MADE? (Y/N)	RESPONSE AND REFERENCES
	<p>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.</p> <p>AT&amp;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&amp;T would be happy to suggest language to incorporate such a process in the proposed ordinance or proposed design guidelines.</p> <p><b><u>VERIZON: The Preference for Private Parcels over the Right-of-Way Violates California Public Utilities Code Section 7901.</u></b></p> <p>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.</p> <p>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. <i>See Western Union Tel. Co. v. Hopkins</i>, 160 Cal. 106, 123 (Cal. Sup. Ct. 1911) (statute grants “exclusive occupation of portions of the streets...free of charge”); <i>Pacific Tel. &amp; Tel. Co. v. City &amp; Cty. of San Francisco</i>, 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”); <i>T-Mobile West LLC v. City</i></p>		<p>City aesthetic rules for permanent installations must be reasonable but AT&amp;T is wrong that 7901.1(b) applies. Their alleged interpretation was firmly rejected by the Cal. Sup Ct in <i>San Francisco</i> 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.”</p> <p>Verizon likewise provides a misleading suggestion about what the <i>San Francisco</i> 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.</p> <p>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.</p> <p>Regulating design and location of development is a fundamental police power, which PUC 7901 does not preempt. In <i>San Francisco</i> 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</p>

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	<p><i>and County of San Francisco</i>, 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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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. <i>Draft Ordinance Section 17.46.040(C) must be deleted.</i></p>		<p>municipalities in matters concerning the design and location of wireless facilities.”</p> <p>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 <a href="http://docs.cpuc.ca.gov/PUBLISHED/Graphics/611.PDF">http://docs.cpuc.ca.gov/PUBLISHED/Graphics/611.PDF</a> [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.”</p>

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#2  ORD	<p><u>AT&amp;T 2. Subjective, Improper, and Impossible Special Exception Requirements.</u> 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.</p> <p><b><u>VERIZON: The City Should Not Require “Special Exceptions” to Locate Small Cells in Residential Rights-of-Way.</u></b></p> <p>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.</p> <p>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. <i>Draft Ordinance Section 17.46.040(E)(1) should be deleted.</i></p>	N and Y	<p><b>No changes are warranted to the text or scope of the existing exceptions based on comments from AT&amp;T and Verizon.</b> The City disagrees that requiring a special exception and proof is inappropriate or rises to the level of a prohibition. AT&amp;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.</p> <p>However, <b>language is proposed to address T-Mobile’s suggestion for allowing minor deviations in limited circumstances.</b> 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 code 17.58.060 which allows approval of deviations from design guidelines that do not have negative aesthetic consequences.</p>



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	<p style="text-align: center;"><b><u>T-MOBILE</u></b></p> <p><b><u>1. Deviation from Design Standards</u></b></p> <p>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.</p> <p>T-Mobile suggests incorporating a limited exception process, as proposed in the attached redline, within Section 17.46.040(F)(3).</p>		
#3  CL	<p style="text-align: center;"><b><u>VERIZON: The Submittals Required to Show that Standards “Materially Inhibit” Service Improvements Cannot Include Coverage Gap Information.</u></b></p> <p>The revised <i>Wireless Facility Application Checklist Type I-IV</i> 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.</p> <p>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</p>	N	<p>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.</p>

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	<p>“densifying a wireless network, introducing new services or otherwise improving service capabilities.” <i>Id.</i>, ¶ 37.</p> <p>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. <i>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.</i></p>		
<p><b>#4</b>  ORD</p>	<p><b><u>AT&amp;T 2. (CONT'D)</u></b> 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.<sup>13</sup> AT&amp;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.</p> <p><b><u>VERIZON: Vague Visual Impact and View Protection Standards Could Lead to Denial of Small Cells that Satisfy the Design Guidelines.</u></b></p> <p>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).</p>	<p>N</p>	<p>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.</p>

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	<p>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).</p> <p>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.</p> <p>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). <i>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</i></p>		
<p><b>#5</b>  ORD</p>	<p><b>AT&amp;T 3. Shot Clock Problem With Submittal Appointments.</b> 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.<sup>14</sup> Thus, under the city’s proposed process, the shot clock would commence on the date the applicant requests to schedule the appointment.</p> <p>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</p>	<p>Y and N</p>	<p>AT&amp;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 <i>and</i> applicants and is not uncommon in smaller jurisdictions with limited staff. However, <b>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.</b> 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.</p>

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	<p>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&amp;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.</p> <p><b>AT&amp;T 4. EFR Shot Clock Issue.</b> AT&amp;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.</p> <p><b>T-MOBILE 3. Shot Clock Concerns</b></p> <p>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.</p> <p>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.<sup>2</sup> Any pre-application procedures, public meetings or hearings, or appeals are included in this calculation.<sup>3</sup> Therefore, the applicable FCC Shot Clock would commence at the time of Applicant’s request for the application intake appointment.</p>		<p>AT&amp;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. <b>No changes have been proposed to the appeal process.</b></p>
#6  ORD	<p><b>AT&amp;T 5. Spacing Requirement.</b> 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</p>	N	<p>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.</p> <p>AT&amp;T’s 7901.1 argument is wrong for the reasons stated earlier.</p>

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	<p>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.</p>		
<p><b>#7</b>  ORD</p>	<p><u><b>AT&amp;T 6. Cost Reimbursement.</b></u> 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&amp;T looks forward to working with the city to ensure its proposed fees comport with state and federal laws.</p>	<p>N</p>	<p>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&amp;T language not necessary. No other industry commenter objected to this language. This is as applied concern.</p>
<p><b>#8</b>  ORD</p>	<p><u><b>AT&amp;T 7. Consultants.</b></u> Section 17.46.060(B)(1) authorizes the city to engage consultants whenever they are deemed necessary, and Sections 17.46.060(B)(2)&amp;(3) require applicants to advance and replenish deposits to cover open-ended consulting charges. While AT&amp;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.<sup>15</sup> 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.<sup>16</sup> 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.</p>	<p>Y</p>	<p>While the City disagrees with many of AT&amp;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. <b>(See comment #17 below as well).</b></p>

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	<p><b><u>T-MOBILE</u></b></p> <p><b>2. Liability for Consultants Expenses.</b></p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>		
#9  COA	<p><b>AT&amp;T 8. <u>Indemnification.</u></b> 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&amp;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&amp;T obviously cannot be made to defend the city from actions or omissions by its customers. The city also must limit the overall scope</p>	Y	<p>AT&amp;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. <b>(Also see comment #24 below)</b></p>

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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.”		
	<b>T-MOBILE REDLINES</b>		
#10  ORD	20. “ <b>stealth</b> ” 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 <del>average, untrained observer</del> <b>reasonable person</b> 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 <del>and or</del> adjacent uses	Y	“Reasonable Person” language change has been accepted.
#11  ORD	5. “ <b>substantial change</b> ”  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 <b>stealth</b> 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. <b>Additional Public Right-of-Way Location Selection Standards.</b> 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 <u>factual and verifiable evidence</u> , 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. <u>within a 250500-foot radius from another provider's wireless facility within the public rights-of-way.</u>  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 <u>significantly reduce</u> greenbelt area that may be used for tree planting.	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.




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#14  ORD	<p>17.46.040.F REQUESTS:</p> <p>b. <b>Overall Height.</b> 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.</p> <p>f. <b>Trees and Landscaping.</b> 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 <b>hardscape features</b>. 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</p> <p><u>the development standards specified in this chapter shall control.</u></p> <p><b>2. <u>Deviation from Design Standards.</u></b></p> <p><b>3.</b></p> <p>a. <u>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.</u></p> <p>b. <u>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.</u></p> <p>c. <u>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.</u></p> <p>d. <u>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.</u></p> <p><i>Author</i> 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.</p> <p><i>Author</i> Please define this term.</p>	N and Y	<p><b>Overall Height</b> – this can be subject of special exception request already. <b>No change needed.</b></p> <p><b>Trees and Landscaping</b> – 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. <b>There is no need to add a definition.</b></p> <p>Deviation language -- T-Mobile request for deviations exception is OK concept but not their language or location in code.  <b>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.</b></p>

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#15  Ord	17.46.050.A.c.  c. <b>Type III Applications: New Small Wireless Facilities on New or Replacement Structures.</b> 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. <div style="border: 1px dashed red; padding: 5px; margin-top: 10px;"> <p>Subject to the 90 day Shot clock.</p> <p><b>Author</b> 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.</p> </div>	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 <u>within the required time period under federal law</u> in order to pause the applicable FCC shot clock.	N	Unnecessarily wordy and not needed
#17  ORD	17.46.060.B.  B. <b>Consultants</b>  1. <b>Use of Consultants.</b> 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. <u>The city shall provide the Applicant with a detailed invoice of time spent and the nature of the review.</u> In no event shall that responsibility be greater than the actual cost to the City of such engineering, legal, or other consulting services.  2. <b>Advance Deposits for Consultant Costs.</b> 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. <u>The city and the Consultant shall supply the Applicant with a reasonable estimate of anticipated costs.</u> 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	<b>Use of consultants: the proposed revision has been incorporated</b>  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. <b>Suggestion not incorporated</b>

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	<p><del>3. <b>Liability for Consultant Expenses.</b> 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:</del></p> <p><del>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.</del></p> <p><del>b. <b>3.</b> 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.</del></p>	<p> <b>Author</b>      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</p>	<p>Liability – <b>T-Mobile edits are not incorporated</b> – 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.</p>

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<p><b>#18</b></p> <p>DG</p>	<p>I. FACILITIES ON PARCELS</p> <p>4. <b>Secondary Power Sources.</b> The reviewing authority may approve secondary or backup <b>emergency</b> power sources and/or generators <del>on a case-by-case basis as required by state and federal law</del>. 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.</p> <p>5. <b>Utilities.</b> All underground cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent</p> <div style="border: 1px solid gray; padding: 5px; margin-top: 10px;"> <p><b>Author</b> 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.</p> <p>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.</p> </div>	<p>N</p>	<p>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.</p>
<p><b>#19</b></p> <p>DG</p>	<p>II. FACILITIES IN PUBLIC RIGHTS OF WAY</p> <p>A. ANTENNAS</p> <p>3. <b>Volume.</b> 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 <del>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.</del></p> <p>II. FACILITIES IN PUBLIC RIGHTS OF WAY</p> <p>C. ACCESSORY EQUIPMENT</p> <p>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.</p> <p>2. <b>Volume.</b> The cumulative limit for all accessory equipment (<del>including</del> <del>excluding</del> 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.</p> <p>3. <b>Pole-Mounted Accessory Equipment.</b> These standards for pole-mounted accessory equipment apply except to the extent that different safety</p> <div style="border: 1px solid gray; padding: 5px; margin-top: 10px;"> <p><b>Author</b> 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.</p> </div> <div style="border: 1px solid gray; padding: 5px; margin-top: 10px;"> <p><b>Author</b> 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.</p> </div> <div style="border: 1px solid gray; padding: 5px; margin-top: 10px;"> <p><b>Author</b> 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.</p> </div>	<p>N</p>	<p>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.</p> <p>Federal definition of SWF with 28 cu ft is for shot clock purposes; city has authority to regulate aesthetics and may require smaller volumes.</p> <p>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.</p>

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<p><b>#20</b>  COA</p>	<p>8. <b>Post-Installation Certifications/RF Emissions Compliance.</b> 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 <del>report</del><u>statement</u>, 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.</p>	<p>N</p>	<p>Disagree wording change is needed.</p>
<p><b>#21</b>  COA</p>	<p>10. <b>Landscape Features.</b> 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. <u>If feasible, a</u>Any 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.</p>	<p>N</p>	<p>While the statement is correct, disagree wording change is needed. Language already contemplates City may approve alternative if circumstances warrant.</p>

 **Author**  
 Sometimes, transplanting a very mature tree is not advisable and a younger tree may have a better chance of surviving.

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<p><b>#22</b> COA</p>	<p>11. <b>Compliance with Applicable Laws/RF Emissions Exposure Limits.</b> 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 (“<b>Laws</b>”) 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, <u>absent agreement from the adjacent land owner</u>. 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</p>	<p>Y</p>	<p>Ok: Proposed edit is consistent with intent</p>
<p><b>#23</b> COA</p>	<p>14. <b>Interference with City Communications Systems.</b> The permittee shall not permit the wireless facility authorized under this permit to interfere with any City communication systems <u>operating on FCC licensed frequencies</u>. In the event that the wireless facility authorized under this permit is causing interference with any City communication systems <u>operating on FCC licensed frequencies, the permittee 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.</u> Any mitigation required shall be at the permittee’s sole cost and expense.</p>	<p>Y</p>	<p>Ok to accept changes as proposed. It is true that FCC is responsible.</p>

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<p><b>#24</b> COA</p>	<p>19. <b>Indemnification.</b> 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 <del>or the wireless facility</del> (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</p>	<p>Y</p>	<p>Some changes are made in response to these edits and AT&amp;T's comments above to in line with City practice. <b>(Also See comment # 9 above)</b></p>
<p><b>#25</b> COA</p>	<p><del>24.</del>  </p> <p><del>22.</del> <b>Record Retention.</b> 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"). <del>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.</del> The requirements in this condition shall not be construed to create any obligation on the City to create or prepare any</p> <div style="border-left: 1px solid black; padding-left: 5px; margin-left: 10px;"> <p> <b>Author</b>        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.</p> <p> <b>Author</b></p> </div>	<p>N</p>	<p>The City disagrees with the premise of the comment. Permittees should keep records of their permits.</p>

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<p><b>#26</b>  COA</p>	<p>B. For Facilities in the Public Right-of-Way, the following additional conditions apply.</p> <p>1. <b>Future Undergrounding Programs.</b> 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 <del>are exempted under the applicable undergrounding program that may not technically be feasible to locate underground.</del> <u>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.</u> 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.</p>	<p>N</p>	<p>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.</p> <p><b>Section 13.28.070.E.</b> shall be amended to read as follows:      “E. Antennae, associated equipment <u>that is within the supporting structure or integrated with the antennae,</u> and supporting structures, used by a utility for furnishing communication services.”</p>
<p>SCTCN COMMENTS</p>			
<p><b>#27</b>  CL</p>	<p><b>1. Strengthen Material Inhibition Claim Information Required by the Applicant</b></p> <p>Applicants are not required to disclose the full details of their service plans, which must be required for full transparency in the application process.</p> <p>a) Bullet # 3 (Application Checklist, page 14)  <u>Weakness:</u> The statement gives the applicant a choice whether to describe new services “and/or” minimum service levels they seek to provide.  <u>Solution:</u> 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.</p>	<p>Y and N</p>	<p>OK to delete word “or”, <b>request “(a)” has been incorporated.</b></p>



	<p>b) Bullet #4 (Application Checklist, page 14)  <u>Weakness:</u> The statement gives the applicant a choice “whether” they would like to submit drive tests.  <u>Solution:</u> Require the applicant to submit drive test data and maps as required in a significant gap/least intrusive means claim.</p>		<p><b>Request “(b)” not accepted.</b> 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.</p>
<p><b>#28</b>  CL</p>	<p><b>2. The City Does Not Require Telecom Companies to Activate all Their Cell Sites Before They Apply for a New cell Site</b></p> <p><u>Weakness:</u> 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.</p> <p><u>Solution:</u> Require telecom companies to turn on all their facilities before they apply for a new facility.</p>	<p>N</p>	<p>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.</p>
<p><b>#29</b>  ORD</p>	<p><b>3. The City Neglects to Include the Potential Adverse Impacts on Real Estate Values in Residential Zoning Districts</b>          (Omitted from the Ordinance)</p> <p><u>Weakness:</u> 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.</p> <p>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</p>	<p>N</p>	<p>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</p>

<p>evidence at a public hearing that a cell tower in close proximity to their home affects their personal welfare.</p> <p><u>Weakness:</u> 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.</p> <p style="text-align: center;"><u>Evidence That Cell Towers Impact Property Values:</u></p> <p><b><u>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.</u></b></p> <p><a href="https://www.nytimes.com/2010/08/29/realestate/29Lizo.html">https://www.nytimes.com/2010/08/29/realestate/29Lizo.html</a></p> <p><a href="https://www.ashland.or.us/SIB/files/Walker_351_PA-T1-2021-00158_Comment_Period_Oct_19.pdf">https://www.ashland.or.us/SIB/files/Walker_351_PA-T1-2021-00158_Comment_Period_Oct_19.pdf</a></p> <p>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 <i>Cellular Tel. Co. V. Zoning Bd. of Adjustment of the Borough of Ho-Ho-Kus</i>, 24 F. Supp. 2d 359, 364 (D.N.J. 1998)).</p> <p><a href="https://www.cga.ct.gov/2014/rpt/2014-R-0281.htm">https://www.cga.ct.gov/2014/rpt/2014-R-0281.htm</a></p>	<p>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 <i>AT&amp;T Wireless Servs. v. City of Carlsbad</i>, 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.</p>
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	<p>“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</p> <p><a href="https://campanellipc.com/practice-areas/cell-tower-opposition-nationwide/">https://campanellipc.com/practice-areas/cell-tower-opposition-nationwide/</a></p> <p><b><u>Studies</u></b></p> <p>The Bond and Hue - Proximate Impact Study The Bond and Hue study conducted in 2004 involved the analysis 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.</p> <p>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%.</p> <p>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%.</p> <p>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.</p>		
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<p><b><u>Cell Towers are Hazards and Nuisances to Single Family Properties</u></b></p> <p>(<a href="https://ehtrust.org/cell-phone-towers-lower-property-values-documentation-research/">https://ehtrust.org/cell-phone-towers-lower-property-values-documentation-research/</a> )</p> <ul style="list-style-type: none"><li>• The U.S. Department of Housing and Urban Development (HUD) considers cell towers “Hazards and Nuisances”</li><li>• HUD requires its certified appraisers to take the presence of nearby cell towers into consideration when determining the value of a single family property.</li><li>• HUD prohibits FHA underwriting of mortgages for homes that are within the engineered fall zone of a cell tower.</li></ul> <p><b><u>Some Home Buyers Back Out of Purchases Due to Disclosure of Cell Tower as Neighborhood Nuisance</u></b></p> <p>(<a href="https://ehtrust.org/wp-content/uploads/Real-Estate-Seller-Property-Questionnaire-reduced-12-17-1.pdf">https://ehtrust.org/wp-content/uploads/Real-Estate-Seller-Property-Questionnaire-reduced-12-17-1.pdf</a>)</p> <p>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 <b>to back out of the sale of purchasing a home near a cell tower.</b></p> <p><b><u>20% Property Reduction Living Next to a Cell Tower</u></b></p> <ul style="list-style-type: none"><li>• Documentation of a price drop of up to 20% is found in multiple surveys and published articles. <a href="https://www.nationalbusinesspost.com/cell-towers-impact-home-values/">https://www.nationalbusinesspost.com/cell-towers-impact-home-values/</a></li><li>• Local, state and International Real Estate Agents estimate a minimum 20% property devaluation for homes next to cell towers</li></ul>
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<ul style="list-style-type: none"><li>● Research finds, cell towers, high powered powerlines and electric substations near homes can drop property values up to 20%.</li><li>● The National Institute for Science, Law &amp; 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. <a href="https://www.businesswire.com/news/home/20140703005726/en/survey-National-Institute-Science-Law-Public-Policy#.U8muiLGO1oY">https://www.businesswire.com/news/home/20140703005726/en/survey-National-Institute-Science-Law-Public-Policy#.U8muiLGO1oY</a></li></ul> <p><b><u>Property Appraisers Recognize Property Values are Impacts by Adverse Aesthetics in Proximity to Cell Towers</u></b></p> <ul style="list-style-type: none"><li>● “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.” “<a href="#">Impact of Communication Towers and Equipment on Nearby Property Values</a>” prepared by Burgoyne Appraisal Company, March 7, 2017</li></ul> <p><b><u>Weakness:</u></b> The City also justifies that allowing a negative impact to property value finding to the wireless ordinance opens the city to litigation. <i>However</i>, 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</p>		
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	<p>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.</p> <p><u>Solution:</u>          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.</p>		
<p><b>#30</b> --</p>	<p><b>4. Wireless Facility Shot Clock Noticing &amp; Community Outreach Must Be Strengthened</b></p> <p><u>Weakness:</u> 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.</p>	<p>N/A</p>	<p>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.</p>

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	<u>Solution:</u> Once the shot clock starts, inform the community at the same time through public email notices, including shot clock stop and restart times.		
<b>#31</b> ORD	<p><b>5. Increase Public Noticing Distance</b></p> <p><u>Weakness:</u> The current draft ordinance only provides hand-delivered postcard notice to neighbors within 100-foot radius of the site.</p> <p><u>Solution:</u> Increase the radius to 500-1,000 feet. The rule is, the higher the structure, the further the noticing. Petaluma does 1,000 feet.</p>	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.
<b>#32</b> CL	<p><b>*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:</b></p> <p><b>** (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</b></p>	Y	Typo corrected
<b>#33</b> ORD	<p><b>*Fire Safety- All wireless facilities (page19) *says, “ should” We need to change this to, “ shall be proactively monitored.”</b></p>	Y	Typo corrected
	<b>END</b>		

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**CITY OF CARMEL-BY-THE-SEA**  
Community Planning & Building Department  
Planning Division

**WIRELESS FACILITY APPLICATION CHECKLIST**

**TYPE I - IV**

**NOTE:** All applications must be submitted to the City at a pre-scheduled appointment with the Community Planning and Building Department. The Community Planning and Building Department shall use reasonable efforts to provide the applicant with an appointment in a reasonable amount of time after a written request is received. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed whether the City retains the submitted materials or not.

Please check the applicable box and provide the information required below.

**1. PROJECT DESCRIPTION**

Provide a detailed description of the proposed facility, and how it complies with the requirements in the Carmel-by-the-Sea Municipal Code Chapter 17.46, the Administrative Detailed Wireless Facility Design Guidelines, and other City design guidelines, as applicable. Label this description "**Attachment 1 – Project Description**" and attach it to this application.

**2. PROJECT PLANS**

Provide complete PDF (USB Drive or CD) set of complete project plans. PDF plans shall be combined as a single PDF optimized for web viewing. Individual plan sheets will not be accepted. Attach to application and mark as "**Attachment 2 – Project Plans**". The project plans must contain all of the following:

- 2.1 Cover Sheet.** A complete cover sheet must include at a minimum:
  - a detailed project description that specifies the proposed installation and/or modifications;
  - site information that includes the site address, assessor's parcel number, block, lot(s), site latitude and longitude, zoning description, pole number (if applicable), site map, and project team contact information.
- 2.2 Site Development Plan.** Only a California Registered Civil Engineer or licensed surveyor may prepare the site development plan. A complete site development plan must include:



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- a north arrow, date, scale and legend;
- plan-view drawings, which include:
  - the entire property or right-of-way block with the proposed project improvements;
  - detailed before-and-after views of the any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features;
  - detailed before-and-after views for each antenna sector;
  - detailed before-and-after views for any equipment pads, shelters, enclosures, rooms, vaults and/or platforms;
  - all existing and proposed equipment (including the point of origin and point of connection for all power and telco utilities) with all dimensions, labels and ownership identifications clearly called out;
  - boundaries for all areas leased/licensed in connection with the wireless site with all dimensions clearly shown and called out;
  - boundaries for all easements, encroachments and/or other rights-of-way for access and utilities in connection with the wireless site with all dimensions clearly shown and called out;
  - all existing and proposed primary and backup utilities, including without limitation all cables, connectors, risers, conduits, cable shrouds, trays, bridges and/or doghouses, transformers, disconnect switches, panels, meters, pedestals, cabinets, vaults, handholes, generators and/or generator sockets;
- detailed before-and-after elevation drawings from all four cardinal directions, which include:
  - all existing and proposed structures, improvements and/or fixtures with all dimensions clearly called out within 500 feet of the proposed project site;
  - detailed before-and-after depictions of the any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features;
  - all existing and proposed equipment with all dimensions, labels and ownership identifications clearly called out;
  - for projects in the public right-of-way, all existing and proposed fiber optic cables, conduits, risers, guy wires, anchors, primary and secondary power lines clearly called out;
- callouts and notes for any proposed new or extended concealment elements;
- depictions of the applicant's plan for electric and data backhaul utilities, which includes the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches and points of connection;

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- a demonstration that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
- 2.3 **Equipment Inventory.** All equipment must be inventoried with the following information for each component in a separate cut sheet:
  - manufacturer and model number;
  - basic dimensions (height, width, length and weight).
- 2.4 **Site Survey.** Only a California Registered Civil Engineer or licensed surveyor may prepare the site survey. A complete site survey must include:
  - a north arrow, date, scale and legend;
  - private and public property boundaries and right-of-way boundaries with all bearings, distances, monuments, iron rods, caps or other markers clearly shown and called out within 75 feet from the proposed project site;
  - location of all traffic lanes within 75 feet from the proposed project site;
  - location of above and below-grade utilities and related structures and infrastructure within 75 feet from the proposed project site;
  - location of all fire hydrants, roadside call boxes and other public safety infrastructure within 75 feet from the proposed project site;
  - location of all streetlights, decorative poles, traffic signals and permanent signage, sidewalks, driveways, parkways, curbs, gutters and storm drains, benches, trash cans, mailboxes, kiosks and other street furniture within 75 feet from the proposed project site;
  - location of all existing trees, planters and other landscaping features within 75 feet from the proposed project site, including any trees at least 4 inches in diameter at a point approximately 4.5 feet above ground;
  - boundaries for all areas leased/licensed in connection with the wireless site with all dimensions clearly shown and called out;
  - boundaries for all easements and/or dedications with all dimensions clearly shown and called out;
  - all access points and/or access routes to the nearest public right-of-way;
  - approximate topographical contour lines with elevations called out;
  - all structures or improvements on the property;
  - all structures or improvements within the public right-of-way within any block partially or entirely occupied by the project and any elements thereof;
  - all structures or improvements on adjacent parcels within 75 feet from the property line;
  - wet stamp and wet signature from preparer;
  - general specifications and notes identifying the applicable public health and safety codes

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and standards.

- 2.5 **Fiber Network Plan.** To the extent that the project requires running new fiber optic cables to the proposed facility, the plans must include a street map view that shows all the proposed facilities in the deployment, clearly labeled with pole number and/or site ID, the hub or base station that serves the facilities in the deployment, all fiber optic cable routes that connect the facilities to the hub, and a legend that identifies any symbols, colors or other items on the map. The fiber plans should clearly identify all meet-me points and points of connection. Even if the fiber deployment will be performed by a third-party vendor, the applicant for wireless facilities must disclose all known or reasonably foreseeable fiber network elements. This plan is not required for an application that is limited to a Small Wireless Facility.
- 2.6 **Fire Safety.** All proposed facility plans must include, describe and depict that the facility meets the fire safety requirements in Chapter 17.46, the Administrative Detailed Wireless Facility Design Guidelines, and applicable fire safety and electrical codes and standards.
- 2.7 **Electrical and Structural Safety Information.** The following engineering documents prepared under the responsible charge of and sealed by a California licensed Professional Engineer:
  - A short circuit and coordination study ("SCCS") calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
  - A one-line diagram of the electrical system;
  - Voltage Drop & Load Flow Study;
  - Load Calculation;
  - Panel Directories;
  - A plot plan showing the location of the mounting structure including address, or structure designation, or GPS location on the front sheet;
  - A plot plan showing the location of the service disconnecting means;
  - An elevation drawing of the equipment and the service disconnecting means

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 3. SITE PHOTOS AND PHOTO SIMULATIONS

Provide site photos and photo simulations that would allow the City to visualize the applicant's proposed project as constructed. The photo simulations must be in a high-resolution format and show the proposed facility from reasonable line-of-sight locations that would accurately and reliably reflect the appearance of the proposed facility and/or modifications as-built. Attach and mark as "**Attachment 3- Site Photos and Photo Simulations**". Except as otherwise provided, photo simulations must contain all the following:

- 3.1 **Current Site Photos.** Current site photos must include:
  - photos of the existing site from at least three different reasonable line-of-sight locations from public streets or other publicly available areas. These should show 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. Applicant should also attempt to get permission from adjacent property owners to take photos that can be used to show potential impacts to their views. If unable to obtain permission to photograph from adjacent properties, applicant shall include a written statement identifying the properties for which consent was requested and not obtained.
  - a map detail showing each location where a photograph was taken, the proposed site and the direction to the site from each photo location.
- 3.2 **Photo Simulations.** Photo simulations must include:
  - an accurate and reliable visual representation of the proposed facility from the same reasonable line-of-sight locations used in the current site photos and must include without limitation all interconnecting cables, conduits, brackets, and electronic equipment such as antennas, radio units and powering equipment;
  - at least one photo simulation depicting the proposed facility from a vantage point approximately 50 feet from the proposed support structure or location;
  - at least one photo simulation that demonstrates the impact of the proposed modification on the all the concealment elements, if any, of the support structure. Concealment elements include but are not limited to screen walls, architectural elements, radomes, landscape features, equipment enclosures and designs and/or techniques intended to mimic the natural or built environment;
  - a map detail showing each location where a photograph was taken, the proposed site and the direction to the site from each photo location.

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 4. REGULATORY AUTHORIZATIONS AND APPROVALS

Provide true and correct copies of all the following:

 4.1 **FCC Licenses.**

If the applicant proposes to operate in FCC-licensed spectrum, provide proof of licenses for all planned operating bands in the applicable geographic market(s). Alternatively, the applicant may provide a URL address or written instructions on where to find such licenses in publicly available FCC resources. Attach and mark as "**Attachment 4.1 – FCC Licenses**" and attach it to this application.

 4.2 **FAA Forms.**

If the proposed wireless facility requires the applicant to file FAA form 7460 or other documentation under Federal Aviation Regulation Part 77.13 *et seq.*, or under other FCC rules, provide such documentation. Label this documentation "**Attachment 4.2 – FAA Forms**" and attach it to this application.

If not applicable, check this box

 4.3 **State Regulatory Authorization.**

For facilities proposed in the public rights-of-way, the applicant must submit evidence of the applicant's regulatory status under California law to provide the services and construct the facility proposed in the application. Applicants may provide a URL address or written instructions on where to find the regulatory status (e.g., CPCN or WIR) in publicly available resources. Attach and mark as "**Attachment 4.3 – State Regulatory Authorization**".

If not applicable, check this box

 4.4 **Underground Service Alert Membership.**

Provide evidence that the applicant is a member in good standing with the Underground Service Alert of Northern California and Nevada. Attach and mark as "**Attachment 4.4 – Underground Service Alert Membership**".

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 5. STRUCTURE OR POLE OWNER'S AUTHORIZATION

If the applicant does not own the structure or pole, provide a written authorization executed by the property owner(s) that authorizes the applicant to file the application and perform the work to the extent described in the application. For facilities on utility poles, the applicant may submit the standard authorization form the pole owner or joint utility association uses to demonstrate that the applicant has the authority to perform the installation or modification. For facilities on any structure owned or controlled by the City located within the public rights-of-way, the applicant must submit a copy of the executed license agreement with the written authorization from the City to demonstrate that the applicant has the authority to perform the installation or modification. Attach and label as "**Attachment 5 – Structure/Pole Owner's Authorization**".

If not applicable, check this box

 6. RADIO FREQUENCY COMPLIANCE REPORT

Provide a radio frequency ("RF") exposure compliance report prepared and certified by an RF engineer that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. Attach and mark as "**Attachment 6 – RF Compliance Report**" and attach it to this application.

The RF compliance report must include:

- the actual frequency and power levels (in watts effective radiated power, not effective isotropic radiated power) for all existing and proposed antennas at the site;
- exhibits that show:
  - the location and orientation (degree azimuths) of all transmitting antennas;
  - the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC);
  - the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC);

*Note:* Each such boundary must be clearly marked and identified for every transmitting antenna at the project site. No RF emissions that would render any portion of any private or public parcel outside the public right-of-way inaccessible to the general public or hinder future development of the parcel, may extend onto or over such parcel without the property owner's prior written consent.

- an affirmation that the proposed installation will be operated in compliance with 47 U.S.C. § 324.

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 7. ACOUSTIC ANALYSIS

Provide a report prepared and certified by an engineer (or other qualified personnel acceptable to the City) that measures all noise-emitting equipment related to the wireless facility and would operate at the site. Such equipment includes without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators. The acoustic analysis must include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.

In lieu of a certified report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable ambient noise limits. In addition, describe whether the equipment will be passively or actively cooled if any equipment will be enclosed in a shroud, cabinet, pedestal or other enclosure. If the equipment will be actively cooled, the applicant must include the manufacturer's specifications for all active cooling mechanisms. Attach and mark as "**Attachment 7 – Acoustic Analysis**" and attach it to this application.

 8. STRUCTURAL ANALYSIS

Provide a report prepared and certified by an engineer (or other qualified personnel acceptable to the City) that evaluates whether the underlying pole, support structure or base station has the structural integrity to support all the proposed equipment and attachments. At a minimum, the analysis must be consistent with all applicable requirements in the most current versions of the CPUC General Order 95 (including, but not limited to, load and pole overturning calculations), the National Electric Safety Code, the California Building Code and any safety and construction standards required by all state and local regulations. Attach and mark as "**Attachment 8 – Structural Analysis**" and attach it to this application.

 9. LANDSCAPE PLANS

Provide a detailed written landscape plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Attach and mark as "**Attachment 9 – Landscape Plans**" and attach it to this application.

If not applicable, check this box

 10. HAZARD ASSESSMENT

A full assessment of the hazards posed by the proposed facility in the event of failure due to flood, high wind, high heat, outage, lightning strike or fire must be conducted that includes the presence of nearby vegetation and structures at applicant's cost. All materials in the proposed facility must be disclosed, including hazardous materials in any and all equipment. The assessment must identify if any tree removal or tree trimming is required or necessary in order to reduce fire hazard. Attach and mark as "**Attachment 10 – Hazard Assessment**" and attach it to this application.

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 11. PROJECT PURPOSE

Provide the following information and mark as “Attachment 11 – Project Purpose” and attach it to this application.

Identify and describe the dominant project purpose. Possible responses analyze whether the proposed facility or modification will:

- add new personal wireless service coverage to an area in which the licensee does not currently provide any personal wireless service coverage;
- add new personal wireless service capacity to an area in which the licensee currently provides personal wireless service coverage.

Check all that apply and explain why one or both apply. If the project has a different dominant purpose from the options described above, provide such purpose in full detail.

 12. TECHNICALLY FEASIBLE AND AVAILABLE ALTERNATIVES ANALYSIS

If any of the items below apply to the project, check the box(es) and attach and mark as “Attachment 12 – Technically Feasible and Available Alternatives Analysis” the information required by this section.

If no items below are applicable, check this box

 12.1 Incompatibility Items (Code Section 17.46.040(B), (C), (D) and (E))

Commented [GK1]: #13

The project is proposed in a location that it is:

- In a Tier I or Tier II location in Code Section 17.46.040(B).
- In the public right-of-way anywhere within the City. *Note:* If in a highly incompatible location in the public right-of-way (as defined in Code Section 17.46.040(E)(1)), the applicant must also provide a complete answer to Item 15 below.
- In the public right-of-way directly in front of the areas which are five feet in either direction from the centerline of each entry door or window on the front façade of any residential building.
- In the public right-of-way within a ~~250~~500-foot radius from another wireless facility within the public right-of-way.

Commented [GK2]: #32

The project is proposed to be placed on:

- A new (non-replacement) structure
- A residential historic structure
- An existing building rooftop
- An existing (or replacement) non-building structure without existing wireless facilities.



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 **12.2 Incompatible Design (Code Section 17.46.040(F) and Design Guidelines)**

If the project does not comply with any of the applicable standards in Code Section 17.46.040(F) or the Administrative Detailed Wireless Facility Design Guidelines, identify those specific items below:

- \_\_\_\_\_
- If not applicable, check this box.

 **12.3 Justification**

- 12.3.1** If you checked any boxes in 12.1 (other than not applicable), submit a justification for deviating from the most compatible location and/or structure. The analysis must include all the following required information and/or materials:

- an aerial map that shows the general geographic area of the proposed location annotated to show:
  - all existing wireless facilities within the search ring used for this particular project;
  - the search ring used for this particular project;
  - all locations for each alternative considered for this particular project;
- for each alternative site considered, a detailed written description that includes, without limitation all the following:
  - the physical address or coordinates;
  - zoning district or plan area designation;
  - the property owner's name, contact information used in attempts to inquire about interest in a lease or other agreement to use the property for a wireless facility, when such attempts were made and the response, if any, received from the property owner;
  - support structure type considered;
  - general design concept and concealment elements/techniques considered;
  - overall height and achievable antenna centerline height;
  - the reasons why the applicant considered the potential alternative site location and/or design to be technically infeasible or unavailable or otherwise less compatible with the standards in the Carmel-by-the-Sea Municipal Code than this application.
- If the applicant did not locate any alternatives within the search ring, the analysis must expressly state that no such alternatives were considered.

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- 12.3.2** If you checked any boxes in 12.2 (other than not applicable) and listed items you claim to be technically infeasible, submit a justification for deviating from the identified design standards. The analysis must include a feasibility study that clearly demonstrates that compliance with each standard would be technically infeasible and the proposed wireless facility complies with the standards to the greatest extent technically feasible.

- 13. ENVIRONMENTAL INFORMATION**

- 13.1 CEQA Documentation**

Provide an environmental impact assessment to determine whether the proposed project is categorically exempt under Article 19 of the CEQA Guidelines, or whether the proposed project will require a Negative Declaration, Mitigated Negative Declaration or an Environmental Impact Report. If a request has been made to the CPUC for a CEQA determination for the proposed project (for example, under the CPUC's 21-day expedited review process in Decision 21-04-006), provide a copy of that submittal and any CPUC staff determination. Attach and mark as "**Attachment 13.1 – CEQA Documentation**".

- 13.2 NEPA/NHPA Documentation**

Provide confirmation that an environmental assessment, or other application determination, has been completed by or on behalf of the FCC for any facility proposed in a location identified in 47 C.F.R. 1.307 (including a floodplain) or as otherwise required by National Environmental Policy Act or the National Historic Preservation Act. Attach and mark as "**Attachment 13.2 – NEPA/NHPA Documentation**".

- 14. PUBLIC NOTICE MAILING INFORMATION AND MATERIALS**

Using a mailing list obtained from the City of all properties within a 300500-foot radius of the subject site keyed to a list of names and addresses of the current property owner(s), provide two sets of adhesive mailing labels for all properties and property owners within the required radius; and unaddressed business envelopes sufficient for two mailings, stamped with first class postage, of sufficient number to contact every property owner within the required radius, the subject property owner(s), and the applicants. Label this information and materials and attach as "**Attachment 14 – Public Notice Mailing Information and Materials**."

Commented [GK3]: #31

- 15. SPECIAL EXCEPTION REQUESTS (CODE SECTION 17.46.080)**

- 15.1 General Information Required for All Special Exception Requests**

If the applicant claims a special exception to the requirements in Chapter 17.46, Chapter 17.58 or the Administrative Detailed Wireless Facility Design Guidelines, provide an explanation of the special exception request and applicable supporting data, information and studies necessary for the City to evaluate the request, including but not limited to:

- provide a list of the specific requirements in Chapter 17.46, Chapter 17.58 or the Administrative Detailed Wireless Facility Design Guidelines to which the special exception request applies.

Commented [GK4]: #2 and #14

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- for each requirement listed in response to the above,
  - identify whether a denial based on the application's noncompliance with that specific requirement would violate a specific provision of federal law, state law or both and list the provision(s) that would be violated or
  - N/A. Special exception request is for minor deviations only.
- if any federal law provisions allegedly would be violated by a denial,
  - provide an explanation as to why the proposed wireless facility qualifies as a "personal wireless service facility" as defined in 47 U.S.C. § 332(c)(7)(C)(ii).
  - provide detailed information to demonstrate that the denial of the application will prohibit or have the effect of prohibiting the provision of personal wireless services or otherwise violate identified federal laws. A simple statement unsupported by any evidence will be considered incomplete. See Item 15.2 for required information.
  - N/A Special exception request is for minor deviations only.
- if any state law provisions allegedly would be violated by a denial,
  - provide information to demonstrate that the denial of the application will violate identified state laws.
  - N/A Special exception request is for minor deviations only.
- provide information to demonstrate the special exception requested will not compromise or excuse compliance with any fire safety, or other public health and safety requirements.
- provide information to demonstrate how the exception request is narrowly tailored such that any deviation from Chapter 17.46, 17.58 or the Administrative Detailed Wireless Facility Design Guidelines is only to the extent necessary
  - for compliance with federal or state law or
  - (for minor deviations) to achieve all of the applicable design objectives of this Chapter, as well as, or better than, would be achieved by adherence to the adopted Design Guidelines.
- 15.2 Specific Information Required for Special Exception Requests Claiming an Effective Prohibition**

For effective prohibition claims, the statement must include all the following information and/or materials for the applicable claim (check applicable claim(s)):

**15.2.1 SIGNIFICANT GAP/LEAST INTRUSIVE MEANS CLAIM**

If an applicant asserts that: (i) an identified wireless provider suffers from a significant gap in its personal wireless services within the City, (ii) that the applicant's proposed facility is the least intrusive means of remedying such gap in services, having considered alternatives and (iii) that under the circumstances pertaining to the application, a denial of the application would constitute an "effective prohibition" under Section 47 U.S.C. §332, then, the applicant shall be required to file the following information:

If an applicant makes a significant gap/least intrusive means claim, then the applicant shall be required to

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submit:

**(a) Drive Test Data and Maps**

The applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which the applicant is claiming such significant gap or gaps exist, for each frequency at which the carrier provides personal wireless services. The applicant shall provide the actual drive test data recorded during such drive test, in a simple format which shall include, in table format:

- (i) the date and time for the test or test,
- (ii) the location, in longitude and latitude of each point at which signal strength was recorded and
- (iii) each signal strength recorded, measured in DBM, for each frequency. Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers.
- (iv) the applicant shall also submit drive test maps, depicting the actual signal strengths recorded during the actual drive test, for each frequency at which the carrier provides personal wireless services to its end-use customers.

If an applicant claims that it needs a "minimum" signal strength (measured in DBM) to remedy its significant gap or gaps in service, then for each frequency, the applicant shall provide three (3) signal strength coverage maps reflecting actual signal strengths in three (3) DBM bins, the first being at the alleged minimum signal strength, and two (2) additional three (3) DBM bin maps depicting signal strengths immediately below the alleged minimum signal strength claimed to be required. By way of example, if the applicant claims that it needs a minimum signal strength of -95 DBM to remedy its alleged gap in service, then the applicant shall provide maps depicting the geographic area where the gap is alleged to exist, showing the carrier's coverage at -95 to -98 DBM, -99 to -101 DBM and -102 to -104 DBM, for each frequency at which the carrier provides personal wireless services to its end-use customers.

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

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

**(c) Alternatives Analysis**

The applicant shall conduct and provide an analysis of a minimum of three (3) alternative sites and designs that shows that the proposed facility is the least intrusive means of filling the identified significant gap. Where the applicant asserts that a potential less intrusive alternative location for a proposed facility is unavailable because the owner of the potential alternative site is incapable or unwilling to lease space upon such site to the applicant, the applicant shall provide proof of such unwillingness in the form of communications to and from such property owner, and/or a sworn affidavit wherein a representative of the applicant affirms, under penalty of perjury, that they attempted to negotiate a lease with the property owner, what the material terms of any such offer to the property owner were, when the offer was tendered, and how, if at all, the property owner responded to such offer.

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 15.2.2 MATERIALLY INHIBITS CLAIM

If an applicant asserts that (i) one or more City requirement(s) will have the effect of prohibiting wireless telecommunications services because it inhibits the provision of personal wireless services because, for example, it inhibits an identified wireless provider's ability to densify a wireless network, introduce new services to a new or existing geographic area or otherwise improve existing service capabilities, or restricts the entry of a new wireless provider in providing personal wireless service in a particular area, and (ii) the inability to meet the identified service and performance goals materially inhibits the wireless provider's ability to compete in a fair and balanced legal and regulatory environment, and (iii) that under the circumstances pertaining to the application, a denial of the application would constitute an "effective prohibition" under Section 47 U.S.C. §332, then, the applicant shall be required to file the following information:

If the materially inhibits claim is based on a claim of the existence of a significant gap, the applicant shall provide the information in 15.2.1 above.

If the materially inhibits claim is based on grounds other than the existence of a significant gap, the applicant shall provide:

- a street-level map that shows the general geographic area of the service area(s) to be densified, to be improved, to receive new services through the proposed wireless facility (the "Service Area");
- full-color signal propagation maps in scale with the street level map that show current and predicted service coverage in the area for all active frequencies in RSRP (or other relevant signal level or quality indicator) and with a legend that describes the objective signal levels in dBm that correspond to any colors used to depict signal levels on such propagation maps. Graduations between signal levels shown on the map shall not exceed 3 dBm;
- a written narrative that describes the new services and ~~for~~ minimum service levels the applicant seeks to provide within the Service Area, the uses (commercial, residential, primary thoroughfare, highway, etc.) within the Service Area, and the manner in which those uses would be negatively affected if the Service Area were to remain unaddressed;
- a statement as to whether the applicant conducted any drive test(s) and, if so, all drive test results and data (in .XLS or .CSV or similar format) together with a report that describes how and when the applicant conducted such test(s).
- an explanation of how the inability to meet the identified service and performance goals due to a City denial on the basis of the City requirement materially inhibits the wireless provider's ability to compete in a fair and balanced legal and regulatory environment.

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Label this information and analysis and attach as "Attachment 15 – Special Exception Requests."

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**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL**

**ORDINANCE NO. 2023-XXX**

**AN ORDINANCE OF THE CITY COUNCIL OF CARMEL-BY-THE-SEA AMENDING THE CARMEL MUNICIPAL CODE (CMC) TITLE 17 (ZONING) BY REPEALING AND REPLACING CHAPTER 17.46 (TELECOMMUNICATIONS AND WIRELESS FACILITIES) AND MAKING CONFORMING AMENDMENTS TO ZONING CODE SECTIONS 17.08.040, 17.12.020, 17.14.030, 17.14.220, 17.18.030, 17.40.070, 17.52.150, 17.54.010, 17.54.040, 17.54.080, 17.58.030, 17.58.040, 17.68.070, 17.70.010 AND 17.70.020 AND TO MUNICIPAL CODE SECTIONS 12.08.050, 12.08.060, 13.28.070; AND FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, the City of Carmel-by-the-Sea currently regulates the placement of wireless facilities throughout the City under Title 17, Chapter 17.46 of the Municipal Code; and

**WHEREAS**, Chapter 17.46 was last amended in 2004; and

**WHEREAS**, there have been significant changes in state and federal law affecting local authority over wireless siting since Chapter 17.46 was last amended, including the passage of new federal laws and state laws, the adoption of new Federal Communications Commission regulations and orders, the amendment of California Public Utility Commission orders related to utility infrastructure, and various judicial decisions interpreting those laws and regulations; and

**WHEREAS**, notwithstanding the various changes in state and federal law, local governments continue to retain authority to regulate the placement, construction, and modification of personal wireless service facilities, subject to those matters where local authority has been limited or removed by state or federal law; and

**WHEREAS**, Carmel-by-the-Sea has made longstanding and sustained efforts to preserve its distinct “village in a forest, by the sea” character, the natural beauty of its shoreline environment, and its charm as a popular visitor destination, by not allowing incompatible development that degrades the visual and economic value of adjoining properties, especially in residential areas; and

**WHEREAS**, Carmel-by-the-Sea’s topography, forested nature, location partially within and partially adjacent to California’s High Fire-Threat District (HFTD), and narrow streets, with few gutters or sidewalks or streetlights, gives rise to many unique concerns

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and situations relating to fire safety, traffic circulation, parking and pedestrian safety;  
and

**WHEREAS**, if not adequately regulated, the installation of personal wireless services facilities within the City can pose a threat to the public health, safety, and welfare; traffic and pedestrian safety hazards; negative impacts to trees; creation of visual and aesthetic blights and potential safety concerns arising from improper design or excessive size, heights, noise, or lack of camouflaging; and

**WHEREAS**, the City therefore intends to exercise its powers to regulate personal wireless service facilities to the maximum extent allowed by law, to protect its residents and visitors, promote public health, safety and community welfare, preserve the natural resources and unique scenic quality of Carmel-by-the-Sea, and protect the character of the City's residential neighborhoods, while nonetheless respecting and adhering to the law as it is today and may change in the future; and

**WHEREAS**, the City Council and Planning Commission held a joint special meeting on wireless regulation on February 28, 2022 to receive an update on changes to the law, to receive public feedback and to provide general direction to staff on an update to the City's wireless regulations; and

**WHEREAS**, the Planning Commission conducted a duly noticed public workshop on a draft of the wireless regulations (ordinance, design guidelines, standard conditions of approval, and application forms) on March 29, 2023 to receive public feedback; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on the proposed ordinance, design guidelines, standard conditions of approval, and application forms on August 23, 2023 at which it took public testimony, held a discussion, and voted to adopt the design guidelines, standard conditions of approval, and application forms, and to recommend that City Council adopt of the proposed code amendments (Resolution No. \_\_\_);

**WHEREAS**, on \_\_\_\_\_, 2023 the City Council held a duly noticed public hearing on the proposed code amendments;

**WHEREAS**, the City determined this ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines; and

**WHEREAS**, the proposed amendments are in full conformity with the City's Local Coastal Plan and the California Coastal Act (Public Resources Code Section 30510 et seq.)

**SECTION 1.** CEQA Review. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an

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application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a “project” within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council’s adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the applicant would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. The City Council therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Monterey within five working days of the passage and adoption of the Ordinance.

**SECTION 2.** Repeal and Replacement of Chapter 17.46. Chapter 17.46 of Title 17 of the Carmel-by-the-Sea Municipal Code is hereby repealed in its entirety and replaced with the following:

**Chapter 17.46  
TELECOMMUNICATIONS AND WIRELESS FACILITIES**

Sections:

- 17.46.010 Purpose and Findings.**
- 17.46.020 Definitions.**
- 17.46.030 Applicability.**
- 17.46.040 General Development Standards.**
- 17.46.050 Wireless Application Types and Submittal Requirements.**
- 17.46.060 Application Review Procedures.**
- 17.46.070 Public Notices, Public Hearings and Appeals.**
- 17.46.080 Findings Required.**
- 17.46.090 Standard Conditions of Approval.**
- 17.46.100 Violations**

**17.46.010 Purpose and Findings.**

A. **Purpose.** The purpose of this chapter is to establish comprehensive requirements and development standards for the siting, design, construction, maintenance and modification of wireless facilities in Carmel-by-the-Sea, including on public and private property and in public rights-of way, in order to manage their deployment and minimize adverse aesthetic impacts to Carmel-by-the-Sea’s unique village character, consistent with and to the full extent of the City’s authority under federal and California law.



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**B. Findings.** The City Council hereby finds that:

1. Limitations on the placement of wireless facilities within the City limits are necessary to:

- a. Protect Carmel-by-the-Sea's distinct "village in a forest, by the sea" character with its centralized commercial core surrounded by residential land uses.
- b. Protect Carmel-by-the-Sea's charm as a popular visitor destination, known as much for its spectacular coast as for its unique community character.
- c. Recognize and respect that Carmel-by-the-Sea is among a limited number of California coastal communities where nearly the entire shoreline from the first public road to the sea is open to the public and easily accessible, and that over the years, Carmel has maintained a balance between preserving the beauty of the shoreline environment and adding the physical improvements that make the Carmel shoreline accessible and enjoyable to the public, keeping the entire beach and bluff as natural appearing as possible consistent with public access, habitat protection, safety and provision of limited recreational support facilities.
- d. Recognize and respect that Carmel-by-the-Sea's streets are narrow in width, 26 to 34 feet, with few gutters or sidewalks and that this lack of formal development of streets throughout Carmel (with the exception of some of the downtown thoroughfares) has been a conscious effort on the part of residents to maintain a "village in a forest" atmosphere, and gives rise to many unique situations relating to traffic, circulation, parking and pedestrian safety.

2. Personal wireless services can serve as an important and effective part of Carmel-by-the-Sea's emergency response and communications.

3. The regulations contained herein are designed to promote public health, safety and community welfare, preserve the natural resources and scenic quality of Carmel-by-the-Sea and protect the character of the City's residential neighborhoods, recognizing that the preservation of the residential character in Carmel is central to all land uses, consistent with the findings in (1) and (2), while regulating managed development of wireless infrastructure throughout the City.

4. The provisions of this chapter are intended to:

- a. Comply with all applicable goals, objectives and policies of the General Plan, the City's Local Coastal Program and the California Coastal Act.
- b. Minimize adverse aesthetic impacts associated with wireless facilities in all districts.
- c. Preserve Carmel's primarily residential character by keeping business and commerce subordinate to its residential character.

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d. Comply with all federal law, Federal Communications Commission rules, regulations and standards, California law, and California Public Utilities Commission regulations and standards.

e. Ensure the safe installation and maintenance of wireless facilities to protect against fire hazards made more prevalent by Carmel's unique urbanized forest, topography and accessibility.

#### **17.46.020 Definitions.**

The definitions in this Section apply to this chapter. Undefined terms shall have the meaning assigned to them in Chapter 17.70. Per Section 17.02.090(C), to the extent that this chapter quotes or paraphrases any State or Federal Statute for convenience and any conflict is discovered, or is created through amendment, the State or Federal Statute shall control and shall be cause for an amendment to this chapter.

#### **A. Generally Applicable Definitions**

1. **"accessory equipment"** means equipment other than antennas used in connection with a wireless facility. The term includes transmission equipment.

2. **"amateur station"** means the same as defined by the FCC in 47 C.F.R. § 97.3, which means a station in an amateur radio service consisting of the apparatus necessary for carrying on radio communications. This term includes amateur radio antennas and related facilities used for amateur radio services.

3. **"antenna"** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), which means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services.

4. **"base station"** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(1), which means:

A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

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(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.6100(b)(1)(i) through (ii) of 47 C.F.R. § 1.6100 that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.6100(b)(1)(i)–(ii) of 47 C.F.R. § 1.6100.

5. **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), which means (1) Mounting or installing an antenna facility on a pre-existing structure; and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure. For eligible facilities requests, the definition of collocation in B.1 below applies instead of this definition.

6. **“CPUC”** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.

7. **“Director”** means the City of Carmel-by-the-Sea Community Planning and Building Director or the Director’s designee.

8. **“EFR” or “eligible facilities request”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(3) which means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

9. **“FCC” or “Commission”** means the Federal Communications Commission, as constituted by the Communications Act of 1934, Pub. L: 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.

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10. **“Fire Safety Authority”** means the Chief Building Official of the City of Carmel-by-the-Sea or the Fire Safety Authority’s designee.
11. **“historic resource”** means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources, the “Carmel Inventory of Historic Resources” or the “Carmel Inventory” as defined in code Section 17.32.230, the “Carmel Register of Historic Resources” or the “Carmel Register” as defined in code Section 17.32.230, or any “historic resource” or “historical resource” as defined in code Section 17.32.230. The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.
12. **“OTARD”** means any “over-the-air reception device” subject to the FCC rules in 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and antennas, and certain fixed wireless antennas not greater than one meter in diameter.
13. **“personal wireless service facility”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(i) which means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.
14. **“personal wireless services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i) which means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.
15. **“public right-of-way”** or **“public rights-of-way”** means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.
16. **“reviewing authority”** means the City official or appointed/elected body responsible for application review and vested with authority to approve, approve with modifications and/or conditions, or deny such applications.
17. **“RF”** means radiofrequency.
18. **“small wireless facility”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), which means a personal wireless service facility that meets each of the following conditions:

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- (a) The facilities (i) are mounted on structures 50 feet or less in height including their antennas; or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures; or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- (b) Each antenna associated with the deployment is no more than three (3) cubic feet in volume, excluding associated antenna equipment;
- (c) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume;
- (d) The facility does not require antenna structure registration under 47 CFR Part 17 (Construction, Marking and Lighting of Antenna Structures);
- (e) The facility is not located on tribal land; and
- (f) The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1).

19. **“FCC shot clock”** means the time defined by the FCC in 47 C.F.R. § 1.6003 or 1.6100(c) (as applicable) in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless services facilities.

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

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21. **“structure”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(m) which means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services). A tree including live, dead, partially cut down or limbed tree is not a structure and may not be used for placement of wireless facilities.

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22. **“tower”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(9) which means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.
23. **“transmission equipment”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(8) which means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
24. **“Type I application”** means an application type described in 17.46.050(A)(1)(a).
25. **“Type II application”** means an application type described in 17.46.050(A)(1)(b).
26. **“Type III application”** means an application type described in 17.46.050(A)(1)(c).
27. **“Type IV application”** means an application type described in 17.46.050(A)(1)(d).
28. **“Type V application”** means an eligible facilities request or EFR.
29. **“utility pole”** means a wood or steel vertical structure in the public right-of-way designed to support electric, telephone and similar utility lines. A tower is not a utility pole.
30. **“visibility triangle”** means that portion of both the public and private property at any corner bounded by the curb line or edge of roadway of the intersecting streets and a line joining points on the curb or edge of roadway a distance in feet equivalent to the width of the roadway from the point of intersection of the extended curb lines or edges of roadway.
31. **“wireless facility”** means the transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), structure(s), and base station(s).

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**B. Additional Definitions Applicable to Eligible Facilities Requests (EFRs) Only**

1. **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), which means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
2. **“eligible support structure”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4) which means any tower or base station, provided that it is existing at the time the relevant eligible facilities request application is filed with the State or local government.
3. **“existing”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4) which means a constructed tower or base station is “existing” for purposes of an EFR, if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
4. **“site”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(6), which means that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.
5. **“substantial change”** or **“substantially change”** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(7), which establishes different criteria based on the particular facility type and location. For clarity, the definition in this chapter reorganizes the FCC’s criteria and thresholds for a substantial change according to the facility type and location.
  - a. For towers outside the public rights-of-way, a substantial change occurs when:
    - i. the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array

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- with separation from the nearest antenna not to exceed 20 feet (whichever is greater); or
- ii. the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
  - iii. the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
  - iv. the proposed collocation or modification involves excavation or deployment outside the current boundaries of the leased or owned property surrounding the wireless tower by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
- b. For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
- i. the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
  - ii. the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
  - iii. the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
  - iv. the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
  - v. the proposed collocation or modification involves excavation or deployment outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- c. In addition, for all towers and base stations wherever located, a substantial change occurs when:



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- i. the proposed collocation or modification would defeat the existing concealment elements of the eligible support structure as determined by the reviewing authority; or
  - ii. the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this definition.
- d. The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits from the originally-permitted eligible support structure. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted eligible support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites that existed prior to February 22, 2012, the cumulative limit for vertically separated deployments is measured from the permitted site dimensions as they existed on February 22, 2012—the date that P.L. 112-96 was signed into law.

#### **17.46.030 Applicability.**

- A. **General.** This chapter applies to all requests for the City’s regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities on property within the City’s territorial and jurisdictional boundaries, unless expressly exempted pursuant to subsection (B). This includes permit applications submitted to the City for decision in its regulatory capacity for wireless facilities on property or structures owned or controlled by the City and located within the City, including in public rights-of-way; provided, however, that this chapter does not govern whether or under what terms and conditions the City, in its capacity as the property or structure owner, would lease, license or otherwise allow a wireless facility on such property or structures.
- B. This chapter shall not be applicable to the following:
  - 1. wireless facilities installed completely indoors and used to extend personal wireless services into a business or the subscriber’s private residence, such as a “femtocell” or indoor distributed antenna system;
  - 2. OTARD antennas which are regulated pursuant to Chapter 15.40 (Antennas and Satellite Dishes);

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3. antennas and related transmission equipment used in connection with a duly authorized amateur station operated by a federally licensed amateur radio operator as part of the Amateur Radio Service; provided, that its maximum height does not exceed the height requirements of the zoning district;
4. wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D;
5. temporary wireless facilities parked in a fixed location within the public rights-of-way for no longer than 10 days under an approved special events permit pursuant to Chapter 12.48.

**17.46.040 General Development Standards.**

- A. **Location Standards.** When considering compatibility of a location and structure for Type I, Type II, Type III and Type IV wireless facilities, the City requires applicants to propose those that will be the least intrusive to community character and values. Subsection B provides a ranking that describes Zoning Districts where wireless facilities are least compatible to most compatible with other uses. Subsection C provides the City's preference for placements on parcels over public rights-of-way. Subsection D provides structure rankings. Subsection E provides additional special considerations for site selection on public right-of-way.
- B. **Ranked Locations.** Applicants must propose placement in locations with the least intrusive land use designation (i.e.: Zoning) technically feasible and potentially available. Applications proposing placement in Tier I or II must include a written justification as part of the application submittal, supported by factual and verifiable evidence, that shows no location in a Tier III land use tier is technically feasible and available. The following land use tiers are ranked from least compatible to most compatible:

*Tier I (Least Compatible):*

Senior Citizen Facility (A-3), Multi-Family Residential (R-4), and Single-Family Residential (R-1).

*Tier II:*

Improved Parklands (P-2), Natural Parklands and Preserves (P-1), and Theatrical (A-1).

*Tier III (Most Compatible):*

Central Commercial (CC), Service Commercial (SC), Community and Cultural (A-2), Residential and Limited Commercial (RC)

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**C. Preference for Placement on Public and Private Parcels Over on Public Right-of-Way.**

Placement on public and private parcels is strongly preferred over placements in the public rights-of-way because Carmel's public rights-of-way are narrow in width (26 to 34 feet), with few gutters or sidewalks. Limiting wireless facilities in public rights-of-way is necessary: (i) to ensure that the flow of pedestrian and vehicular traffic, including ingress to, or egress from, any residence, public building, or place of business or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles is maintained; (ii) to provide reasonable access for the use and maintenance of sidewalks, pathways, hydrants, restrooms, trash receptacles, firefighting apparatus, as well as access to locations used for public transportation services; (iii) to ensure no interference to the performance of police, firefighter, and other emergency medical personal; and (iv) to maximize public access in the commercial districts and along the coast which have unusually high pedestrian and vehicular traffic volumes. Applications proposing placement in the public right-of-way must include a written justification as part of the application submittal, supported by factual and verifiable evidence, that shows placement on a parcel is not technically feasible and available

**D. Structure Selection.** Applicants shall propose placement on the most-compatible structure that is technically feasible and available. Any application to place a wireless facility on a structure other than the most compatible structure must include a written justification, based on factual and verifiable evidence, that shows no more compatible structure is technically feasible and available.

1. **Structure Selection on Parcels.** The following structures are ranked from least compatible to most compatible on parcels:
  - a. new (non-replacement) structures.
  - b. residential historic structures
  - c. existing building rooftops.
  - d. existing (or replacement) non-building structures without existing wireless facilities.
  - e. existing non-building structures with existing wireless facilities.
2. **Structure Selection on Public Rights-of-Way.** New (non-replacement) structures of any type (pole or non-pole) are the least compatible structures to use on public rights-of-way. Existing (or replacement) utility poles are the most compatible structures. Selection of structures/locations in the public right-of-way is also subject to the limitations in Subsection E below.

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**E. Additional Special Considerations for Locations in the Public Right-of-Way.**

1. **Highly Incompatible Locations in the Public Right-of-Way.** Applicants shall not propose to install wireless facilities in/on a highly incompatible location in the public right-of-way unless the application is accompanied by a request for a special exception finding under Subsection 17.46.080(C). The following is a list of highly incompatible locations:
  - a. any location in the public right-of-way within the Single-Family Residential Zoning District.
  - b. any location in the public right-of-way that would trigger review of consistency with the Secretary of the Interior's Standards for potential impacts to a historic resource on a residential parcel in any Tier I zone in B above;
  - c. any location in the public right-of-way within the area depicted in Figure 1 below.



**FIGURE 1**

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 500-foot radius from another wireless facility within the public rights-of-way.

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3. **Public Right-of-Way Location Safety Considerations.** Applicants shall not propose adding new structures in the following locations:
- a. Any location that would create a hazard to public health or safety.
  - b. Any location that would adversely affect the normal drainage of surface water, unless an acceptable mitigation is included that will be advantageous to the general public.
  - c. Any location that would adversely affect vehicular and/or pedestrian traffic or the parking of vehicles including placements in any visibility triangle that obstructs or restricts the view necessary for the safe operation of motor vehicles as determined by the Traffic Safety Committee.
  - 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.
  - e. Any location within 10 feet away from any driveways for police stations, fire stations, or other emergency responder facilities.
  - f. Any location that would physically interfere with or impede access to any: (i) above-ground or underground infrastructure for traffic control, or public transportation, including, without limitation, any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (ii) public transportation vehicles, shelters, street furniture, or other improvements at any public transportation stop; (iii) above-ground or underground infrastructure owned or operated by any public or private utility agency; (iv) fire hydrant or water valve; (v) doors, gates, sidewalk doors, passage doors, stoops, or other ingress and egress points to any building appurtenant to the right-of-way; or (vi) fire escape.

**F. Design Standards**

1. **General Requirements.** This subsection establishes generally applicable design standards for all Type I, Type II, Type III and Type IV wireless facilities in all locations. The design of Type I, Type II, Type III and Type IV wireless facilities must also comply with applicable administrative guidelines adopted by the Planning Commission pursuant to subsection 17.46.040(B)(2), Chapter 17.58, and the City Council pursuant to subsection 17.58.020(E).
- a. **Stealth/Concealment.** All wireless facilities must be stealth to the maximum extent feasible. Colors and materials for wireless facilities shall be muted, subdued, non-reflective and chosen to minimize visibility to the greatest extent feasible.

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- 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.
- c. **Finishes.** All exterior surfaces shall be painted, colored, and/or wrapped in flat, muted, subdued, non-reflective hues that match the underlying structure or blend with the surrounding environment. All exterior surfaces on wireless facilities shall be constructed from, or coated with, graffiti-resistant materials. All finishes shall be subject to the reviewing authority's prior approval.
- d. **Noise.** All wireless facilities must be compliant with all applicable noise regulations, which includes, without limitation, any noise regulations in this code. The reviewing authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
- e. **Lights.** Wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC, other applicable federal or state governmental regulations. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible. Any lights associated with the electronic equipment shall be appropriately shielded from public view. Any light beacons or lightning arresters shall be included in the overall height calculation.
- 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 existing native vegetation shall be maintained to the maximum extent feasible. The reviewing authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the stealth techniques required under this chapter. All plants proposed or required must be reviewed as part of a formal landscaping plan and approved by the City.
- g. **Signage; Advertisements.** All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's

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network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the reviewing authority, required by law or recommended under FCC or other federal governmental agencies for compliance with RF emissions regulations.

- h. **Security Measures.** To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as fences, walls and anti-climbing devices, may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall stealth, and the reviewing authority may condition approval on additional stealth elements to mitigate any aesthetic impacts, which may include, without limitation, additional landscape or hardscape features. Barbed wire, razor ribbon, electrified fences or any similar security measures are prohibited. Alarm systems shall not include any audible sirens or other sounds.
- i. **Fire Safety.** All wireless facilities shall be designed by qualified, licensed persons to provide the maximum protection that is technically feasible to prevent electrical and fire hazards. All wireless facilities ~~should~~ shall be proactively monitored and maintained to continue and if possible, improve the safety design.
- j. **Compliance with Laws.** All wireless facilities must be designed and sited in compliance with all applicable federal, state, regional, and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, general plan and any applicable specific plan, this code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
- k. **View Protection.** Wireless facilities shall be located and designed to preserve significant coastal views from the public right-of-way in conformance with Section 30251 of the California Coastal Act. The protection of public views should not prevent reasonable development of the site, yet development shall not preclude reasonable protection of any significant coastal view. Designs should respect views enjoyed by neighboring parcels and should not present excess visual mass or bulk to public view or to adjoining properties. 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. Collocation is encouraged when it will decrease visual impact. This objective is intended to balance the private rights to views from all parcels that will be affected by a proposed wireless facility. No single parcel should enjoy a greater right than other parcels except the natural advantages of each site's

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topography. Wireless facilities which substantially eliminate an existing significant view enjoyed on another parcel should be avoided.

2. **Administrative Detailed Wireless Facility Design Guidelines.** The Planning Commission may develop, and from time to time amend, Administrative Detailed Wireless Facility Design Guidelines consistent with the generally applicable design standards contained in this ordinance to clarify the aesthetic and public safety goals and standards in this chapter for City staff, applicants and the public. The Administrative Detailed Wireless Facility Design Guidelines shall provide more detailed standards to implement the general principals articulated in this section and may include specific standards for particular wireless facilities or site locations, but shall not unreasonably discriminate between functionally equivalent service providers. If a conflict arises between the development standards specified in this chapter and the Administrative Detailed Wireless Facility Design Guidelines, the development standards specified in this chapter shall control.

G. **Standards Applicable to Type V Wireless Facilities.** Type V applications are evaluated under the criteria for an eligible facilities request established by federal law and FCC regulations to determine whether or not the request involves a “substantial change” to an “eligible support structure” as these terms are defined in Section 17.46.020. Type V applications also must comply with any generally applicable law, regulation, rule or standard or permit condition reasonably related to public health or safety.

#### **17.46.050 Wireless Application Types and Submittal Requirements.**

##### **A. Application Types**

1. **Conditional Use Permit Applications.** There shall be four (4) specific types of applications for conditional use permits under this section, which shall include Type I, Type II, Type III, and Type IV applications. The Planning Commission is the initial reviewing authority for Type I-IV applications. Decisions of the Planning Commission may be appealed to the City Council.
  - a. **Type I Applications: Collocations of Small Wireless Facilities.** Type I applications shall be limited to applications wherein an applicant seeks to place a new small wireless facility upon an existing structure and either (i) the structure is not an existing tower or base station (as defined for EFR purposes) or (ii) the structure is an existing tower or base station (as defined for EFR purposes) but the proposed facility does not qualify as an EFR. If the completed facility would still meet the physical limits and requirements to meet the definition of a small wireless facility after the installation of the new equipment, then the application to install such new equipment is a Type I application.



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- b. **Type II Applications: Collocations which do not qualify as a Small Wireless Facility Collocation or EFR.** Type II applications shall be limited to applications wherein an applicant is seeking to place a new personal wireless service facility upon an existing structure which does not meet the definition of a small wireless facility or which will not meet the definition of a small wireless facility if and when the proposed new personal wireless service equipment is installed upon the existing facility and/or structure and either (i) the structure is not an existing tower or base station (as defined for EFR purposes) or (ii) the structure is an existing tower or base station (as defined for EFR purposes) but the proposed facility does not qualify as an EFR.
  - 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.
  - d. **Type IV Applications: New Towers and All Other Wireless Facilities, Except EFRs.** Type IV applications shall include any applications for the installation of a new personal wireless service facility which does not meet the criteria for Type I, Type II, Type III or Type V applications.
2. **Administrative Use Permit Applications.** There shall be one type of application for an administrative use permit under this section, which shall be a Type V application. The Director is the initial reviewing authority for Type V applications. Decisions of the Director may be appealed to the City Council.
- a. **Type V Applications: Eligible Facilities Requests or EFRs.** Type V applications shall include any applications that purport to meet the criteria for an eligible facilities request under federal law and FCC regulations.

## B. Submittal Requirements.

1. **Application Content.** All applications for a permit under this Chapter must include all the information and materials required by the Application for Wireless Facility form and the applicable Wireless Facility Application Checklist adopted by resolution of the Planning Commission. The Planning Commission is authorized to develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Planning Commission finds necessary, appropriate or useful for processing any application governed under this chapter. All such requirements must be in written form and publicly stated and available. All applications shall, at a minimum, require the applicant to submit probative evidence to demonstrate that the proposed project will be in compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions. It shall be the obligation of any applicant to use the

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correct forms and explicitly and correctly identify which type of application they are filing.

2. **Application Fee/Deposit.** The applicant shall submit with its written materials the full application fee or deposit amount established by City Council resolution. If no application fee has been adopted at the time of application, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a 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. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be refunded to the applicant.
3. **Application Submittal.** All applications submitted under this chapter must be submitted to the City ~~at a pre-scheduled appointment with~~ during the office hours specified for intake of applications submitted under this chapter as established by the Community Planning and Building Department and posted on the City's webpage. Applicants may submit one application ~~per appointment but may schedule successive appointments for~~ multiple applications whenever feasible and not prejudicial to other applicants. ~~The Community Planning and Building Department shall use reasonable efforts to provide the applicant with an appointment in writing within five working days after the Community Planning and Building Department receives a written request.~~ Any application received in a different manner or outside those established intake hours ~~without an appointment~~, whether delivered in-person, by mail or through any other means, will not be considered duly filed whether the City retains the submitted materials or not.
4. **Other Permits and Reviews That May Be Required.** In addition to any permit required by this Chapter, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state, or local laws or regulations for the construction of the proposed facility, which includes, without limitation, any applicable permits or reviews listed below:
  - a. **Forest and Beach Commission Review.** Any proposed project that involves a request to remove or prune any tree type identified in Chapter 17.48 must be approved by the Forest and Beach Commission prior to determining completeness of the application.
  - b. **Historic Resources Board Review.** In accordance with Section 17.32.220, facilities proposed within a historic district or within the boundaries of an historic property included in the inventory are subject to additional review under Chapter 17.32 prior to consideration by the Planning Commission.

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c. **Coastal Development Permit Review.** In accordance with Section 17.52.090, any person wishing to undertake any development in the coastal zone shall obtain a coastal development permit unless excluded from coastal permit requirements pursuant to Section 17.52.100.

5. **Voluntary Community Meetings.** The City strongly encourages, but does not require, prospective applicants and applicants to schedule, notice, arrange, and attend one or more voluntary community meetings with all interested members of the public. Community meetings may be conducted before or after application submittal. This community meeting is intended to give applicants the opportunity to hear from members of the public regarding the proposed project and any alternative locations or designs. Voluntary community meetings do not cause any FCC shot clock to begin.

#### **17.46.060 Application Review Procedures.**

##### **A. Completeness Review By Director**

1. In addition to exercising other duties and powers listed in Section 17.52.030 and elsewhere in this Title relevant to the application, the Director shall review each application and determine whether or not the application is complete and inform the applicant in writing that the application is complete or that additional information is needed to complete the application consistent with timeline in Section 17.52.020 and the applicable FCC shot clock.
2. If the Director determines that the application is defective or incomplete, they shall promptly deliver a Notice of Incompleteness to the applicant in order to pause the applicable FCC shot clock.
3. The Director may take such other steps as may be required for the City to timely act upon applications for placement of wireless facilities, including entering into agreements with applicants to extend the time for action on any application under the applicable FCC shot clock.

##### **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

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landowner to secure the reimbursement of the City's consultant expenses. The City Council shall establish policies and procedures for the fixing of escrow deposits and the management of payment from them. When it appears that there may be insufficient funds in the account established for the applicant or landowner by the City to pay current or anticipated vouchers, the City shall cause the applicant or landowner to deposit additional sums to meet such expenses or anticipated expenses in accordance with policies and procedures established by the City Council. No reviewing agency shall be obligated to proceed unless the applicant complies with escrow deposit requirements.

~~3. **Liability for Consultant Expenses.** 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:~~

**D. Director Denial Without Prejudice Due to Failure to Respond to Notice(s) of Incompleteness.** To promote efficient review and timely decisions, any application governed under this chapter regardless of type may be denied by the Director without prejudice when the applicant fails to tender a substantive response to the City within 120 calendar days after the Director deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 120th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

**E. Environmental Review.** Environmental review of the proposed project to protect and assure that citizens of the community contribute to the preservation and the enhancement of the environment shall be performed in accordance with Chapter 17.60 of the City's Municipal Code.

**F. Fire Safety Authority Review.** After submittal by the applicant, the relevant application materials shall be transmitted to the Fire Safety Authority for their review and any recommended conditions.

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G. **Staff Report and Recommendations.** A staff report shall be prepared for Type I-IV applications involving a public hearing. Staff reports shall evaluate the compliance of the proposed project with the applicable City policies, regulations and requirements. The report shall recommend, with appropriate findings, the approval, approval with conditions, or disapproval of the application, based on the project evaluation. The report and supporting materials will be made available to the public in advance of the public hearing.

**17.46.070 Public Notices, Public Hearings, Decision Notices and Appeals.**

A. **Application Submittal Notices – For Types I-V**

1. **Posted and Hand-Delivered Notices.** Within five days after an application is duly filed with the Director, the applicant shall (1) post notice on the proposed project site in a location near to and visible from the public rights-of-way or in the public right-of-way if the project site is in the public right-of-way; (2) provide a hand-delivered postcard notice to neighbors within 100-foot radius of the site; and (3) provide the Director an affidavit that such notice has been posted and hand-delivered. The applicant is responsible for maintaining and replacing the posted notice as necessary during the duration of the application review process until the reviewing authority acts on the application. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for the duration of the notice period. The posted notice shall be no more than two square feet and not violate Section 17.40.070. The notice/sign shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, pedestrians or other users in the public right-of-way. The City encourages applicants to consult with the department on placement locations to avoid any potential hazards.
2. **City Website Notice.** Within 10 days after an application is duly filed with the department, the Director shall post notice of the submittal on the City's website.
3. **Notice Content.** The notices required by this Section 17.46.070(A) shall include: (1) the project location with both an approximate street address and GPS coordinates; (2) the City's permit application number; (3) the application type and a general project description with photo simulations; (4) the applicant's contact information as provided on the application submitted to the City; (5) a URL for the City's website page where application information can be obtained once uploaded in accordance with Section 17.46.070(A)(2); and (6) a statement as to whether a public hearing will be required for the application.

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B. **Public Hearing Notices (For Types I-IV).** Public hearing notices shall be provided consistent with the requirements of Section 17.52.110, except that the mailing radius shall be 500 feet.

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C. **Public Hearings (For Types I-IV).** The Planning Commission shall conduct a public hearing upon each conditional use permit application, consistent with the procedures in §17.52.160.

D. **Decision Notices.**

1. **For Types I-V.** Within five calendar days after the Planning Commission makes a decision on a Type I, II, III or IV application or the Director makes a decision on a Type V application, the Director shall: (1) deliver a written decision notice to the applicant; (2) post written notice of the decision at the proposed project site; (3) provide a hand-delivered written notice of the decision to neighbors within 100-foot radius of the site; and (4) post the decision on the City's website.
2. **Content of Decision Notices for Types I-V.** The written notice sent to the applicant, posted at the proposed project site and hand-delivered to neighbors must contain: (1) the decision made (approval or denial); (2) either the reasons for the decision or where the reasons for the decision are available; (3) if the decision is a denial, a statement whether the denial is with prejudice or without prejudice for the purposes of CMC 17.52.170(D); and (4) instructions for how and when to file any appeal.
3. **For Director Denials Without Prejudice.** The Director must send a written notice to the applicant to deny an application without prejudice due to failure to respond to notice(s) of incompleteness pursuant to Section 17.46.060(D)(1). The written notice shall state: (1) the number of days that have passed without the applicant tendering a substantive response to the City after the Director last deemed the application incomplete in a written notice to the applicant; (2) a statement that denial is without prejudice; and (3) instructions for how and when to file any appeal.

E. **Appeals.**

1. **For Types I-V.** Within ten calendar days after the Director issues the decision notices pursuant to Section 17.46.070(D)(1) or (3), any interested person may file a written appeal for cause in accordance with the provisions in Chapter 17.54; provided, however, that (1) the time for filing an appeal and the notice provisions in this chapter shall control over those in Chapter 17.54 and (2) appeals from an approval shall not be permitted when based solely on environmental effects from RF emissions exposure from the approved facility that was found compliant with applicable FCC regulations and guidelines.

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2. **For Director Denials Without Prejudice.** Within ten calendar days after the Director issues the decision notice pursuant to Section 17.46.070(D)(3) denying an application without prejudice, the applicant may file a written appeal for cause in accordance with the provisions in Chapter 17.54; provided, however, that the time for filing an appeal and notice provisions in this chapter shall control over those in Chapter 17.54.
3. **Appeals to City Council.** The City Council shall be the appellate authority for all appeals in accordance with the provisions of Chapter 17.54. The City Council shall issue a written decision that contains the reasons for the decision, and such decision shall be the final action of the City and not subject to any further administrative appeals.

#### **17.46.080 Findings Required.**

##### **A. Types I to IV Applications**

1. **Required Findings for Approval.** The reviewing authority may approve wireless facility applications only when the reviewing authority makes all the following findings:
  - a. the proposed wireless facility will not result in adverse visual impacts because it complies with all applicable development standards in Section 17.46.040 and the Administrative Detailed Wireless Facility Design Guidelines;
  - b. if applicable, to the extent the proposed wireless facility does not comply with all applicable development standards in Section 17.46.040 and the Administrative Detailed Wireless Facility Design Guidelines, the applicant has requested a special exception and the findings for granting a special exception pursuant to Section 17.46.080(C) can be made;
  - c. the proposed wireless facility will comply with all applicable FCC regulations and guidelines for human exposure to RF emissions and will not, either individually or cumulatively with other transmitters in the vicinity, result in RF exposures that exceed the FCC's maximum permissible exposure level for the general population;
  - d. the proposed wireless facility will comply with all applicable fire safety and public safety standards;
  - e. the proposed wireless facility will comply with fall zone requirements in the Administrative Detailed Wireless Facility Design Guidelines;
  - f. all public notices required for the application have been given;

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- g. all the findings required for a use permit pursuant to Section 17.64.010;
  - h. all the findings for discretionary design review approval pursuant to Section 17.58.060;
  - i. if applicable, all the findings required for a Coastal Development Permit.
2. **Conditional Approvals.** Subject to any applicable federal or state laws, nothing in this chapter is intended to limit the reviewing authority's ability to conditionally approve any application governed under this chapter as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, this code, or this chapter.

B. **Type V Applications (EFRs)**

1. **Required Findings for Approval.** The reviewing authority may approve or conditionally approve an application for an EFR administrative design review approval when the reviewing authority finds that the proposed project:
  - a. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
  - b. does not substantially change the physical dimensions of the existing wireless tower or base station in that it meets each and every one of the applicable criteria for an eligible facilities request stated in the definition of "substantial change," after application of the definitions in 47 C.F.R. 1.6100(b). The reviewing authority shall make an express finding for each criterion.
2. **Findings for Denial.** The reviewing authority may deny without prejudice any application for an EFR administrative design review approval when the reviewing authority finds that the proposed project:
  - a. does not meet the findings required in Section 17.46.080(B)(1);
  - b. involves the replacement of the entire eligible support structure; or
  - c. violates any generally applicable law, regulation, rule or standard or permit condition reasonably related to public health or safety.
3. **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this chapter is intended to limit the reviewing authority's authority to conditionally approve an application for an EFR administrative design review approval to comply with all generally applicable laws and to protect and promote the public health and safety.



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**C. Special Exceptions for Federal or State Preemption or Minor Deviations in Design (Types I to IV only)**

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1. **Preface.** The provisions in this section establish 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, but only if specifically requested by the applicant in writing at the time of application submittal and only to the extent necessary to avoid conflict with applicable federal or state law or it is a minor deviation that achieves all of the applicable design objectives of this Chapter, as well as, or better than, would be achieved by adherence to the adopted Design Guidelines. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.
2. **Required Findings.** The reviewing authority shall not grant any special exception unless the reviewing authority finds the following:
  - a. the applicant has shown that denial of an application will result in an effective prohibition or otherwise violate federal law; OR the applicant has shown that denial of an application will violate state law; OR the applicant has shown that it is a minor deviation that achieves all of the applicable design objectives of this Chapter, as well as, or better than, would be achieved by adherence to the adopted design guidelines.
  - b. the special exception requested by the applicant does not compromise or excuse compliance with any fire safety or other public health and safety requirements; and
  - c. the special exception is narrowly tailored such that any deviation from the requirements of this chapter is only to extent necessary for compliance with federal or state law or to achieve all of the applicable design objectives of this Chapter, as well as, or better than, would be achieved by adherence to the adopted Design Guidelines.
3. **Evidentiary Standard.** The applicant shall have the burden to prove to the reviewing authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for a special exception.

**17.46.090 Standard Conditions of Approval.**

**A. Wireless Facility Standard Terms and Conditions.** All wireless facilities approved under this chapter or deemed approved by the operation of law shall be

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automatically subject to the Wireless Facility Standard Terms and Conditions adopted by the Planning Commission by resolution, unless modified by the reviewing authority in an approval decision.

**B. Modified Approval Conditions.** The reviewing authority, when granting approval of a permit application, may modify, add to or remove standard conditions set forth in the Wireless Facility Standard Terms and Conditions adopted by the Planning Commission by resolution, as the reviewing authority deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions to the particular facts and circumstances associated with the project; and/or (3) memorialize any changes to the proposed project needed for compliance with the City’s Municipal Code, generally applicable health and safety requirements and any other applicable laws.

**17.46.100 Violations**

Any use or condition caused or permitted to exist in violation of any provision of this chapter shall be and hereby is declared a public nuisance and may be subject to administrative citations as set forth in Chapter 18.04 of this code, summary abatement pursuant to Chapter 15.57 of this code, California Code of Civil Procedure § 731, or any other remedy available to the City.

**SECTION 3.** Conforming Amendments To Title 17. The following Sections of Title 17 of the Carmel-by-the-Sea Municipal Code are amended as follows (all other sections remain unchanged):

**Section 17.08.040:** the residential uses table listing for “Communications” uses in the Transportation, Communications and Utilities uses table shall read:

Transportation, Communication and Utilities			
Antennas and Transmission Towers – Telecommunications	C	C	See Chapter 17.46 for findings
Antennas and Transmission Towers – Other	-	C	
Facilities Within Buildings	C	C	

**Section 17.12.020.H.** shall read:

“H. Outdoor Antennas. Except as provided in Chapter 17.46 CMC, Telecommunications and Wireless Facilities and antennas used by Federal Communications Commission licensed ham operators or operators certified by RACES or ARES, both of which are excluded from the application of these provisions, antennas erected in the R-4 land use district shall be subject to the following standards:

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1. No antenna or its supporting structure shall be located in the area between the front property line and the portion of the main structure or building located closest to the front property line.
2. No antenna shall be roof-mounted except on a flat portion of the roof structure with parapets, and/or architecturally matching screening plan.
3. All ground-mounted antennas shall be camouflaged by walls, antenna color, fences, or landscaping. Landscaping shall be of a type and variety capable of growth within one year to a landscape screen that obscures the visibility of the antenna. The landscaping plan shall be approved by the City Forester before it is implemented.
4. No antenna shall be erected within the public viewshed as identified in CMC 17.12.050, Preservation of Public Viewshed.
5. No part of any antenna shall be higher than 24 feet.”

**Section 17.14.030:** the commercial uses table listing “Communications” uses in the Transportation, Communications and Utilities uses table shall read:

Transportation, Communication and Utilities				
Antennas and Transmission Towers – Telecommunications	C	C	C	
Antennas and Transmission Towers – Other	-	-	-	
Facilities Within Buildings	P	P	C	

**Section 17.14.220.F.** shall read:

“F. Antennas. ~~Except for antennas preempted by Federal law, antennas in the commercial districts shall be located and screened to reduce their visibility from the public right-of-way and adjacent properties.~~ All antenna installations must be reviewed and approved through the commercial design review procedures. Except as provided in Chapter 17.46 CMC, Telecommunications and Wireless Facilities, antennas located in any commercial land use district shall conform to the following standards:

1. All ground-mounted antennas shall be required to maintain their supporting structures at least three feet from any property line.
2. All ground-mounted antennas shall be screened by walls, color, fences or landscaping. Landscaping shall be of a type and variety capable of growing within one year to a landscape screen, which obscures the visibility of the antenna. The landscaping plan shall be approved by the City Forester before it is implemented.
3. No part of any antenna shall be higher than the maximum height allowed in the underlying land use district.

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4. A maximum of one antenna shall be allowed on a building site.

5. All roof-mounted antennas are prohibited except as provided in CMC ~~17.46.020(E)~~ 17.46.030(B) (general development standards)."

**Section 17.18.030:** the public and quasi-public uses table listing for "Communications" uses in the Transportation, Communications and Utilities uses table shall read:

Transportation, Communication and Utilities			
Communication Facilities			
Antennas and Transmission Towers – Telecommunications	C	C	See Chapter 17.46 CMC
Antennas and Transmission Towers – Other	-	C	
Facilities Within Buildings	C	C	

**Section 17.40.070.H.** shall read:

"H. Signs in the public right-of-way, except for signs posted by a Federal, State, or local governmental entity with permission of the City and application notices posted in accordance with CMC 17.46.070(A)(1)."

**Section 17.52.150.C** shall read:

"C. Appeals. All final actions of the Director may be appealed to the Planning Commission in accordance with Chapter 17.54 CMC, Appeals, except for Director decisions pursuant to CMC 17.46.050(A)(2) and 17.46.060(D) which may only be appealed to the City Council."

**Section 17.54.010.E.** shall read:

"E. The findings and actions of the Planning Director shall be final and conclusive from and after the date of final action unless an appeal is filed with the Planning Commission Secretary pursuant to CMC 17.54.040(A), Appeals to the Forest and Beach Commission or the Planning Commission, or CMC 17.54.040(B), Appeals to the Historic Resources Board, or with the Coastal Commission pursuant to CMC 17.54.040(D) and 17.54.050, or with the City Clerk pursuant to CMC 17.54.040(C), Appeals to City Council."

**Section 17.54.040.C.** shall read:

"C. Appeals to the City Council. Decisions to approve or deny projects made by the Planning Commission, Forest and Beach Commission, or the Historic Resources Board may be appealed to the City Council by filing a notice of appeal in writing in the office of

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the City Clerk within 10 working days following the date of action by the decision-making body and paying the required filing fee as established by City Council resolution. Notwithstanding the foregoing, decisions for projects subject to Chapter 17.46 (Telecommunications and Wireless Facilities) made by the Planning Director or by the Planning Commission must be appealed within the time periods specified in CMC 17.46.070(E).“

**Section 17.54.080.A.** shall read:

“A. Appeals of Decisions on Permits. Any decision to approve, deny or conditionally approve any permit made by the Director (except for denials without prejudice made pursuant to CMC 17.46.060(D)), the City Forester, the Planning Commission, or the Historic Resources Board may be appealed by any aggrieved party. Coastal Commissioners may appeal these decisions pursuant to CMC 17.54.020 and 17.54.050.”

**Section 17.58.030.B.1.d.** shall read:

“d. Installation of antennas and associated equipment.”

**Section 17.58.040.B.1 and the introductory part of B.2** shall read:

B. Residential Track Two Design Study. Track two is a discretionary review process for projects that require a public hearing with the Planning Commission. All track two projects shall require public notice and a hearing pursuant to CMC 17.52.110, Notice of Public Hearing.

1. Applicability. Residential district track two design review is for the construction of new dwellings, rebuilds, substantial alterations, installation of antennas and associated equipment, and other projects that comply with applicable zoning standards and design review guidelines but do not qualify for track one processing.

2. Procedures. Except for the installation of antennas and associated equipment which shall be subject to the procedures in CMC 17.58.030.B.2, Design review for track two projects is a three-phase process requiring: (1) preliminary site assessment, (2) design concept review, and (3) final details review. The application shall not be deemed complete until the preliminary site assessment has occurred and the City has received a complete application for design concept review. When a use permit, variance, or other land use permit is required, the application shall not be deemed complete until design concept review is completed and the City has received a complete application for final details review and for the applicable land use permit. The procedure for track two projects includes the following:

**Section 17.68.070 “Communication Facilities”** uses shall read:

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*Antennas and Transmission Towers - Telecommunications.* Communication services accomplished through electronic or telephonic mechanisms, as well as structures designed to support one or more reception or transmission systems. Examples of transmission towers - telecommunications are limited to telephone exchange or microwave relay towers, and cellular telephone transmission or personal communications systems towers.

*Antennas and Transmission Towers - Other.* Broadcasting, recording, and other communication services accomplished through electronic or telephonic mechanisms, as well as structures designed to support one or more reception or transmission systems. Examples of transmission towers- other are limited to radio towers, television towers, ~~telephone exchange or microwave relay towers, and cellular telephone transmission or personal communications systems towers~~ and other towers that are not used for telecommunications.

*Facilities Within Buildings.* Includes radio, television, or recording studios and telephone switching centers; excludes antennas and transmission devices.

**Section 17.70.010 and Section 17.70.020** shall be amended to repeal the following listed terms and corresponding definitions:

Amateur Radio Antenna (See Antenna);

Antenna; Monopole (See Telecommunications Terms);

Satellite Antenna (See Antenna);

Telecommunications Facility, Co-Located (See Telecommunications Terms);

Telecommunications Facility (See Telecommunications Terms);

Telecommunications Terms (Building-Mounted Telecommunications Facility; Monopole; Telecommunications Facility; Telecommunications Facility, Co-Located).

**Section 17.70.010** shall be further amended to add to the listed terms the following:

“Telecommunications and Wireless Terms. See Chapter 17.46.”

**SECTION 4.** Conforming Amendments to Titles 12 and 13. The following Sections of Title 12 and 13 of the Carmel-by-the-Sea Municipal Code are amended to read (all other sections remain unchanged):

**Section 12.08.050** shall be amended to add a new subsection E as follows:

“E. Notwithstanding Section 12.080.040.A. and Section 12.08.050.A, B, C and D, for applications that are subject to both Ch. 17.46 and Ch. 12.08, the reviewing authority

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under Ch. 17.46 shall process and decide both applications concurrently under the procedures in Ch. 17.46, including any appeals.”

**Section 12.08.060** shall be amended to add a new subsection I as follows:

“I. For applications that are subject to both Ch. 17.46 and Ch. 12.08, only the standards in Ch. 17.46 and the applicable administrative guidelines shall apply.”

**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.”

**SECTION 5.** Effective Date. This Ordinance shall take effect 30 days after its adoption by the City Council of the City of Carmel-by-the-Sea and after approval by the California Coastal Commission.

**SECTION 6.** Severability. If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining sections, subsections, provisions, sentences, clauses, phrases or words of this Ordinance.

**INTRODUCED** at a Regular City Council Meeting on \_\_\_\_\_, 2023.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA** this \_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

Mayor

City Clerk

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### Wireless Facility Standard Conditions of Approval

All wireless facilities approved pursuant to Chapter 17.46 or deemed approved by the operation of law shall be automatically subject to these Wireless Facility Standard Conditions of Approval adopted by the Planning Commission by resolution no. \_\_\_\_ dated \_\_\_\_\_, unless modified by the reviewing authority in an approval decision as authorized by code Section 17.46.090(B).

#### A. General.

1. **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless pursuant to another provision of the Municipal Code or these conditions, it expires sooner or is terminated. Unless an extension or renewal has been granted, the permittee must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of any structure supporting the wireless facility that is owned by City, a utility, or another entity, need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least ninety (90) days prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility may remain in place under this permit until the City takes final action on the application.
2. **Future Collocations.** The permittee shall be willing to allow other carriers and site operators to collocate transmission equipment with the wireless facility, to the extent such facility or portions thereof are owned or controlled by the permittee, whenever technically feasible and aesthetically desirable in accordance with applicable provisions in the City's Municipal Code.
3. **CPUC GO-159A Certification.** Within 15 business days after the City issues a permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Administrator.
4. **City's Standing Reserved.** The City's grant or grant by operation of law of a permit does not waive, and shall not be construed to waive, any standing by the City to challenge any provision in federal or state law or any interpretation thereof.
5. **Compliance with Approved Plans.** Prior to submission of a building permit application, the permittee must incorporate this permit, all conditions associated with this permit and any approved photo simulations into the project plans (the "**Approved Plans**"). The permittee must construct, install and operate the wireless facility in strict compliance, as determined by the approval authority, with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or



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required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the approval authority's prior review and approval.

6. **Build-Out Period.** This permit will automatically expire 36 months from the approval date (the "**Build-Out Period**") unless the permittee commences installation of the wireless facility. The permittee may request in writing, and the Director may grant in writing, one six-month extension to the Build-Out Period if the permittee submits, at least 30 days prior to the automatic expiration date in this condition, justifiable cause for granting the six-month extension. If the Build-Out Period finally expires, the permit shall be automatically void but the permittee may submit a new application, which includes without limitation all application fees, for the same or a substantially similar project.
7. **Pre-Installation Requirements.** In addition to obtaining all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use, the permittee shall, prior to commencement of any installation or construction, attend a pre-grading meeting with the Public Works Department regarding temporary Best Management Practices ("**BMPs**") pertaining to discharges from the construction site. Before the permittee can proceed with installation or construction of the approved wireless facility, the Public Works Department must inspect and approve the permittee's installation of such temporary BMPs.
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, 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.
9. **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences, hardscape and landscape features, in a neat, clean, safe and code

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compliant condition in accordance with the Approved Plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee shall regularly inspect the site to determine whether any maintenance is needed. The permittee shall perform any maintenance requested by the City for compliance with this condition within a reasonable time specified by the Director in a written notice to the permittee. Routine maintenance within residential zones shall be restricted to normal construction work hours specified in the City's Municipal Code. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

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. Any 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.
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 remove its wireless facility or obtain adjacent property owner consent to mitigation measures on the adjacent property if required to maintain compliance with any Laws applicable to human exposure to RF emissions. If the Director finds good cause to believe that the wireless facility is not in compliance with any Laws applicable to human exposure to RF emissions, the Director may require the permittee to submit a written report, signed by an RF engineer under penalty of perjury, 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

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levels deemed safe by the FCC. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws.

12. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the City. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part. The permittee shall, at its sole cost and expense, repair and restore any and all damages to public and private properties that result from any activities performed in connection with the installation or maintenance of a wireless facility. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. If the permittee fails to complete such repair within the number of days stated on a written notice by the Director may (but shall not have the obligation to) cause such repair to be completed at permittee's sole cost and expense.
13. **Noise.** If the Director finds good cause to believe that ambient noise from a facility violates applicable provisions in the City's Municipal Code, the Director, in addition to any other actions or remedies authorized by the permit, the City's Municipal Code or other applicable Laws, may require the permittee to commission a noise study by a qualified professional to evaluate the facility's compliance.
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, the City may notify the permittee and the permittee shall endeavor to investigate and resolve or mitigate any such interference.~~may order the facility to be powered down until such time as the interference has~~

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~~been mitigated.~~ Any mitigation required shall be at the permittee's sole cost and expense.

15. **Inspections; Emergencies.** The City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the wireless facility upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies threatening actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
16. **Fire Safety Hazard Protocol.** If the Fire Safety Authority finds good cause to believe that the wireless facility presents an immediate fire risk, electrical hazard or other threat to public health and safety in violation of any applicable Laws, the Fire Safety Authority may notify the permittee and may order the facility to be powered down until such time as the fire threat has been mitigated. Any mitigation required shall be at the permittee's sole cost and expense.
17. **Abandonment.** The permittee shall notify the Director when the permittee intends to abandon or decommission the wireless facility authorized under this permit. In addition, the wireless facility authorized under this permit shall be deemed abandoned if the wireless facility is determined by the Director not to be operating and the permittee fails to resume operations within 90 days from a written notice from the Director. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee, property owner and/or structure owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable Laws, which includes without limitation the City's Municipal Code. The permittee, property owner and/or structure owner may request an extension up to 180 days to complete restoration after a wireless facility is abandoned or deemed abandoned, which the Director may grant for good cause shown. If the removal and restoration obligations under this condition are not complied with within the required period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee, property owner and structure owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
18. **Permittee's Contact Information.** Prior to final inspection and at all times relevant to this permit, the permittee shall keep on file with the Community Planning and Building Department basic contact and site information. This information shall include, at a minimum, the following:

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- a. the name, physical address, notice address (if different from physical address), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) property owner, (iii) structure owner, (iv) site operator, (v) equipment owner, (vi) site manager and (vii) agent for service of process;
- b. the regulatory authorizations held by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment owner and site manager as may be necessary for the facility's continued operation;
- c. the facility's site identification number and/or name used by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment owner and site manager; and
- d. a toll-free telephone number to the facility's network operations center where a live person with power-down control over the facility is available 24 hours-per-day, seven days-per-week.

Within 10 business days after a written request by the City, the permittee shall furnish the City with an update that includes all the most-current information described in this condition or any form provided by the City for such updates. Any notices from the City to the permittee shall be deemed given when delivered to the most current address(es) for the permittee on file with the City.

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~~ the City's, officers, public officials, employees and ~~assigns~~ 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 reasonably cooperate in the defense. The City ~~may, in its sole discretion, participate in any such legal action, but participation shall not relieve the permittee of any obligation under this condition. shall have the right to~~

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~~approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the permittee and the property owner and/or structure owner (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. Should any party bring any legal action in connection with this project, the Superior Court of the County of Monterey, California, shall be the situs and have jurisdiction for the resolution of all such actions.~~ Such indemnification obligations will survive the expiration, revocation or other termination of this permit.

20. **Insurance.** The permittee shall obtain and maintain insurance policies as follows:
- a. **Commercial General Liability Insurance.** Insurance Services Office Form CG 00 01 covering Commercial General Liability ("CGL") on an "occurrence" basis, with limits not less than \$2,000,000 per occurrence or \$4,000,000 in the aggregate. If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground ("UCX") exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; or (iv) contain any other exclusion contrary to the conditions in this permit.
  - b. **Automotive Insurance.** Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if permittee has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
  - c. **Workers' Compensation Insurance.** The permittee shall certify that it is aware of the provisions of California Labor Code § 3700, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and further certifies that the permittee will comply with such provisions before commencing work under this permit. To the extent the permittee has employees at any time during the term of this permit, at all times during the performance of the work under this permit the permittee shall maintain insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

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- d. **Professional Liability Insurance.** The permittee shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the permittee's profession, with limit no less than \$1,000,000 per occurrence or claim. This insurance shall be endorsed to include contractual liability applicable to this permit and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the permittee. "Covered Professional Services" as designed in the policy must specifically include work performed under this permit.
- e. **Claims-Made Policies.** If the permittee maintains any required insurance under a claims-made form, the permittee shall maintain such coverage continuously throughout the permit term and, without lapse, for at least three years after the permit term expires so that any claims that arise after the expiration in connection with events that occurred during the permit term are covered by such claims-made policies.
- f. **Umbrella or Excess Liability Policies.** If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for CGL or automotive insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. Permittee shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- g. **Additional Insured; Separation of Insureds.** The relevant CGL and automotive insurance policies shall name the City, its elected/ appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The required insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees.
- h. **Primary Insurance; Waiver of Subrogation.** The required insurance shall be primary with respect to any insurance programs covering the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees. All policies for the required CGL, automotive and workers' compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage or harm covered by such policies

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- i. **Term; Cancellation Notice.** The permittee shall maintain the required insurance throughout the permit term and shall replace any certificate, policy, or endorsement which will expire prior to that date. The permittee shall use its best efforts to provide 30 calendar days' prior written notice to the City of the cancellation or material modification of any applicable insurance policy; provided, however, that in no event shall the permittee fail to provide written notice to the City within 10 calendar days after the cancellation or material modification of any applicable insurance policy. The permittee shall promptly take action to prevent cancellation or suspension, reinstate cancelled coverage or obtain coverage from a different qualified insurer.
  - j. **Certificates.** Before the City issues any permit, the permittee shall deliver to the Director insurance certificates and endorsements, in a form satisfactory to the Director, that evidence all the coverage required above. In addition, the permittee shall promptly deliver complete copies of all insurance policies and endorsements upon a written request by the Director.
  - k. **Insurer Rating.** Unless approved in writing by the City, all required insurance shall be placed with insurers authorized to do business in the State of California and with a current A.M. Best rating of at least A-:VIII.
21. **Removal Bond.** Prior to issuance of any building permits, the permittee shall post a bond issued by a surety and in an amount and a form acceptable to the City Attorney. The permittee must provide to the City at least one written estimate of removal and restoration costs from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must cover the cost to remove all equipment and other improvements, including without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable Laws. The bond shall be valid for the term of this permit plus the greater of one year or the time required to complete the removal and restoration in accordance with this condition. If at any time after construction the Director finds good cause to believe that the bond required in this condition no longer adequately covers the removal and restoration costs, the Director may require by written notice that the permittee provide an updated estimate and increase the bond amount to cover any increase.
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



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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**"). 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 Records not otherwise required to be created or prepared by other applicable Laws. Compliance with this condition shall not excuse the permittee from any other similar record-retention obligations under applicable Laws.

23. **Permit Revocation.** This permit may be revoked in accordance with the provisions and procedures in code Section 17.66.050.
24. **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the permit or the wireless facility, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
25. **Successors and Assigns.** The conditions terms contained in this permit will bind and inure to the benefit of the City and permittee and their respective successors and permitted assigns.
26. **Severable Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (a) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (b) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (c) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
27. **No Waiver.** No failure or omission by the City to timely notice or promptly enforce compliance with any permit condition shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with this permit.

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28. **No Possessory Interest.** No possessory interest is created by this permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, permittee acknowledges that City has given to permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.

**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. 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.
2. **Electric Meter Upgrades.** If the wireless facility includes a separate or ground-mounted electric meter pedestal and the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee, on its own initiative and at no cost to City, shall arrange for removal of the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall obtain any required encroachment and/or other ministerial permit(s). Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
3. **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may (a) change any street grade, width, or location; (b) add, remove, or otherwise change any improvements in, on, under, or along any street owned by the City or any other public agency, which includes, without limitation, any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles, and utility systems for gas, water, electric, or telecommunications; and/or (c) perform any other work deemed necessary,

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useful, or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this permit. If the Director determines that any City work will require the permittee's wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's wireless facility within a reasonable time after the Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's wireless facility without prior notice to permittee when the Director determines that City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 business days after a written demand for reimbursement and reasonable documentation to support such costs.

- C. **For Eligible Facilities Requests, the following condition C.1 replaces condition A.1. above, and additional conditions C.2 and C.3 apply.**
1. **Permit Term.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval constitutes a federally-mandated modification to the subject tower or base station. The City's grant or any approval deemed granted by operation of law of this EFR administrative design review approval will not extend the existing permit term, if any, for the wireless tower or base station to be modified. Accordingly, the term for this EFR administrative design review approval shall be coterminous with the existing permit or other prior regulatory authorization for the subject tower or base station and any renewals thereof.
  2. **Permit subject to conditions of existing permit.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval shall be subject to the terms and conditions of the existing permit for the subject tower or base station.
  3. **City's Standing Reserved.** The City's grant or any approval deemed granted by operation of law of an EFR administrative design review approval does not waive, and shall not be construed to waive, any standing by the City to challenge 47 U.S.C. Section 1455(a), any FCC rules that interpret 47 U.S.C. Section 1455(a) or any eligible facilities request.