

**TO:** CHAIRMAN AND MEMBERS OF THE PLANNING COMMISSION  
**FROM:** NICOLE JULES, DEPUTY DIRECTOR OF PUBLIC WORKS   
ARA MIHRANIAN, DIRECTOR OF COMMUNITY DEVELOPMENT   
**DATE:** JUNE 27, 2017  
**SUBJECT:** REVIEW OF THE CITY'S ORDINANCE REGARDING WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT- OF-WAY

Staff Coordinator: Christy Marie Lopez, Special Counsel  
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### **RECOMMENDATION**

Receive and file a presentation by the City Attorney and City Staff on the City's newly adopted Wireless Telecommunications Facilities Ordinance as it pertains to the submittal requirements, review procedures, required findings, and the Planning Commission's role in the public review process for requested wireless telecommunication facility permits in the public right-of-way.

### **BACKGROUND**

In January of 2016, the City Council adopted an ordinance establishing criteria for governing the installation of wireless telecommunication facilities in the public right-of-way (ROW). There are a substantial number of existing wireless facilities in the City, and the City has received a plethora of requests for additional wireless facility installations. In an effort to better manage ROW installations and protect the aesthetics of the City and adjacent property values, the Rancho Palos Verdes Municipal Code at Chapter 12.18 imposes regulations and procedures for wireless installations in the ROW. Part of the process for evaluating certain wireless facilities will include review by the Planning Commission base on required findings that, among other things, assess the design and location (Section 12.18.090). It is anticipated that the Commission will be reviewing proposed wireless facility applications at its next meeting (July 11, 2017). As such, staff believes it would be helpful to review the adopted ordinance and the legal parameters that govern the review process. Notably, there are federal and state law parameters that must be addressed to fully understand the review of wireless facilities.

### **CODE CONSIDERATION & ANALYSIS**

#### **A. FEDERAL AND STATE LAW:**

##### **1. Federal Law applicable to all telecommunications installations**

A number of Federal statutes regulate wireless communication facilities. The Telecommunications Act ("TCA") regulates the placement, construction, and maintenance of personal wireless facilities and telecommunications services. This section focuses on the TCA limitations that affect a local entity's authority to regulate wireless communication facilities.

(a) Section 332(c)(7) of the Telecommunications Act

Section 332 of the TCA regulates personal wireless services defined under the statute as “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.” (47 U.S.C.A. § 332 et seq.) Section 332(c)(7) of the TCA generally preserves local and state authority over the regulation of telecommunications infrastructure while simultaneously limiting its scope. (*Sprint Telephony PCS, L.P. v. County of San Diego* (9th Cir. 2008) 543 F.3d 571, 575.) The statute says that “nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.” Nonetheless, Section 332(c)(7) imposes several restrictions on local authority including the following:

- (1) Regulations and restrictions may not “unreasonably discriminate among providers of functionally equivalent services”; and (Section 332(c)(7)(B)(i)(I).)
- (2) “[T]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof [...] shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” (Section 332(c)(7)(B)(i)(II).)

Even if local actions do not prohibit coverage or unreasonably discriminate against providers, “substantial evidence” must support a government decision to deny or grant permission to place, construct or modify personal wireless service facilities.

(ii) Effective Prohibition Limitation

Section 332(c)(7)(B)(i)(II) of the TCA says that “the regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government [...] shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” A governmental entity violates Section 332 when it: (1) imposes an outright ban on wireless services; or (2) effectively prohibits wireless services. The mere possibility of prohibiting services is insufficient to state a claim under Section 332. (*Sprint Telephony PCS, L.P.*, supra, 543 F.3d at 576.)

The Ninth Circuit has held that an “effective prohibition” results when local restrictions cause a “significant gap” coverage. (*Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates* (9th Cir. 2009) 583 F.3d 716, 726.) To allege that a governmental decision “effectively prohibits” wireless services, the complainant must show: (1) a significant gap in the applicant’s in coverage; and (2) lack of potentially available and technologically feasible alternatives. (*T-Mobile USA, Inc. v. City of Anacortes* (9th Cir. 2009) 572 F.3d 987, 995.) ‘[S]ignificant gap’ determinations are extremely fact-specific inquiries that defy any bright-line legal rule.” (*Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates* (9th Cir. 2009) 583 F.3d 716, 727, quoting *MetroPCS, Inc. v. City and County of San Francisco* (9th Cir. 2005) 400 F.3d 715, 733 abrogated by *T-Mobile South, LLC v. City of Roswell, Ga.* (2015) 135 S.Ct. 808.) The Ninth Circuit recognizes a significant gap in one provider’s network even if that area is being serviced by other providers.

The second prong requires the complainant show that the selected means of closing the gap is the “least intrusive” option. (*Metro PCS*, supra, 400 F.3d at 735.) A party challenging an ordinance or policy on the grounds that it effectively prohibits telecommunications services must meet the “high burden of proving that ‘no set of circumstances exists under which the

[Ordinance] would be valid.” (*Sprint Telephony PCS, L.P.*, supra, 543 F.3d at 580, quoting Salerno, *U.S. v. Salerno* (1987) 481 U.S. 739, 745.)<sup>1</sup>

As discussed below, state law grants CPUC-regulated telephone corporations access to the ROW subject to the local government’s reasonable time, place and manner regulations. Notably, the courts have upheld a city’s ability to regulate the aesthetics of facilities in the right-of-way.

(iii) Unreasonable Discrimination Limitation

Section 332(c)(7)(B)(i)(I) states that “[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof [...] shall not unreasonably discriminate among providers of functionally equivalent services. The two-part test in the Ninth Circuit for “unreasonable discrimination” is: (1) whether the plaintiff has been treated differently from other providers whose facilities are similarly situated; and (2) if there was different treatment, whether the treatment was unreasonable. (*MetroPCS, Inc. v. City and County of San Francisco* (9th Cir. 2005) 400 F.3d 715, 727 abrogated by *T-Mobile South, LLC v. City of Roswell, Ga.* (2015) 135 S.Ct. 808 [190 L.Ed.2d 679].) The Court will evaluate the “structure, placement, and cumulative impact of the facilities” in order to determine if two or more facilities are “similarly situated”. (*Id.*) The Ninth Circuit considers traditional zoning regulations as reasonable, such as those used to “preserve the character of the neighborhood” and “avoid aesthetic blight.” (*Id.* at 727.)

The Court in *Newpath Networks LLC v. City of Irvine, Cal.* (C.D. Cal., Dec. 23, 2009, SACV 06-550-JVS ANX) 2009 WL 9050819, at \*20 held that Plaintiff’s allegation of unreasonable discrimination was invalid because the location of each facility was substantially different in character, the amount of light posts required by each facility differed, and no evidence demonstrated the facilities were “similarly situated” with respect to size, meter boxes, and concealment. (*Id.*)

(iv) Substantial Evidence Needed for a Denial

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<sup>1</sup> *Section 253 of the Telecommunications Act*: Similarly, section 253 regulates state and local ROW management policies applied to telecommunications services. The statute reads in pertinent part as follows:

“[N]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”

[Telecommunication services is defined in the statute as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” (47 U.S.C.A. § 153(53).)]

The Court in *Sprint Telephony* 543 F. 3d 571, 579 determined that the “effective prohibition” analysis under Section 332 applies to telecommunication services under Section 253. (*Id.* at 579.) Section 253 has essentially been harmonized with Section 332 above (*Id.* at 579.) In summary, under both Sections 332 and 253, a party must show that the local government action prohibited or “effectively prohibited” telecommunications coverage. (*Sprint PCS Assets, L.L.C.*, supra, 583 F.3d at 728.)

Section 332(c)(7)(B)(iii) of the TCA says that a government's decision "to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record." (See also *Sprint PCS Assets, L.L.C.*, supra, 583 F.3d at 721.) The substantial evidence standard is a traditional standard of review for agency decisions. (*Newpath Networks LLC*, supra, 2009 WL 9050819, at \*18; See *Cellular Telephone Co. v. Town of Oyster Bay* (2d Cir. 1999) 166 F.3d 490, 494 [The substantial evidence standard is "less than a preponderance, but more than a scintilla of evidence."].) When a government decision is being judicially reviewed for substantial evidence, courts must decide whether: (1) the decision was authorized by local law; and (2) the decision was supported by a reasonable amount of evidence. (*Sprint PCS Assets, L.L.C.*, supra, 583 F.3d at 721.) The substantial evidence determination is a case-by-case analysis. In *T-Mobile USA, Inc. v. City of Anacortes* (9th Cir. 2009) 572 F.3d 987, 994, the Court found substantial evidence to support the government's decision based on propagation maps, mock-ups of the proposed WCFs, reports on the effects of the aesthetic values, public comments, and oral presentations. Similarly, in *Newpath Networks LLC*, supra, 2009 WL 9050819, at \*18, the Court held that the City's decision to deny the permit was supported by substantial evidence derived from visual simulations, reports detailing aesthetic impacts, public comment, and letters and emails about property values and aesthetics effects, and real estate agent opinions. (See also *Am. Tower Corp. v. City of San Diego* (9th Cir. 2014) 763 F.3d 1035.)

## **2. State Law applicable to telecommunications installations in the ROW**

In addition to the federal requirements and limitations outlined above, California State law regulates local authority over wireless facility deployments. The following are the State of California code provisions which govern local regulation of ROW installations and are significant to any analysis of proposed installations under the proposed ordinance.

### **(a) California Public Utilities Code Section 7901 and 7901.1**

California Public Utilities Code ("CPUC") allows telecommunications facilities to be installed in the ROW and case law specifically prohibits local entities from charging rent for the ROW. CPUC Section 7901 says the following:

"Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters."

The term "incommode" as used in the statute includes inconvenience, impeding, obstructing, or hindering the use of the public rights of way. (*Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates* (9th Cir. 2009) 583 F.3d 716, 723.) Thus, telephone companies do not have an absolute right to place or construct telephone facilities and lines in the public ROWs. (*City of Huntington Beach v. Public Utilities Commission of the State of California* (2013) 214 Cal.App.4th 566, 590, reh'g denied (Apr. 11, 2013), review denied (June 26, 2013).) The Supreme Court in the *City of Huntington Beach v. Public Utilities Commission of the State of California* held that section 7901 grants 'a limited right to use the highways and does so only to the extent necessary for the furnishing of services to the public.'" (*Id.*) In essence, the right to construct in the public ROW is subject to a reasonableness standard – the construction, placement or modification must be reasonable so as not to incommode the public right of way. (*Newpath Networks LLC*, supra, 2009 WL 9050819, at \*15.)

Section 7901.1 reads as follows: “(a) It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed. (b) The control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner. (c) Nothing in this section shall add to or subtract from any existing authority with respect to the imposition of fees by municipalities.”

Section 7901.1 was designed to “bolster the cities’ abilities with regard to construction management and to send a message to telephone corporations that cities have authority to manage their construction, without jeopardizing the telephone corporations’ statewide franchise. [citations omitted].” (*Sprint PCS Assets, L.L.C.*, supra, 583 F.3d at 724.) However, Section 7901.1 does not grant absolute local authority over telecommunications facilities. (*Newpath Networks LLC*, supra, 2009 WL 9050819, at \*15.) Rather, local governments may impose only reasonable time, place and manner restrictions on such facilities. (*Id.*) An unreasonable restriction is one that entirely prohibits or has the effect of prohibiting telephone companies in the public right of way. (*Id.* at 16.)

The next section discusses how courts have interpreted Sections 7901 and 7901.1 to allow local entities to prevent the construction of telecommunication facilities on the basis of aesthetic concerns.

(b) The right to base decisions regarding the siting of telecommunications facilities on aesthetic concerns

Several recent cases have addressed the issue of whether cities can prohibit the placement, replacement, or construction of poles in the public ROW on the basis of aesthetic concerns. Although this issue has not been decided at the state court level, the Ninth Circuit determined that local governments can deny permits for poles in the right of way for aesthetic reasons.

*Sprint PCS Assets* was the seminal case that established a local entity’s right to deny on aesthetic grounds the construction of telecommunication facilities in the ROW. In that case, a city ordinance granted it the authority to deny wireless communication facility (“WCF”) permits on the basis of “adverse aesthetic impacts arising from the proposed time, place, and manner of use of the public property.” (*Sprint PCS Assets, L.L.C.*, supra, 583 F.3d at 720.) Pursuant to this ordinance, the city denied Sprint PCS a WCF permit. (*Id.*) Sprint appealed the decision and thereafter brought a civil action requesting a declaration that the city violated the TCA in denying Sprint’s WCF permit on aesthetic grounds. (*Id.*)

The Court noted the expressive, social, and aesthetic objectives that go into planning a city as follows:

“The experience of traveling along a picturesque street is different from the experience of traveling through the shadows of WCF, and we see nothing exceptional in the City’s determination that the former is less discomforting, less troubling, less annoying, and less distressing than the latter.” (*Id.* at 723.)

The Court explained that the “time, place, and manner” in which companies “access” the public rights-of-ways can be aesthetically concerning and therefore a matter falling within the ambit of the city’s authority to regulate. The Court emphasized that an aesthetic-based decision must still be supported by substantial evidence and may not prohibit the provision of wireless services. (*Id.*)

Two years later, the Court in *NextG Networks of California, Inc. v. City of Newport Beach, CA* (C.D. Cal., Feb. 18, 2011, SACV 10-1286 DOC JCX) 2011 WL 717388, at \*6-7, held that the city was justified in denying permits to construct **new poles** for telecommunication facilities because “degrading the aesthetic of the Pacific Coast Highway area [would] decrease the public’s ability to enjoy this area.” (*Id.* at 7.) The Court found that the city’s decision was supported by substantial evidence in the administrative record indicating that the aesthetic impacts would also diminish the public’s enjoyment of the area and would decrease property values. (*Id.*)

These cases demonstrate that it is now well-established in the Ninth Circuit that local entities can deny or conditionally approve construction of telecommunication facilities in the public rights of way on the basis of certain aesthetic concerns. Nonetheless, this right is not absolute. “A city that invokes aesthetics as a basis for a WCF permit denial is required to produce substantial evidence to support its decision, and even if it makes that showing, its decision is nevertheless invalid if it operates as a prohibition on the provision of wireless service in violation of 47 U.S.C. § 332(c)(7)(B)(i)(II).” (*Sprint PCS Assets, L.L.C.*, supra, 583 F.3d at 725.)

It is important to note that the issue of whether a local entity is entitled to consider the aesthetic impacts when evaluating a wireless facility is currently being considered by the California Supreme Court. Previously the California Court of Appeals affirmed a local entities authority to deny a site based on aesthetic grounds. (*See T-Mobile West LLC v. City and County of San Francisco* (Cal. App. 1st Dist. 2016) 3 Cal. App. 5th 334.) The California Supreme Court has granted review of this case. The City Attorney’s Office will continue to monitor the status of this case law and notify the City accordingly.

## **B. NEW ORDINANCE REQUIREMENTS:**

### **1. New Permits Established**

Pursuant to the City’s new ordinance, there are three new permits established. Both residents and industry representatives at the past public workshop expressed support for a tiered permit system, with a relatively streamlined process for preferred designs in preferred locations, as described below:

I. Major Wireless Telecommunications Facilities Permit - If the applicant can demonstrate it meets the requirements for a Major Wireless Telecommunications Facilities Permit, said permit is subject to a public hearing before the Planning Commission.

II. Administrative Wireless Telecommunications Facilities Permit - If the applicant can demonstrate that the proposed installation will be located in a preferred location (e.g., not in a residential area) and can comply with all other provisions of Chapter 12.18, it may be eligible for an Administrative Wireless Telecommunications Facilities Permit. For this permit, a decision is made by the Public Works Director that is appealable to the Planning Commission, then the Planning Commission’s decision is appealable to the City Council.

III. Master Deployment Plan Permit - If the applicant seeks approval of five or more installations in the ROW, it can seek a Master Deployment Plan Permit. Said permit shall provide approval of all facilities provided for in the plan and is subject to a public hearing before the Planning Commission. The same substantive standards applicable to the individual sites are applicable to Master Deployment Plan Permits, however applicants for a Master Deployment Plan Permit may obtain multiple approvals at a single public hearing.

It should be noted that all permits shall still require the applicant to obtain any other applicable permit (e.g. encroachment permit) as may be required by the City. Additionally, both the

Major Wireless Telecommunications Permit and the Master Deployment Plan Permit to be considered by the Planning Commission at public hearing will be noticed to property owners within 500-feet of the project location at least 15-days before the public hearing.

## **2. Processing and Evaluation of Proposed Installations**

When a telecommunications company is interested in modifying or placing a new cell site, said applicant shall initiate the process with the Public Works Department. Staff will provide the interested party with informal instructions on how to proceed with filing an application for the proposed installation. A pre-submittal conference is strongly encouraged so that the applicant is fully informed regarding the particulars of the proposed site and application process. When an applicant is ready to submit a completed application, an appointment is scheduled after receipt of a written request. The Public Works Department will process the application, however the Planning Commission will render decisions on all Major Wireless Facility Permits and Master Deployment Plan Permit. After the Planning Commission makes its ruling, the Public Works Department will issue a Notice of Decision that is appealable to the City Council. If no appeal is filed, the Public Works Department will follow-up and close-out the permit. Section 12.18.060 outlines the pre-submittal and application submittal process.

- (a) Pre-submittal Conference – see Section 12.18.060(A)
- (b) Application submittal appointment – see Section 12.18.060(B)

## **3. New Provisions**

There are many new regulations applicable to wireless installations within the ROW. The following is a highlight of those most significant.

### **(a) Application Requirements**

Applicants seeking to install in the ROW shall be required to provide the following pursuant to the new application requirements, as applicable:

- (i) Detailed plans regarding the proposed installation;
- (ii) Justification study to support the proposed installation including an Alternative Sites Analysis;
- (iii) Completed Environmental Assessment application pursuant to CEQA;
- (iv) Visual impact analysis;
- (v) Radio Frequency compliance report;
- (vi) Noise study;
- (vii) Traffic control plan;
- (viii) Landscape plans;
- (ix) Geographic and propagation maps;

- (x) Certificate of Public Convenience or Necessity (CPCN) or other documentation to establish right to enter the ROW;
- (xi) Mock-up installation notice requirements;
- (xii) A deposit for independent expert to review all submitted documents and proposals; and,
- (xiii) Photo simulations of existing and proposed facilities;

(b) Notice Requirements

- (i) As stated above, the new ordinance includes new notice provisions for all mock-ups;
- (ii) All requests for a Major Wireless Telecommunications Facility Permit and Master Deployment Plan Permit shall be subject to a public hearing before the Planning Commission and shall require a public notice at least 15-days before the public hearing to property owners within a 500-foot radius of the project location; and,
- (iii) All applicants are required to notify the city in advance of any shot clock expiration

(c) Mock Up Requirements

- (i) Applicant shall obtain an encroachment permit before installing the temporary mock-up, and must remove the temporary mock-up within five (5) calendar days of receiving a written notice to remove from the director.
- (ii) When seeking the encroachment permit, the applicant shall provide address labels for use by the city in noticing all property owners within 500 feet of the proposed installation. The city shall mail a notice regarding installation of the mock-up at least five (5) business days prior to the installation.
- (iii) The mock-up shall demonstrate the height and mass of the facility, including all interconnecting cables. The applicant shall not be entitled to install the facility it intends to install permanently. The mock-up may consist of story poles or the like.
- (iv) The mock-up shall include a sign that displays photo simulations depicting before and after images, including any accessory equipment cabinet, and the telephone number of the Public Works Department.
- (v) The applicant shall be required to follow any other city practices or processes relevant to the installation of a mock-up as may be provided in a publicly accessible form or document.

(vi) After installation of the mock-up, the applicant shall certify that the mock-up accurately represents the height and width of the proposed installation and has been installed consistent with the code.

(d) Standards Related to Community Impacts

- (i) Screening or camouflage design;
- (ii) New poles are discouraged;
- (iii) Installations on existing poles are limited so as to protect aesthetics;
- (iv) Accessory equipment shall be installed underground to the extent feasible;
- (v) Landscaping required where appropriate;
- (vi) Lighting limitations as allowed;
- (vii) Noise limitations;

(e) Preferred Locations are as follows:

- (i) Along arterial or non-local roads
- (ii) Co-located with existing sites

### **ADDITIONAL INFORMATION**

#### Senate Bill 649

The California Legislature is currently considering legislation that would strip local governments authority to deny wireless installations in the ROW based on aesthetic concerns (See Attachment 3). It would also prohibit the City from implementing its current permitting process. Again, the City Attorney's Office will continue to monitor the status of this case law and notify the City, including the Planning Commission, accordingly.

#### Courtesy Notice

On June 22, 2017, the City published a notice of tonight's meeting in the *Peninsula News*. Additionally, on June 16, 2017, a list-serve message was sent to the following groups: Breaking News, Planning Commission, and Wireless Telecommunications.

### **ATTACHMENTS**

1. RPVMC Section 12.18 – Wireless Telecommunications Facilities Ordinance
2. Wireless Telecommunications Facilities Permit Application
3. Senate Bill 649

## ORDINANCE NO. 580

### AN ORDINANCE OF THE CITY OF RANCHO PALOS VERDES, CALIFORNIA, ADDING A NEW CHAPTER ENTITLED "WIRELESS TELECOMMUNICATIONS FACILITIES" TO CHAPTER 18 OF TITLE 12 OF THE RANCHO PALOS VERDES MUNICIPAL CODE TO PROVIDE UNIFORM AND COMPREHENSIVE REGULATIONS AND STANDARDS, ALONG WITH PERMIT REQUIREMENTS, FOR THE INSTALLATION OF WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

#### A. Recitals.

(i) The purpose of this Ordinance is to amend the City's Municipal Code to provide uniform and comprehensive standards and regulations, along with permit requirements, consistent with State and federal law, for the installation of wireless telecommunications facilities in the City's public right-of-way ("ROW").

(ii) The Municipal Code contains very minimal standards or regulations specifically designed to address the unique legal and/or practical issues that arise in connection with wireless telecommunications facilities deployed in the ROW.

(iii) On January 19, 2016, the City Council held a duly noticed public hearing and adopted Urgency Ordinance No. 578U (the "Urgency Ordinance"), which contained substantially similar provisions intended to address the urgent need to regulate, to the maximum extent permissible under State and federal law, wireless telecommunications facilities in the public ROW because the City had approximately 52 pending or anticipated applications for wireless telecommunications facilities in the ROW and very minimal standards or regulations specifically designed to address the unique legal and/or practical issues that arise in connection with such facilities.

(iv) The City did not introduce this Ordinance at the same time that it adopted the Urgency Ordinance because it desired to afford the public and stakeholders, including representatives from the wireless services and infrastructure industry and representatives from franchised utilities and telecommunications services, to provide further comments and refinements to the Urgency Ordinance that would ultimately be adopted as this Ordinance.

(v) On February 1, 2016, the City conducted a noticed public workshop at which the public and stakeholders, including representatives from the wireless services and infrastructure industry and representatives from franchised utilities and telecommunications services, could provide verbal comments and refinements to the proposed Ordinance. Approximately 48 people attended the work shop. Representatives from Verizon, AT&T, Southern California Gas and Crown Castle attended the workshop, but only representatives from Verizon and Crown Castle offered any comments or refinements to the proposed Ordinance.

(vi) State and federal law have changed substantially and materially since the City last adopted regulations for wireless telecommunications facilities installation in the ROW. Such changes include (1) modifications to federal "shot clocks" whereby the City must act on permit applications for new and modified installations within as few as sixty (60) days after an applicant submits an application, whether complete or incomplete; (2) new State statutes and federal regulations that provide for "deemed-approved" or "deemed-granted" remedies when the City fails to act within the applicable timeframes for review; and (3) clarifications in decisional law about the City's authority to regulate aesthetics in the public ROW. See 47 C.F.R. §§ 1.40001 *et seq.*; CAL. GOV'T CODE § 65964.1; *In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd. 12865 (Oct. 17, 2014) [hereinafter "2014 Report and Order"]; *In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd. 13994 (Nov. 18, 2009) [hereinafter "2009 Declaratory Ruling"]; (*Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates* (9th Cir. 2009) 583 F.3d 716, 726.)

(vii) The public ROW in the City is a uniquely valuable public resource, closely linked with the City's residential character, civic identity and natural beauty. Whereas the reasonably regulated and orderly deployment of wireless facilities in the ROW is desirable, unregulated or disorderly deployment represents an ever-increasing and true threat to the health, welfare and safety of the community.

(viii) The City finds and declares that the regulation of wireless telecommunications facilities in the public ROW is necessary to protect and preserve the aesthetics in the community, as well as property values within the City, and to ensure that all wireless facilities are installed using the least intrusive means possible.

(ix) On February 16, 2016, the City Council of the City of Rancho Palos Verdes conducted and concluded a duly noticed public hearing concerning the Municipal Code amendments contained herein as required by law and received testimony from City staff and all interested parties regarding the proposed amendments. The City Council then passed a motion to continue the hearing to March 1, 2016.

(x) The City Council finds and determines as follows:

1. The Federal Telecommunications Act of 1996 preempts and declares invalid all state rules that restrict market entry to or limit competition in both local and long-distance telephone service.

2. The California Public Utilities Commission (“CPUC”) is primarily responsible for the implementation of local telephone competition and it issues certificates of public convenience and necessity (“CPCN”) to new entrants that are qualified to provide competitive local telephone exchange services and related telecommunications service, whether using their own facilities or the facilities or services provided by other authorized telephone corporations.

3. Section 234(a) of the California Public Utilities Code defines a “telephone corporation” as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.”

4. Section 616 of the California Public Utilities Code provides that a telephone corporation “may condemn any property necessary for the construction and maintenance of its telephone line.”

5. Section 2902 of the California Public Utilities Code authorizes municipal corporations to retain their powers of control to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets.

6. Section 7901 of the California Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

7. Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner, and may involve the imposition of fees.

8. Section 50030 of the California Government Code provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes.

(xi) All legal prerequisites to the adoption of the Ordinance have occurred.

**B. Ordinance.**

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The facts set forth in the Recitals, Part A of this Ordinance, are true and correct.

**SECTION 2.** Environmental Review.

A. The City Council finds that, pursuant to CEQA Guidelines, section 15061(b)(3), it has determined with certainty that there is no possibility that this project may have a significant impact on the physical environment. The City previously adopted Urgency Ordinance No. 578U, which is currently in effect and established substantially the same processing procedures. This Ordinance is being enacted to bring the City’s processing procedures into compliance with existing State and federal law. Regardless whether Urgency Ordinance No. 578U had been adopted or not, to the extent that the regulations in this Ordinance involve mere synchronization of these timelines into the City’s zoning Ordinance, this Ordinance is not a “physical condition” that will impact the environment for the purposes of the California Environmental Quality Act (“CEQA”). Therefore, this project is not subject to CEQA.

**SECTION 3.** Section 13.12.320 of Chapter 12, Title 13, is hereby amended and replaced in its entirety to read as follows:

**“13.12.320 Antennas for telecommunications services.**

- A. Section 17.76.020 of Chapter 17.76 of Title 17 of this Code sets forth the city's regulatory requirements relating to the siting and construction of the following categories of antennas that are commonly used in providing or receiving telecommunications services:
1. Satellite earth station antennas, (also known as "satellite dish antennas"), which are parabolic or dish-shaped antennas which are in excess of one (1) meter in diameter or devices that are designed for over-the-air reception of radio or television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.
  2. Commercial antennas, which are unstaffed facilities for the transmission or reception of radio, television, and communications signals, commonly consisting of an antenna array, connection cables, a support structure to achieve the necessary elevation, and an equipment facility to house accessory equipment, which may include cabinets, pedestals, shelters, and similar protective structures.
- B. Notwithstanding any other provision of this chapter, Chapter 12.18 of this code shall apply to siting, modification and construction of wireless telecommunication facilities, as defined therein, which in whole or in part, itself or as part of another structure, rests upon, in, over or under the public right-of-way, including, but not limited to, any such facility owned, controlled, operated or managed by an entity entitled to construct within the right-of-way pursuant to a franchise with the city or state law."

**SECTION 4.** Chapter 18 "Wireless Telecommunications Facilities in the Public Right-of-Way" is hereby added to Title 12 of the Rancho Palos Verdes Municipal Code beginning at Section 12.18.010 to read as follows:

**"CHAPTER 18. WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY**

**12.18.010 Purpose.**

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the city's public right-of-way. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides standards necessary (1) for the preservation of the public right-of-way in the city for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the General Plan, and (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations.

**12.18.020 Definitions.**

"Accessory equipment" means any equipment associated with the installation of a wireless telecommunications facility, including but not limited to cabling, generators, fans, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.

"Antenna" means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals.

"Cellular" means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.

"Code" means the Rancho Palos Verdes Municipal Code.

"Collocation" means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signal for communication purposes.

"COW" means a "cell on wheels," which is a wireless telecommunications facility temporarily rolled in or temporarily installed.

"Director" means the director of public works, or his or her designee.

"Facility(ies)" means wireless telecommunications facilities.

"Ground-Mounted" means mounted to a telecommunications tower.

“Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

“Monopole” means a structure composed of a pole or tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).

“Mounted” means attached or supported.

“Located within the public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the public right-of-way.

“Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this Code.

“Public right-of-way” means any public right-of-way as defined by section 17.96.1490 of this Code.

“Sensitive uses” means any residential use, public or private school, day care, playground, and retirement facility.

“Telecommunications tower” means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.

“Utility Pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

“Wireless telecommunications facility,” “facility” or “facilities” mean any facility that transmits and/or receives electromagnetic waves. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development.

Exceptions: The term “wireless telecommunications facility” does not apply to the following:

- (a) Government owned and operated telecommunications facilities.
- (b) Emergency medical care provider-owned and operated telecommunications facilities.
- (c) Mobile services providing public information coverage of news events of a temporary nature.
- (d) Any wireless telecommunications facilities exempted from this Code by federal law or state law.

“Wireless telecommunications services” means the provision of services using a wireless telecommunications facility or a wireless telecommunications collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. §332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

**12.18.030      Applicability.**

- A. This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way as follows:
  - 1. All facilities for which applications were not approved prior to January 19, 2016 shall be subject to and comply with all provisions of this division.
  - 2. All facilities for which applications were approved by the city prior to January 19, 2016 shall not be required to obtain a new or amended permit until such time as a provision of this code so requires. Any wireless telecommunication facility that was lawfully constructed prior to January 19, 2016 that does not comply with the standards, regulations and/or requirements of this division, shall be deemed a nonconforming use and shall also be subject to the provisions of section 12.18.230.

3. All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this chapter governing the operation and maintenance (section 12.18.130), , cessation of use and abandonment (section 12.18.170), removal and restoration (section 12.18.180) of wireless telecommunications facilities and the prohibition of dangerous conditions or obstructions by such facilities (section 12.18.150); provided, however, that in the event a condition of approval conflicts with a provision of this division, the condition of approval shall control until the permit is amended or revoked.

B. This chapter does not apply to the following:

1. Amateur radio facilities;
2. Over the Air Reception Devices ("OTARD") antennas;
3. Facilities owned and operated by the city for its use;
4. Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement.

**12.18.040 Wireless Telecommunications Facility Permit Requirements.**

A. *Major Wireless Telecommunications Facilities Permit.*

All new wireless facilities or collocations or modifications to existing wireless facilities shall require a Major Wireless Telecommunications Facilities Permit subject to planning commission approval unless otherwise provided for in this chapter.

B. *Administrative Wireless Telecommunications Facilities Permit.*

1. An Administrative Wireless Telecommunications Facilities Permit, subject to the director's approval, may be issued for new facilities or collocations or modifications to existing facilities that meet all the following criteria:
  - a. The proposal is not located in any location identified in section 12.18.200.
  - b. The proposal would not significantly impair any view from any viewing area as those terms are interpreted and applied in Code section 17.02.040; and
  - c. The proposal complies with all applicable provisions in this chapter without need for an exception pursuant to section 12.18.190.
2. The director may, in the director's discretion, refer any application for an Administrative Wireless Telecommunications Facilities Permit to the planning commission for approval.
3. In the event that the director determines that any application submitted for an Administrative Wireless Telecommunications Facilities Permit does not meet the criteria this Code, the director shall convert the application to a Major Wireless Facilities Permit application and refer it to the planning commission.

C. *Master Deployment Plan Permit.*

1. Any applicant that seeks approval for five (5) or more wireless telecommunications facilities (including new facilities and collocations to existing facilities) may elect to submit an application for a Master Deployment Plan Permit subject to planning commission approval. The proposed facilities in a Master Deployment Plan shall be reviewed together at the same time and subject to the same requirements and procedures applicable to a Major Wireless Telecommunications Facilities Permit.
2. A Master Deployment Plan Permit shall be deemed an approval for all wireless telecommunications facilities within the plan; provided, however, that an individual encroachment permit shall be required for each wireless telecommunications facility.
3. After the planning commission approves a Master Deployment Plan Permit, any deviations or alterations from the approved Master Deployment Plan for an individual wireless telecommunications facility shall require either a Major Wireless Telecommunications Facilities Permit or an Administrative Wireless Telecommunications Facilities Permit, as applicable.

D. *Other Permits Required.* In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other city departments, or state or federal agencies. Any permit granted

under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other city departments, state or federal agencies.

- E. *Eligible Applicants.* Only applicants who have been granted the right to enter the public right-of-way pursuant to state or federal law, or who have entered into a franchise agreement with the city permitting them to use the public right-of-way, shall be eligible for a permit to install or modify a wireless telecommunications facility or a wireless telecommunications collocation facility in the public right-of-way.
- F. *Speculative Equipment Prohibited.* The city finds that the practice of “pre-approving” wireless equipment or other improvements that the applicant does not presently intend to install but may wish to install at some undetermined future time does not serve the public’s best interest. The city shall not approve any equipment or other improvements in connection with a Wireless Telecommunications Facility Permit when the applicant does not actually and presently intend to install such equipment or construct such improvements.

**12.18.050 Application for Wireless Telecommunications Facility Permit.**

A. *Application.*

- 1. In addition to the information required of an applicant for an encroachment permit or any other permit required by this code, each applicant requesting approval of the installation or modification of a wireless telecommunications facility in the public right-of-way shall fully and completely submit to the city a written application on a form prepared by the director.
- 2. No applicant seeking to install wireless antennas shall seek an encroachment permit for fiber or coaxial cable only. Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the right-of-way.

B. *Application Contents* The director shall develop an application form and make it available to applicants upon request. The supplemental application form for a new wireless telecommunications facility installation in the public right-of-way shall require the following information, in addition to all other information determined necessary by the director:

- 1. The name, address and telephone number of the applicant, owner and the operator of the proposed facility.
- 2. If the applicant is an agent, the applicant shall provide a duly executed letter of authorization from the owner of the facility. If the owner will not directly provide wireless telecommunications services, the applicant shall provide a duly executed letter of authorization from the person(s) or entity(ies) that will provide those services.
- 3. If the facility will be located on or in the property of someone other than the owner of the facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, or cable conduit), the applicant shall provide a duly executed written authorization from the property owner(s) authorizing the placement of the facility on or in the property owner’s property.
- 4. A full written description of the proposed facility and its purpose.
- 5. Detailed engineering plans of the proposed facility and related report prepared by a professional engineer registered in the state documenting the following:
  - a. Height, diameter and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least visible equipment within the particular technology the carrier chooses to deploy. A layout plan, section and elevation of the tower structure shall be included.
  - b. A photograph and model name and number of each piece of equipment included
  - c. Power output and operating frequency for the proposed antenna.
  - d. Total anticipated capacity of the structure, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.
  - e. Sufficient evidence of the structural integrity of the pole or other supporting structure as required by the city.
- 6. A justification study which includes the rationale for selecting the proposed use; if applicable, a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant

to provide wireless service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option.

7. Site plan(s) to scale, specifying and depicting the exact proposed location of the pole, pole diameter, antennas, accessory equipment, access or utility easements, landscaped areas, existing utilities, adjacent land uses, and showing compliance with section 12.18.080.
8. Scaled elevation plans of proposed poles, antennas, accessory equipment, and related landscaping and screening.
9. A completed environmental assessment application.
10. If the applicant requests an exception to the requirements of this chapter (in accordance with section 12.18.190), the applicant shall provide all information and studies necessary for the city to evaluate that request.
11. An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the facility, including scaled photo simulations from at least 3 different angles.
12. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the Federal Communications Commission's (FCC) "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.
13. For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts Effective Radio Power "ERP") for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
14. [Reserved]
15. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the facility.
16. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this Code including section 12.18.080(A)(16)(B).
17. A traffic control plan when the proposed installation is on any street in a non-residential zone. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).
18. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site.
19. A written description identifying the geographic service area for the subject installation including geographic and propagation maps, that identifies the location of the proposed facility in relation to all existing and planned facilities maintained within the city by each of the applicant, operator, and owner, if different entities, as well as the estimated number of potentially affected uses in the geographic service area. Regardless of whether a Master Deployment Plan Permit is sought, the applicant shall depict all locations anticipated for new construction and/or modifications to existing facilities, including collocation, within two years of submittal of the application. Longer range conceptual plans for a period of five years shall also be provided, if available.
  - a. In the event the applicant seeks to install a wireless telecommunications facility to address service coverage concerns, full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites;
  - b. In the event the applicant seeks to address service capacity concerns, a written explanation identifying the existing facilities with service capacity issues together with competent evidence to demonstrate the inability of those facilities to meet capacity demands.

20. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.
21. An application fee, and a deposit for a consultant's review as set forth in paragraph E of this section in an amount set by resolution by the city council and in accordance with California Government Code section 50030.
22. Proof that a temporary mock-up of the facility and sign has been installed at the proposed location for a period of at least thirty (30) calendar days.
  - a. Applicant shall obtain an encroachment permit before installing the temporary mock-up, and must remove the temporary mock-up within five (5) calendar days of receiving a written notice to remove from the director.
  - b. When seeking the encroachment permit, the applicant shall provide address labels for use by the city in noticing all property owners within 500 feet of the proposed installation. The city shall mail a notice regarding installation of the mock-up at least five (5) business days prior to the installation.
  - c. The mock-up shall demonstrate the height and mass of the facility, including all interconnecting cables. The applicant shall not be entitled to install the facility it intends to install permanently. The mock-up may consist of story poles or the like.
  - d. The mock-up shall include a sign that displays photo simulations depicting before and after images, including any accessory equipment cabinet, and the telephone number of the Public Works Department.
  - e. The applicant shall be required to follow any other city practices or processes relevant to the installation of a mock-up as may be provided in a publicly accessible form or document.
  - f. After installation of the mock-up, the applicant shall certify that the mock-up accurately represents the height and width of the proposed installation and has been installed consistent with this Code.
23. Any other information and/or studies determined necessary by the director may be required.
  - C. *Application Contents – Modification of Existing Facility.* The content of the application form for a modification to an existing facility shall be determined by the director, and shall include but not be limited to the requirements listed in section 12.18.050(B) unless prohibited by state or federal law.
  - D. *Effect of State or Federal Law Change.* In the event a subsequent state or federal law prohibits the collection of any information required by section 12.18.050(B), the director is authorized to omit, modify or add to that request from the city's application form with the written approval of the city attorney, which approval shall be a public record.
  - E. *Independent Expert.* The director is authorized to retain on behalf of the city an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall address any or all of the following:
    1. Compliance with applicable radio frequency emission standards;
    2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
    3. The accuracy and completeness of submissions;
    4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
    5. The applicability of analysis techniques and methodologies;
    6. The validity of conclusions reached or claims made by applicant;
    7. The viability of alternative sites and alternative designs; and
    8. Any other specific technical issues identified by the consultant or designated by the city.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution. No permit shall be issued to any applicant which has not fully reimbursed the city for the consultants cost.

**12.18.060 Review Procedure**

- A. *Pre-submittal Conference.* Prior to application submittal, the city strongly encourages all applicants to schedule and attend a pre-submittal conference with Public Works Department staff to receive informal feedback on the proposed location, design and application materials. The pre-submittal conference is intended to identify potential concerns and streamline the formal application review process after submittal. Public Works Department staff will endeavor to provide applicants with an appointment within approximately five (5) business days after receipt of a written request.
- B. *Application Submittal Appointment.* All applications must be submitted to the city at a pre-scheduled appointment. Applicants may submit one (1) application per appointment but may schedule successive appointments for multiple applications whenever feasible as determined by the city. City staff will endeavor to provide applicants with an appointment within five (5) business days after receipt of a written request.
- C. *Notice; Decisions.* The provisions in this section describe the procedures for approval and any required notice and public hearings for an application.
  - 1. *Planning Commission Hearings.* Any permit application under this chapter subject to planning commission approval shall require notice and a public hearing. Notice of such hearing shall be provided in accordance with Code section 17.80.090. The planning commission may approve, or conditionally approve, an application only after it makes the findings required in section 12.18.090.
  - 2. *Director's Decision Notice.* The director may approve, or conditionally approve, an application only after it makes the findings required in section 12.18.090. Within five days after the director approves or conditionally approves an application under this chapter, the director shall provide notice in accordance with Code section 17.80.040.
  - 3. *Notice of Shot Clock Expiration.* The city acknowledges there are federal and state shot clocks which may be applicable to a proposed wireless telecommunications facility. That is, federal and state law provide time periods in which the city must approve or deny a proposed wireless telecommunications facility. As such, the applicant is required to provide the city written notice of the expiration of any shot clock, which the applicant shall ensure is received by the city (e.g. overnight mail) no later than twenty (20) days prior to the expiration.
  - 4. *Written Decision Required.* All final decisions made pursuant to this chapter shall be in writing and based on substantial evidence in the written administrative record. The written decision shall include the reasons for the decision.
- D. *Appeals.* Any aggrieved person or entity may appeal a decision by the director or the planning commission as provided in accordance with the provisions in Code chapter 17.80. The appellate authority may hear the appeal *de novo*.

**12.18.080 Requirements for Facilities within the Public Right-of-Way**

- A. *Design and Development Standards.* All wireless telecommunications facilities that are located within the public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:
  - 1. General Guidelines.
    - a. The applicant shall employ screening, undergrounding and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties all in a manner that achieves compatibility with the community and in compliance with section 17.02.040 of this Code.
    - b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.
    - c. Facilities shall be located such that views from a residential structure are not significantly impaired. Facilities shall also be located in a manner that protects public views over city view corridors, as defined in the city's general plan, so that no significant view impairment results in accordance with this Code including section 17.02.040. This provision shall be applied consistent with local, state and federal law.
  - 2. [Reserved]

3. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
4. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.
5. Equipment. The applicant shall use the least visible equipment possible. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this section, antennas shall be situated as close to the ground as possible.
6. Poles.
  - a. Facilities shall be located consistent with section 12.18.200 unless an exception pursuant to section 12.18.190 is granted.
  - b. Only pole-mounted antennas shall be permitted in the right-of-way. All other telecommunications towers are prohibited, and no new poles are permitted that are not replacing an existing pole. (For exceptions see subparagraph (h) below and sections 12.18.190 and 12.18.220.)
  - c. Utility Poles. The maximum height of any antenna shall not exceed forty-eight (48) inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than twenty-four (24) feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.
  - d. Light Poles. The maximum height of any antenna shall not exceed four (4) feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than sixteen and a half (16 1/2) feet above any drivable road surface.
  - e. Replacement Poles. If an applicant proposes to replace a pole in order to accommodate a proposed facility, the pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible.
  - f. Pole mounted equipment, exclusive of antennas, shall not exceed six (6) cubic feet in dimension.
  - g. [Reserved]
  - h. An exception shall be required to place a new pole in the public right-of-way. If an exception is granted for placement of new poles in the right-of-way:
    - i. Such new poles shall be designed to resemble existing poles in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced.
    - ii. Such new poles that are not replacement poles shall be located at least ninety (90) feet from any existing pole to the extent feasible.
    - iii. Such new poles shall not adversely impact public view corridors, as defined in the general plan, and shall be located to the extent feasible in an area where there is existing natural or other feature that obscures the view of the pole. The applicant shall further employ concealment techniques to blend the pole with said features including but not limited to the addition of vegetation if appropriate.
    - iv. A new pole justification analysis shall be submitted to demonstrate why existing infrastructure cannot be utilized and demonstrating the new pole is the least intrusive means possible including a demonstration that the new pole is designed to be the minimum functional height and width required to support the proposed facility.
      - i. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the pole and shall be camouflaged or hidden to the fullest extent feasible. For all wooden poles wherein interior installation is infeasible, conduit and cables attached to the exterior of poles shall be mounted flush thereto and painted to match the pole.
7. Space. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.
8. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this Code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.

9. Obstructions. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the right-of-way, or safety hazards to pedestrians and motorists and in compliance with section 17.48.070 so as not to obstruct the intersection visibility triangle.
10. Public Facilities. A facility shall not be located within any portion of the public right-of-way interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.
11. Screening. All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least eighteen (18) inches from the curb and gutter flow line.
12. Accessory Equipment. Not including the electric meter, all accessory equipment shall be located underground, except as provided below:
  - a. Unless city staff determines that there is no room in the public right-of-way for undergrounding, or that undergrounding is not feasible, an exception shall be required in order to place accessory equipment above-ground and concealed with natural or manmade features to the maximum extent possible.
  - b. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five (5) feet and a total footprint of fifteen (15) square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged. Also, while pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this Chapter.
  - c. In locations where homes are only along one side of a street, above-ground accessory equipment shall not be installed directly in front of a residence. Such above-ground accessory equipment shall be installed along the side of the street with no homes. Unless said location is located within the coastal setback or the landslide moratorium area, then such locations shall be referred to the city's geotechnical staff for review and recommendations.
13. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs. Additional landscaping shall be planted, irrigated and maintained by applicant where such landscaping is deemed necessary by the city to provide screening or to conceal the facility.
14. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.
15. Lighting.
  - a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.
  - b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles.
  - c. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods.
  - d. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The city may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.
  - e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties. Should no lighting be proposed, no lighting study shall be required.
16. Noise.
  - a. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 PM and 7:00 AM.

- b. At no time shall equipment noise from any facility exceed an exterior noise level of fifty-five (55) dBA three (3) feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within five hundred (500) feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed forty-five (45) dBA three (3) feet from the sources of the noise.
17. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The director may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no lethal devices or elements shall be installed as a security device.
  18. Modification. Consistent with current state and federal laws and if permissible under the same, at the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.
  19. The installation and construction approved by a wireless telecommunications facility permit shall begin within one (1) year after its approval or it will expire without further action by the city.
- B. *Conditions of Approval.* In addition to compliance with the design and development standards outlined in this section, all facilities shall be subject to the following conditions of approval (approval may be by operation of law), as well as any modification of these conditions or additional conditions of approval deemed necessary by the director:
1. The permittee shall submit an as built drawing within ninety (90) days after installation of the facility. [As-builts shall be in an electronic format acceptable to the city which can be linked to the city's GIS.]
  2. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the city. The permittee shall notify the city of any changes to the information submitted within thirty (30) days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:
    - a. Identity, including the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.
    - b. The legal status of the owner of the wireless telecommunications facility.
  3. The permittee shall notify the city in writing at least ninety (90) days prior to any transfer or assignment of the permit. The written notice required in this section must include: (1) the transferee's legal name; (2) the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address; and (3) a statement signed by the transferee that the transferee shall accept all permit terms and conditions. The director may require the transferor and/or the transferee to submit any materials or documentation necessary to determine that the proposed transfer complies with the existing permit and all its conditions of approval, if any. Such materials or documentation may include, but shall not be limited to: federal, state and/or local approvals, licenses, certificates or franchise agreements; statements; photographs; site plans and/or as-built drawings; and/or an analysis by a qualified radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Communications Commission. Noncompliance with the permit and all its conditions of approval, if any, or failure to submit the materials required by the director shall be a cause for the city to revoke the applicable permits pursuant to and following the procedure set on in section 12.18.180.
  4. At all times, all required notices and/or signs shall be posted on the site as required by the Federal Communications Commission, California Public Utilities Commission, any applicable licenses or laws, and as approved by the city. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.
  5. Permittee shall pay for and provide a performance bond or other form of security approved by the city attorney's office, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and this code. The security instrument coverage shall include, but not be limited to, removal of the facility. (The amount of the security instrument shall be calculated by the applicant in its submittal documents in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.) Before issuance of any building permit, permittee must submit said security instrument.

6. If a nearby property owner registers a noise complaint, the city shall forward the same to the permittee. Said complaint shall be reviewed and evaluated by the applicant. The permittee shall have ten (10) business days to file a written response regarding the complaint which shall include any applicable remedial measures. If the city determines the complaint is valid and the applicant has not taken any steps to minimize the noise, the city may hire a consultant to study, examine and evaluate the noise complaint and the permittee shall pay the fee for the consultant if the site is found in violation of this chapter. The matter shall be reviewed by the director. If the director determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the Code, the director may impose conditions on the project to achieve said objective.
7. A condition setting forth the permit expiration date in accordance with section 12.18.160 shall be included in the conditions of approval.
8. The wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the director for the purpose of: (a) protecting the public health, safety, and welfare; (b) preventing interference with pedestrian and vehicular traffic; and/or (c) preventing damage to the public right-of-way or any adjacent property. The city may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the underlying permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the city by the permittee.
9. The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by section 12.18.080(B)(5).
10. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement or property without the prior consent of the owner of that structure, improvement or property. No structure, improvement or property owned by the city shall be moved to accommodate a wireless telecommunications facility unless the city determines that such movement will not adversely affect the city or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the city's structure, improvement or property. Prior to commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, the permittee shall provide the city with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement or property within the public right-of-way to be affected by applicant's facilities.
11. The permittee shall assume full liability for damage or injury caused to any property or person by the facility.
12. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless telecommunications facility in the public right-of-way. 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. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the city engineer. Such time period for correction shall be based on the facts and circumstances, danger to the community and severity of the disrepair. Should the permittee not make said correction within the time period allotted the city engineer shall cause such repair to be completed at permittee's sole cost and expense.
13. No facility shall be permitted to be installed in the drip line of any tree in the right-of-way.
14. Insurance. The permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of public liability insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence and Four Million Dollars (\$4,000,000) in the aggregate, that fully protects the city from claims and suits for bodily injury and property damage. The insurance must name the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with thirty (30) days prior written notice to the city, except for cancellation due to nonpayment of premium. The insurance provided by permittee shall be primary to any coverage available to the city, and any insurance or self-insurance maintained by the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers shall be excess of permittee's insurance and shall not contribute with it. The policies of insurance required by this permit shall include provisions for waiver of subrogation. In accepting the benefits of this permit, permittee hereby waives all rights of subrogation against the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers. The insurance must afford coverage for the permittee's and the wireless provider's use, operation and activity,

vehicles, equipment, facility, representatives, agents and employees, as determined by the city's risk manager. Before issuance of any building permit for the facility, the permittee shall furnish the city risk manager certificates of insurance and endorsements, in the form satisfactory to the city attorney or the risk manager, evidencing the coverage required by the city.

15. Permittee shall defend, indemnify, protect and hold harmless city, its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceeding against the city, and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers to attack, set aside, void or annul, an approval of the city, planning commission or city council concerning this permit and the project. Such indemnification shall include damages of any type, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The city shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit city from participating in a defense of any claim, action or proceeding. The city shall have the option of coordinating the defense, including, but not limited to, choosing counsel after consulting with permittee and at permittee's expense.
16. Additionally, to the fullest extent permitted by law, the permittee, and every permittee and person in a shared permit, jointly and severally, shall defend, indemnify, protect and hold the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers harmless from and against all claims, suits, demands, actions, losses, liabilities, judgments, settlements, costs (including, but not limited to, attorney's fees, interest and expert witness fees), or damages claimed by third parties against the city for any injury claim, and for property damage sustained by any person, arising out of, resulting from, or are in any way related to the wireless telecommunications facility, or to any work done by or use of the public right-of-way by the permittee, owner or operator of the wireless telecommunications facility, or their agents, excepting only liability arising out of the sole negligence or willful misconduct of the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers.
17. Should the utility company servicing the facility with electrical service that does not require the use of an above ground meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within ninety (90) days of such service being offered and reasonably restore the area to its prior condition. An extension may be granted if circumstances arise outside of the control of the permittee.
18. Relocation. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to city, if and when made necessary by (i) any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or above ground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency, (ii) any abandonment of any street, sidewalk or other public facility, (iii) any change of grade, alignment or width of any street, sidewalk or other public facility, or (iv) a determination by the director that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way. Such modification, removal, or relocation of the facility shall be completed within ninety (90) days of notification by city unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review and approval of a modified permit pursuant to the Code including applicable notice and hearing procedures. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the Code allow. In the event the facility is not modified, removed, or relocated within said period of time, city may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances including those of immediate or imminent threat to the public's health and safety, the city may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.
19. Permittee shall agree in writing that the permittee is aware of, and agrees to abide by, all conditions of approval imposed by the wireless telecommunications facility permit within thirty (30) days of permit issuance. The permit shall be void and of no force or effect unless such written consent is received by the city within said thirty (30) day period.
20. Prior to the issuance of any encroachment permit, permittee may be required to enter into a right-of-way agreement with the city in accordance with the City's past practice.
21. "Permittee" shall include the applicant and all successors in interest to this permit.

**12.18.090 Findings.**

No permit shall be granted for a wireless telecommunications facility unless all of the following findings are made by the director:

- A. All notices required for the proposed installation have been given.
- B. The proposed facility has been designed and located in compliance with all applicable provisions of this chapter.
- C. If applicable, the applicant has demonstrated its inability to locate on existing infrastructure.
- D. The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the city permitting them to use the public right-of-way.
- E. The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible and supported by factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process were technically infeasible or not available.

**12.18.100 [Section Reserved]**

**12.18.110 Nonexclusive grant.**

No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for any purpose whatsoever. Further, no approval shall be construed as any warranty of title.

**12.18.120 Emergency Deployment.**

A COW shall be permitted for the duration of an emergency declared by the city or at the discretion of the director.

**12.18.130 Operation and Maintenance Standards.**

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards.

- A. Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent within forty-eight (48) hours:
  - 1. After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or
  - 2. After permittee, owner, operator or any designated maintenance agent receives notification from the city.
- B. Each permittee of a wireless telecommunications facility shall provide the director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within seven (7) days of any change.
- C. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
  - 1. General dirt and grease;
  - 2. Chipped, faded, peeling, and cracked paint;
  - 3. Rust and corrosion;
  - 4. Cracks, dents, and discoloration;
  - 5. Missing, discolored or damaged artificial foliage or other camouflage;
  - 6. Graffiti, bills, stickers, advertisements, litter and debris;
  - 7. Broken and misshapen structural parts; and

- 8. Any damage from any cause.
- D. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the director.
- E. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.
- F. Each facility shall be operated and maintained to comply at all conditions of approval. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the same and the standards set forth in this chapter.

**12.18.140 [Reserved]**

**12.18.150 No Dangerous Condition or Obstructions Allowed**

No person shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

**12.18.160 Permit Expiration.**

- A. Unless Government Code section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless pursuant to another provision of this Code it lapses sooner or is revoked. At the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- B. A permittee may apply for a new permit within one hundred and eighty (180) days prior to expiration. Said application and proposal shall comply with the city's current code requirements for wireless telecommunications facilities.

**12.18.170 Cessation of Use or Abandonment**

- A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for ninety (90) or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility.
- B. The operator of a facility shall notify the city in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten (10) days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the director of any discontinuation of operations of thirty (30) days or more.
- C. Failure to inform the director of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be grounds for:
  - 1. Litigation;
  - 2. Revocation or modification of the permit;
  - 3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;
  - 4. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
  - 5. Any other remedies permitted under this Code.

**12.18.180 Removal and Restoration – Permit Expiration, Revocation or Abandonment**

- A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. The facility shall be removed from the property, at no cost or expense to the city.
- B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within ninety (90) days after expiration, earlier termination or revocation of the permit, or abandonment of the facility, shall be a violation of this Code. Upon a showing of good cause, an extension may be granted by the director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this section shall be grounds for:
  - 1. Prosecution;
  - 2. Acting on any security instrument required by this chapter or conditions of approval of permit;
  - 3. Removal of the facilities by the city in accordance with the procedures established under this Code for abatement of a public nuisance at the owner's expense; and/or
  - 4. Any other remedies permitted under this Code.
- C. *Summary Removal.* In the event the director or city engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), the director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five (5) business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within sixty (60) days, the facility shall be treated as abandoned property.
- D. *Removal of Facilities by city.* In the event the city removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this Code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removed by the city due to exigent circumstances.

**12.18.190 Exceptions.**

- A. The city council recognizes that federal law prohibits a permit denial when it would effectively prohibit the provision of personal wireless services and the applicant proposes the least intrusive means to provide such services. The city council finds that, due to wide variation among wireless facilities, technical service objectives and changed circumstances over time, a limited exemption for proposals in which strict compliance with this chapter would effectively prohibit personal wireless services serves the public interest. The city council further finds that circumstances in which an effective prohibition may occur are extremely difficult to discern, and that specified findings to guide the analysis promotes clarity and the city's legitimate interest in well-planned wireless facilities deployment. Therefore, in the event that any applicant asserts that strict compliance with any provision in this chapter, as applied to a specific proposed personal wireless services facility, would effectively prohibit the provision of personal wireless services, the planning commission may grant a limited, one-time exemption from strict compliance subject to the provisions in this section
- B. *Required Findings.* The planning commission shall not grant any exception unless the applicant demonstrates with clear and convincing evidence all the following:
  - 1. The proposed wireless facility qualifies as a "personal wireless services facility" as defined in United States Code, Title 47, section 332(c)(7)(C)(ii);
  - 2. The applicant has provided the city with a clearly defined technical service objective and a clearly defined potential site search area;

3. The applicant has provided the city with a meaningful comparative analysis that includes the factual reasons why any alternative location(s) or design(s) suggested by the city or otherwise identified in the administrative record, including but not limited to potential alternatives identified at any public meeting or hearing, are not technically feasible or potentially available; and
  4. The applicant has provided the city with a meaningful comparative analysis that includes the factual reasons why the proposed location and design deviates is the least noncompliant location and design necessary to reasonably achieve the applicant's reasonable technical service objectives.
- C. *Scope.* The planning commission shall limit its exemption to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its reasonable technical service objectives. The planning commission may adopt conditions of approval as reasonably necessary to promote the purposes in this chapter and protect the public health, safety and welfare.
- D. *Independent Consultant.* The city shall have the right to hire, at the applicant's expense, an independent consultant to evaluate issues raised by the exception and to submit recommendations and evidence in response to the application.

**12.18.200 Location Restrictions.**

*Locations Requiring an Exception.* Wireless telecommunications facilities are strongly disfavored in certain areas. Therefore the following locations are permitted when an exception has been granted pursuant to section 12.18.190:

- A. Public right-of-way of local streets as identified in the general plan if within the residential zones;
- B. Public right-of-way if mounted to a new pole that is not replacing an existing pole in an otherwise permitted location.

**12.18.210 Effect on Other Ordinances.**

Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of this Code. In the event of a conflict between any provision of this division and other sections of this Code, this chapter shall control.

**12.18.220 State or Federal Law.**

- A. In the event it is determined by the city attorney that state or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities, such requirement shall be deemed severable and all remaining regulations shall remain in full force and effect. Such a determination by the city attorney shall be in writing with citations to legal authority and shall be a public record. For those facilities, in lieu of a minor conditional use permit or a conditional use permit, a ministerial permit shall be required prior to installation or modification of a wireless telecommunications facility, and all provisions of this division shall be applicable to any such facility with the exception that the required permit shall be reviewed and administered as a ministerial permit by the director rather than as a discretionary permit. Any conditions of approval set forth in this provision or deemed necessary by the director shall be imposed and administered as reasonable time, place and manner rules.
- B. If subsequent to the issuance of the city attorney's written determination pursuant to (A) above, the city attorney determines that the law has changed and that discretionary permitting is permissible, the city attorney shall issue such determination in writing with citations to legal authority and all discretionary permitting requirements shall be reinstated. The city attorney's written determination shall be a public record.
- C. All installations permitted pursuant to this chapter shall comply with all federal and state laws including but not limited to the American with Disabilities Act.

**12.18.230 Nonconforming Wireless Telecommunications Facilities in the Right-of-Way**

- A. Nonconforming wireless telecommunications facilities are those facilities that do not conform to this chapter.
- B. Nonconforming wireless telecommunications facilities shall, within ten (10) years from the date such facility becomes nonconforming, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this Code at such time, to the extent the city can require such compliance under federal and state law.

- C. An aggrieved person may file an appeal to the city council of any decision of the director made pursuant to this section. In the event of an appeal alleging that the ten (10) year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property."

**SECTION 5.** Section 17.96.090 of Chapter 96, Title 17 is amended and replaced in its entirety to read as follows:

"Commercial antenna" means all antennas, parabolic dishes, relay towers and antenna support structures used for the transmission or reception of radio, television and communication signals for commercial purposes. For the purpose of this definition, "commercial purposes" shall mean communications for hire or material compensation, or the use of commercial frequencies, as these terms are defined by the Federal Communications Commission (FCC). "Commercial antennas" shall not include antennas owned or operated by governmental agencies.

**SECTION 6.** Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

**SECTION 7.** Effective Date. This ordinance shall be in effective on the thirtieth (30th) day after the day of its adoption.

**SECTION 8.** Certification. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this 15<sup>th</sup> day of March 2016.

/s/ Ken Dyda  
Mayor

ATTEST:

/s/ Carla Morreale  
City Clerk

STATE OF CALIFORNIA                    )  
COUNTY OF LOS ANGELES            )ss  
CITY OF RANCHO PALOS VERDES        )

I, Carla Morreale, City Clerk of the City of Rancho Palos Verdes, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Ordinance No. 580 passed first reading on March 1, 2016, was duly and regularly adopted by the City Council of said City at a regular meeting thereof held on March 15, 2016, and that the same was passed and adopted by the following roll call vote:

AYES:               Brooks, Duhovic, Misetich and Campbell  
NOES:               None  
ABSENT:            Dyda  
ABSTAIN:           None

\_\_\_\_\_  
City Clerk

City of



RANCHO PALOS VERDES

Received: Initials \_\_\_\_\_ Date \_\_\_\_\_

### Wireless Telecommunications Facility Permit Application

#### INTRODUCTION

- a. All applicants for a wireless telecommunication facility permit (“WTFP”) or a modified WTFP must complete this application and submit all documentation requested thereunder. WTFPs apply to all facilities for the provision of wireless services including antennas, poles, towers, cables, and wires.
- b. For all WTFP applications, you must submit three (3) copies of this application with exhibits attached, a WTFP fee, and deposit(s) for an independent consultant(s) to review the application. Current Fees - Application Fee: \$370 | Trust Deposit: \$5,000
- c. Please call (310) 544-5252 to schedule an appointment to submit all application materials in person at 30940 Hawthorne Blvd., Rancho Palos Verdes, CA 90275.

#### INSTRUCTIONS

- a. Complete the following application in its entirety. An incomplete application will result in any of the following: (1) denial of the permit; (2) delay in granting the permit; (3) a request for supplemental information.
- b. All written responses to the questions below must be typed in 12 point font. Several questions require you to attach supplemental documentation and commentary to support your answers below. All your exhibits must be marked as directed in the application. All supporting documentation must be clear and legible. All exhibits must be stapled or bound to the application.

#### PUBLIC NOTICE REQUIREMENTS

- a. The applicant is required to provide address labels for use by the City in noticing all property owners within 500 feet of the proposed installation. The notice will be mailed on or about 5 business days prior to any installation of any mock-up and will include photo simulations depicting before and after images.
- b. If applicable, prepare public hearing information pursuant to the public noticing requirements of the Rancho Palos Verdes Municipal Code (“RPVMC”) Section 17.80.090.
- c. Provide proof that all applicable public notices articulated in the RPVMC and the noticing policies of the City of Rancho Palos Verdes (“City”) have been met. Provide the City twenty (20) days advance notice of an upcoming shot clock expiration date to provide the City with a final opportunity to approve or deny the application before it is deemed approved.

## I. CONTACT INFORMATION

- a. Property address: \_\_\_\_\_
- b. Assessor's Parcel No(s): \_\_\_\_\_
- c. Applicable homeowner's association: \_\_\_\_\_
- d. Contact information for the following:
  - i. Wireless provider or operator:
    - (1) Name: \_\_\_\_\_
    - (2) Street Address: \_\_\_\_\_
    - (3) City, State & Zip: \_\_\_\_\_
    - (4) Phone No.: \_\_\_\_\_
    - (5) Fax No.: \_\_\_\_\_
    - (6) Email: \_\_\_\_\_
  - ii. **Applicant:**
    - (1) Name: \_\_\_\_\_
    - (2) Street Address: \_\_\_\_\_
    - (3) City, State & Zip: \_\_\_\_\_
    - (4) Phone No.: \_\_\_\_\_
    - (5) Fax No.: \_\_\_\_\_
    - (6) Email: \_\_\_\_\_
    - (7) Your property interest:  
 Lease    License    Ownership  
 Other: \_\_\_\_\_
  - iii. **Property owner:**
    - (1) Name: \_\_\_\_\_
    - (2) Street Address: \_\_\_\_\_
    - (3) City, State & Zip: \_\_\_\_\_
    - (4) Phone No.: \_\_\_\_\_
    - (5) Fax No.: \_\_\_\_\_
    - (6) Email: \_\_\_\_\_
  - iv. **Person most knowledgeable about the proposed project:**  
 Same as Applicant listed above.
    - (1) Name: \_\_\_\_\_
    - (2) Street Address: \_\_\_\_\_
    - (3) City, State & Zip: \_\_\_\_\_
    - (4) Phone No.: \_\_\_\_\_
    - (5) Fax No.: \_\_\_\_\_
    - (6) Email: \_\_\_\_\_

## II.

Check the box identifying the permitting the application seeks:

- Major Wireless Telecommunications Facilities Permit
- Administrative Wireless Telecommunications Facilities Permit
- Master Deployment Plan Permit

***For parts (1) – (2), provide a description supporting your selections below. Attach all rules, regulations, agreements, court documents, or other materials on which you base your response. Attach description and supporting documentation marked as Exhibit A.***

1. Check the box(es) below that identify the statute(s) you believe govern(s) the application request:
  - a.  Section 6409(a) of the Middle Class Tax and Job Creation Act of 2012 for collocation or modification to an existing commission-authorized Wireless Telecommunications service
  - b.  Section 332(c)(7) of the Telecommunications Act for the provision of personal wireless telecommunications facilities
  - c.  California Government Code Section 65964.1 (AB-57)
2. Check the box below pertaining to the shot clock you believe applies to your application:
  - a.  150 day shot clock for new facilities
  - b.  90 day shot clock for modifications resulting in a substantial change
  - c.  60 days shot clock for modifications that do not result in a substantial change

## III. Characteristics of the Property

1. Specify the following characteristics about the existing property:
  - a. Zoning designation: \_\_\_\_\_
  - b. General Plan designation: \_\_\_\_\_
  - c. Parcel Size: \_\_\_\_\_
  - d. Parcel Width: \_\_\_\_\_
  - e. Parcel Depth: \_\_\_\_\_
  - f. Average Slope: \_\_\_\_\_
  - g. Describe the current use of the parcel: \_\_\_\_\_
  - h. Legal description of the parcel: \_\_\_\_\_
2. Attach pictures of the site and surrounding area as it currently exists. ***Attach and mark as Exhibit B.***

#### IV. Description of Project Coverage and Purpose

1. Provide a narrative description of the project. Your response shall include, but not be limited to, a description of the proposed facility or modification, the anticipated construction activities involved, the maintenance requirements and schedule for the new or modified facility, and the number of antennas to be installed. Provide any supporting documentation regarding the purpose of the project. ***Attach and mark responses and documentation as Exhibit C1.***

2. Is the purpose of the project, in whole or in part, designed to close what you believe to be a “significant gap” in coverage?
  - a.  Yes
  - b.  No

Attach supporting documentation and commentary substantiating your response. If you selected “Yes” above, provide a justification study that provides the following:

- a. A detailed explanation of the coverage gap that the proposed use would serve;
  - b. The rationale for selecting the proposed use;
  - c. An explanation that identifies whether the proposed project is the least intrusive means of closing the significant gap and on what basis the applicant believes the project to be the least intrusive means. ***Attach and mark as Exhibit C2.***
3. Provide three (3) copies of each of the following geographic and propagation maps illustrating the following (***Attach and mark as Exhibit C3***):
    - a. Geographic boundaries of a significant gap in coverage, if applicable.
    - b. The proposed site that identifies the location of existing wireless telecommunications facilities owned and/or operated by the applicant.
    - c. Location of the proposed facility in relation to all existing and planned facilities maintained within the City by the applicant, operator, and owner, if different entities.
    - d. Existing network or radio frequency coverage
    - e. Proposed radio frequency coverage

4. Provide a description identifying the geographic service area for the subject installation. ***Attach and mark as Exhibit C4.***

5. If the applicant is seeking to install a facility that exceeds the maximum height permitted in the City’s Municipal Code, provide an analysis comparing the operation of the facility at its proposed height with its operation at the maximum height permitted. ***Attach and mark responses and documentation as Exhibit C5.***

6. Check the box below that most accurately identifies the primary purpose of the project:
  - a.  Increase network capacity without adding new radio frequency coverage
  - b.  Provide new radio frequency coverage in areas without radio frequency coverage
  - c.  Increase existing radio frequency coverage in area with coverage
  - d.  Other: \_\_\_\_\_

## V. Project Location and Authorizations

Facilities will be located:

- a.  On private property
  - b.  In the public right of way (PROW)
1. If the facility will be sited in the PROW, state or provide the following:
    - a. Your authority to locate the facility in the PROW (state law, federal law, or franchise agreement); ***Attach and mark as Exhibit D1a.***
    - b. If applicable, include a copy of the certificate of public convenience and necessity (CPCN). ***Attach and mark as Exhibit D1b.***
    - c. Whether a new pole (that is not replacing an existing pole) in an otherwise permitted location is proposed. If so, provide a new pole justification analysis to demonstrate why existing infrastructure cannot be utilized and how the new pole is the least intrusive means possible; ***Attach and mark as Exhibit D1c.***
    - d. Whether the facility is proposed to be sited in the PROW of non-local roadways (as defined by the City).
  2. If the facility will be co-located on a structure owned by someone other than the applicant or owner of the proposed installation provide:
    - a. Written authorization by any and all property owners authorizing the placement of the facility on or in the property owner's property. ***Attach and mark as Exhibit D2.***
  3. If applicable, provide the following letter(s) of authorization to collocate, modify, or provide services:
    - a. If the applicant is an agent, provide a letter of authorization from the owner of the facility. ***Attach and mark as Exhibit D3a.***
    - b. If the owner will not directly provide wireless telecommunications services, provide a letter of authorization from the person or entity that will provide those services. ***Attach and mark as Exhibit D3b.***

## VI. Radio Frequency ("RF") Emissions and Monitoring Requirements

1. Provide proof or certification of completion of the RF emissions exposure guidelines checklist contained in Appendix A to the Federal Communications Commission's ("FCC") "Local Government Official's Guide to Transmitting Antenna RF Emission Safety". ***Attach and mark as Exhibit E.*** The Guide can be found at:  
[http://wireless.fcc.gov/siting/FCC\\_LSGAC\\_RF\\_Guide.pdf](http://wireless.fcc.gov/siting/FCC_LSGAC_RF_Guide.pdf)
2. Pursuant to the completed checklist referenced above, will the facility be "categorically excluded" under the FCC regulations for RF emissions?
  - a.  Yes
  - b.  No

If you selected “No” above, provide a technically detailed report certified by a qualified radio frequency engineer indicating the following:

- i. The amount of RF emissions expected from the proposed facility;
- ii. The associated accessory equipment required;
- iii. The cumulative impacts of the other existing facilities at the site to the extent permitted by federal law, including co-located facilities;
- iv. That the proposed facility, individually or combined with the cumulative emissions of on-site facilities, will not exceed applicable standards set by the FCC.

## **VII. Engineering Plans for the Facility and Equipment**

***Submit one (1) electronic copy and three (3) hard copies of stamped detailed engineering plans of the proposed facility and related reports prepared and signed by a professional engineer registered in the state of California documenting the following:***

1. Height, diameter, design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to the minimum height and diameter required from a technological standpoint for the proposed site. ***Attach and mark as Exhibit F1.***
2. A cross-section of the tower structure. ***Attach and mark as Exhibit F2.***
3. A photograph and model name and number of each piece of equipment included. ***Attach and mark as Exhibit F3.***
4. Power output and operating frequency for the proposed antenna. ***Attach and mark as Exhibit F4.***
5. Total anticipated capacity of the structure, indicating the number and types of antennas and power and frequency ranges, which can be accommodated. ***Attach and mark as Exhibit F5.***
6. Structural calculation demonstrating the structural integrity of the proposed facility. ***Attach and mark as Exhibit F6.***
7. A wind velocity test including an evaluation of high wind load capacity shall include the impact of a modification to an existing facility. ***Attach and mark as Exhibit F7.***
8. Seismic analysis. ***Attach and mark as Exhibit F8.***

## **VIII. Site Plans**

1. ***Attach the following documentation or information:***
  - a. One (1) electronic copy and three (3) hard copies of the site plans to scale, in compliance with City requirements including, but not limited to, the requirements contained in the RPVMC. ***Attach and mark as Exhibit H1a.***
    - i. The site plans must at minimum include:
      - (1) The location and dimensions of the existing facility and maximum height above ground of the facility;
      - (2) The benchmarks and data used for elevations;

- (3) The location of existing accessways and the location and design for all proposed accessways;
  - (4) The exact proposed location of the pole, antennas, accessory equipment, and landscaped areas;
  - (5) The location of existing utilities and adjacent land uses;
  - (6) The design of the facility, including the specific type of support structure, type, location, size, height, and configuration of applicant's existing and proposed facilities;
  - (7) If applicable, the method by which an antenna will be attached to the mounting structure.
- b. Three (3) copies of the Master Plan of all existing and proposed facilities. The Master Plan shall reflect all locations anticipated for new construction and/or modifications to existing facilities, including collocation, that are anticipated to be installed within the next two years from submittal of this application. ***Attach and mark as Exhibit H1b.***
  - c. If applicable, three (3) copies of the scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation. Provide a description of how the chosen material at maturity will screen the site. ***Attach and mark as Exhibit H1c.***
  - d. Three (3) sets of scaled and dimensioned photo simulations of the before and after images of the project and project site from at least three (3) different angles and three (3) sets of an accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the facility. ***Attach and mark as Exhibit H1d.***
2. ***Attach a narrative description and supporting documentation marked as Exhibit H2 that:***
- a. Identifies whether the proposed project is consistent with the General Plan and any specific plans;
  - b. Identifies whether the proposed use is conditionally permitted within the zoned area;
  - c. Identifies applicable zoning and development codes and requirements and demonstrates whether the proposed project complies with all applicable provisions of the City's zoning and development code;
  - d. Identifies applicable building codes and other generally applicable laws or prior conditions for approval that reasonably relate to public health and safety and demonstrates compliance therewith.

***CONTINUED ON FOLLOWING PAGE***

## IX. Alternative Sites

1. List a minimum of three (3) alternative sites for the proposed project, including at least one (1) collocated site.

**a. Alternative 1:**

- i. Address of property: \_\_\_\_\_
- ii. Property owner(s) name(s): \_\_\_\_\_
  - (1) Address: \_\_\_\_\_
  - (2) Telephone number: \_\_\_\_\_
- iii. Zoning designation: \_\_\_\_\_
- iv. General Plan designation: \_\_\_\_\_
- v. Explanation of why Alternative 1 is inferior to proposed project.

***Attach and mark as Exhibit II.***

**b. Alternative 2:**

- i. Address of property: \_\_\_\_\_
- ii. Property owner(s) name(s): \_\_\_\_\_
  - (1) Address: \_\_\_\_\_
  - (2) Telephone number: \_\_\_\_\_
- iii. Zoning designation: \_\_\_\_\_
- iv. General Plan designation: \_\_\_\_\_
- v. Explanation of why Alternative 2 is inferior to proposed project.

***Attach and mark as Exhibit I2.***

**c. Alternative 3: (Must be a collocated site.)**

- i. Address of property: \_\_\_\_\_
- ii. Description of existing installation: \_\_\_\_\_
- iii. Property owner(s) name(s): \_\_\_\_\_
  - (1) Address: \_\_\_\_\_
  - (2) Telephone number: \_\_\_\_\_
- iv. Zoning designation: \_\_\_\_\_
- v. General Plan designation: \_\_\_\_\_
- vi. Explanation of why Alternative 3 is inferior to proposed project.

***Attach and mark as Exhibit I3.***

## **X. Anticipated Impacts and Other Confounding Factors**

1. Provide descriptions, commentary, and supporting documentation relating to the following:
  - a. If applicable, a noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed facility will comply with the RPVMC. *Attach and mark as Exhibit J1a.*
  - b. A completed environmental assessment application. The application can be found at <http://www.rpvca.gov/documentcenter/view/5995>. *Attach and mark the application as Exhibit J1b.*
  - c. Historic preservation review. *Attach and mark as Exhibit J1c.*
  - d. A traffic control plan if the proposed installation is to be sited on any street in a non-residential zone. *Attach and mark as Exhibit J1d.*

## **XI. Other Requirements**

1. All other documentation certifying that all applicable licenses or other approvals required by the FCC have been obtained to provide the services proposed in connection with the application. *Attach and mark as Exhibit K1.*
2. Any copies of all documents the applicant is required to file pursuant to the Federal Aviation Administration regulations for the facility. *Attach and mark as Exhibit K2.*
3. All other documentation required by the RPVMC. *Attach and mark as Exhibit K3.*

## **XII. Exceptions to the Application Requirements**

1. Do you believe you are entitled to an exception to the requirement(s) of this application, including, but not limited to, exceptions from findings that would otherwise justify denial?
  - a.  Yes
  - b.  No
2. If you selected “Yes” above, provide all information and studies necessary for the City to evaluate a request for an exception to the requirements of this application. The narrative must demonstrate with clear and convincing evidence that denial of the facility would violate state and/or federal law, violate the provisions of this division, as applied to the applicant, or deprive the applicant of its rights under state and/or federal law. *Attach and mark as Exhibit L.*

## **XIII. Supplemental Materials for Projects Subject to 6409**

You must complete this section if you selected the box in Section II titled “Application Type” that indicates your project is subject to 6409. For parts (1) – (6), provide a narrative description and any supporting documentation for the selections you make below. *Attach and mark as Exhibit M.*

1. Is the application for an eligible facilities request?
  - a.  Yes
  - b.  No
  
2. Will the proposed project cause a substantial change in the physical dimension of the structure?
  - a.  Yes
  - b.  No
  
3. Does the structure at issue involve an existing wireless tower or base station?
  - a.  Yes
  - b.  No
  
4. Check the box(es) below that are applicable to your project:
  - a.  Collocation of new transmission equipment
  - b.  Removal of transmission equipment
  - c.  Replacement of transmission equipment
  
5. If your project does not involve excavation, tower installation, or tower modification in the PROW, answer the following questions:
  - a. Does the project propose a height increase of less than 10% or no more than one additional antenna not more than 20 feet in height (whichever is greater)?
  - b. Does the project propose a width increase of less than 20 feet?
  - c. Will the project require excavation near the ground-mounted equipment?
  - d. Will the project preserve all existing concealment elements of the current tower or base station?
  - e. Will the proposed collocation preserve all prior conditions of approval that do not conflict with FCC regulations for a substantial change?
  - f. Does the project propose adding four or fewer additional equipment cabinets?
  
6. If your project involves excavation, tower or base station installation, or tower or base station modification in the PROW, answer the following questions:
  - a. Does the project propose a height increase of less than 10% or 10 feet (whichever is greater)?  
 Yes  
 No
  
  - b. Does the project propose a width increase of less than 6 feet?  
 Yes  
 No
  
  - c. Does the project propose excavation entirely within the anticipated lease area of private property?  
 Yes  
 No

- d. Will the project preserve all existing concealment elements of the current tower or base station?  
 Yes  
 No
  
- e. Will the proposed collocation preserve all prior conditions of approval that do not conflict with FCC regulations for a substantial change?  
 Yes  
 No
  
- f. Does the project propose adding four or fewer additional equipment cabinets?  
 Yes  
 No

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

AMENDED IN ASSEMBLY JUNE 20, 2017

AMENDED IN SENATE MAY 2, 2017

AMENDED IN SENATE MARCH 28, 2017

**SENATE BILL**

**No. 649**

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**Introduced by Senator Hueso**

(Principal coauthor: Assembly Member Quirk)

**(Coauthor: Senator Dodd)**

*(Coauthor: Assembly Member Dababneh)*

February 17, 2017

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An act to amend Section 65964 of, and to add ~~Section~~ *Sections* 65964.2 and 65964.5 to, the Government Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 649, as amended, Hueso. Wireless telecommunications facilities.

Under existing law, a wireless telecommunications collocation facility, as specified, is subject to a city or county discretionary permit and is required to comply with specified criteria, but a collocation facility, which is the placement or installation of wireless facilities, including antennas and related equipment, on or immediately adjacent to that wireless telecommunications collocation facility, is a permitted use not subject to a city or county discretionary permit.

This bill would provide that a small cell is a permitted use, subject only to a specified permitting process adopted by a city or county, if the small cell meets specified requirements. By imposing new duties on local agencies, this bill would impose a state-mandated local program. The bill would authorize a city or county to require an encroachment permit or a building permit, and any additional ministerial permits, for

a small cell, as specified. *The bill would authorize a city or county to charge 3 types of fees: an annual administrative permit fee, an annual attachment rate, or a on-time reimbursement fee. The bill would require the city or county to comply with notice and hearing requirements before imposing the annual attachment rate. The bill would require an action or proceeding to challenge a fee imposed under the provisions of this bill to be commenced within 120 days of the effective date of the ordinance or resolution. The bill would define the term “small cell” for these purposes.*

*This bill would prohibit a city or county from adopting or enforcing any regulation on the placement or operation of a communications facility in the rights-of-way by a provider that is authorized by state law to operate in the rights-of-way or from regulating that service or imposing any tax, fee, or charge, except as provided in specified provisions of law or as specifically required by law.*

Under existing law, a city or county, as a condition of approval of an application for a permit for construction or reconstruction of a development project for a wireless telecommunications facility, may not require an escrow deposit for removal of a wireless telecommunications facility or any component thereof, unreasonably limit the duration of any permit for a wireless telecommunications facility, or require that all wireless telecommunications facilities be limited to sites owned by particular parties within the jurisdiction of the city or county, as specified.

This bill would require permits for these facilities to be renewed for equivalent durations, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares that, to ensure
- 2 that communities across the state have access to the most advanced
- 3 ~~wireless~~ communications technologies and the transformative
- 4 solutions that robust wireless *and wireline* connectivity enables,

1 such as Smart Communities and the Internet of Things, California  
2 should work in coordination with federal, state, and local officials  
3 to create a statewide framework for the deployment of advanced  
4 wireless communications infrastructure in California that does all  
5 of the following:

6 (a) Reaffirms local governments' historic role and authority  
7 with respect to ~~wireless~~ wireless communications infrastructure siting and  
8 construction generally.

9 (b) Reaffirms that deployment of telecommunications facilities  
10 in the rights-of-way is a matter of statewide concern, subject to a  
11 statewide franchise, and that expeditious deployment of  
12 telecommunications networks generally is a matter of both  
13 statewide and national concern.

14 (c) Recognizes that the impact on local interests from individual  
15 small wireless facilities will be sufficiently minor and that such  
16 deployments should be a permitted use statewide and should not  
17 be subject to discretionary zoning review.

18 (d) Requires expiring permits for these facilities to be renewed  
19 so long as the site maintains compliance with use conditions  
20 adopted at the time the site was originally approved.

21 (e) Requires providers to obtain all applicable building or  
22 encroachment permits and comply with all related health, safety,  
23 and objective aesthetic requirements for small wireless facility  
24 deployments on a ministerial basis.

25 (f) Grants providers fair, reasonable, nondiscriminatory, and  
26 nonexclusive access to locally owned utility poles, streetlights,  
27 and other suitable host infrastructure located within the public  
28 ~~right-of-way~~ *rights-of-way* and in other local public places such  
29 as stadiums, parks, campuses, hospitals, transit stations, and public  
30 buildings consistent with all applicable health and safety  
31 requirements, including Public Utilities Commission General Order  
32 95.

33 (g) Provides for full recovery by local governments of the costs  
34 of attaching small wireless facilities to utility poles, streetlights,  
35 and other suitable host infrastructure in a manner that is consistent  
36 with existing federal and state laws governing utility pole  
37 attachments generally.

38 (h) Permits local governments to charge wireless permit fees  
39 that are fair, reasonable, nondiscriminatory, and cost based.

1 (i) Advances technological and competitive neutrality while not  
2 adding new requirements on competing providers that do not exist  
3 today.

4 SEC. 2. Section 65964 of the Government Code is amended  
5 to read:

6 65964. As a condition of approval of an application for a permit  
7 for construction or reconstruction for a development project for a  
8 wireless telecommunications facility, as defined in Section 65850.6,  
9 a city or county shall not do any of the following:

10 (a) Require an escrow deposit for removal of a wireless  
11 telecommunications facility or any component thereof. However,  
12 a performance bond or other surety or another form of security  
13 may be required, so long as the amount of the bond security is  
14 rationally related to the cost of removal. In establishing the amount  
15 of the security, the city or county shall take into consideration  
16 information provided by the permit applicant regarding the cost  
17 of removal.

18 (b) Unreasonably limit the duration of any permit for a wireless  
19 telecommunications facility. Limits of less than 10 years are  
20 presumed to be unreasonable absent public safety reasons or  
21 substantial land use reasons. However, cities and counties may  
22 establish a build-out period for a site. A permit shall be renewed  
23 for an equivalent duration ~~duration~~ *durations* unless the city or county makes  
24 a finding that the wireless telecommunications facility does not  
25 comply with the codes and permit conditions applicable at the time  
26 the permit was initially approved.

27 (c) Require that all wireless telecommunications facilities be  
28 limited to sites owned by particular parties within the jurisdiction  
29 of the city or county.

30 SEC. 3. Section 65964.2 is added to the Government Code, to  
31 read:

32 65964.2. (a) A small cell shall be a permitted use subject only  
33 to a permitting process adopted by a city or county pursuant to  
34 subdivision (b) if it satisfies the following requirements:

35 (1) The small cell is located in the public ~~right-of-way~~  
36 *rights-of-way* in any zone or in any zone that includes a commercial  
37 or industrial use.

38 (2) The small cell complies with all applicable federal, state,  
39 and local health and safety regulations, including ~~compliance with~~

1 the federal Americans with Disabilities Act of 1990 (42 U.S.C.  
2 Sec. 12101 et seq.).

3 (3) The small cell is not located on a fire department facility.

4 (b) (1) A city or county may require that the small cell be  
5 approved pursuant to a building permit or its functional equivalent  
6 in connection with placement outside of the public ~~right-of-way~~  
7 *rights-of-way* or an encroachment permit or its functional  
8 equivalent issued consistent with Sections 7901 and 7901.1 of the  
9 Public Utilities Code for the placement in public rights-of-way,  
10 and any additional ministerial permits, provided that all permits  
11 are issued within the timeframes required by state and federal law.

12 (2) Permits issued pursuant to this subdivision may be subject  
13 to the following:

14 (A) The same ~~administrative~~ permit requirements as for similar  
15 construction projects and applied in a nondiscriminatory manner.

16 (B) A requirement to submit additional information showing  
17 that the small cell complies with the Federal Communications  
18 Commission's regulations concerning radio frequency emissions  
19 referenced in Section 332(c)(7)(B)(iv) of Title 47 of the United  
20 States Code.

21 (C) A condition that the applicable permit may be rescinded if  
22 construction is not substantially commenced within one year.  
23 Absent a showing of good cause, an applicant under this section  
24 may not renew the permit or resubmit an application to develop a  
25 small cell at the same location within six months of ~~recession~~  
26 *rescission*.

27 (D) A condition that small cells no longer used to provide  
28 service shall be removed at no cost to the city or county.

29 (E) Compliance with building codes, including building code  
30 structural requirements.

31 (F) A condition that the applicant pay all electricity costs  
32 associated with the operation of the small cell.

33 (G) A condition to comply with feasible design and collocation  
34 standards on a small cell to be installed on property not in the  
35 ~~right-of-way~~ *rights-of-way*.

36 (3) Permits issued pursuant to this subdivision shall not be  
37 subject to:

38 (A) Requirements to provide additional services, directly or  
39 indirectly, including, but not limited to, in-kind contributions from  
40 the applicant such as reserving fiber, conduit, or pole space.

1 (B) The submission of any additional information other than  
 2 that required of similar construction projects, except as specifically  
 3 provided in this section.

4 (C) Limitations on routine maintenance or the replacement of  
 5 small cells with small cells that are substantially similar, the same  
 6 size or smaller.

7 (D) The regulation of any micro wireless facilities mounted on  
 8 a span of wire.

9 *(4) Notwithstanding any other provision of this section, a city*  
 10 *or county shall not impose permitting requirements or fees on the*  
 11 *installation, placement, maintenance, or replacement of micro*  
 12 *wireless facilities that are suspended, whether embedded or*  
 13 *attached, on cables or lines that are strung between existing utility*  
 14 *poles in compliance with state safety codes.*

15 (c) A city or county shall not preclude the leasing or licensing  
 16 of its vertical infrastructure located in public ~~right-of-way~~  
 17 *rights-of-way* or public utility easements under the terms set forth  
 18 in this ~~paragraph~~ *subdivision*. Vertical infrastructure shall be made  
 19 available for the placement of small cells under fair and reasonable  
 20 fees, *subject to the requirements in subdivision (d)*, terms, and  
 21 conditions, which may include feasible design and collocation  
 22 standards. A city or county may reserve capacity on vertical  
 23 infrastructure if the city or county adopts a resolution finding,  
 24 based on substantial evidence in the record, that the capacity is  
 25 needed for projected city or county uses. ~~Fees shall be tiered or~~  
 26 ~~flat and within a range of \$100 to \$850 per small cell per year,~~  
 27 ~~indexed for inflation from the effective date of this section.~~

28 *(d) (1) A city or county may charge the following fees:*

29 *(A) An annual administrative permit fee not to exceed two*  
 30 *hundred fifty dollars (\$250) for each small cell attached to city or*  
 31 *county vertical infrastructure.*

32 *(B) An annual attachment rate that does not exceed an amount*  
 33 *resulting from the following requirements:*

34 *(i) The city or county shall calculate the rate by multiplying the*  
 35 *percentage of the total usable space that would be occupied by*  
 36 *the attachment by the annual costs of ownership of the vertical*  
 37 *infrastructure and its anchor, if any.*

38 *(ii) The city or county shall not levy a rate that exceeds the*  
 39 *estimated amount required to provide use of the vertical*  
 40 *infrastructure for which the annual recurring rate is levied. If the*

1 *rate creates revenues in excess of actual costs, the city or county*  
2 *shall use those revenues to reduce the rate.*

3 *(iii) For purposes of this subparagraph:*

4 *(I) “Annual costs of ownership” means the annual capital costs*  
5 *and annual operating costs of the vertical infrastructure, which*  
6 *shall be the average costs of all similar vertical infrastructure*  
7 *owned or controlled by the city or county. The basis for the*  
8 *computation of annual capital costs shall be historical capital*  
9 *costs less depreciation. The accounting upon which the historical*  
10 *capital costs are determined shall include a credit for all*  
11 *reimbursed capital costs. Depreciation shall be based upon the*  
12 *average service life of the vertical infrastructure. Annual cost of*  
13 *ownership does not include costs for any property not necessary*  
14 *for use by the small cell.*

15 *(II) “Usable space” means the space above the minimum grade*  
16 *that can be used for the attachment of antennas and associated*  
17 *ancillary equipment.*

18 *(C) A one-time reimbursement fee for actual costs incurred by*  
19 *the city or county for rearrangements performed at the request of*  
20 *the small cell provider.*

21 *(2) A city or county shall comply with the following before*  
22 *adopting or increasing the rate described in subparagraph (B) of*  
23 *paragraph (1):*

24 *(A) At least 14 days before the hearing described in*  
25 *subparagraph (C), the city or county shall provide notice of the*  
26 *time and place of the meeting, including a general explanation of*  
27 *the matter to be considered.*

28 *(B) At least 10 days before the hearing described in*  
29 *subparagraph (C), the city or county shall make available to the*  
30 *public data indicating the cost, or estimated cost, to make vertical*  
31 *structures available for use under this section if the city or county*  
32 *adopts or increases the proposed rate.*

33 *(C) The city or county shall, as a part of a regularly scheduled*  
34 *public meeting, hold at least one open and public hearing at which*  
35 *time the city or county shall permit the public to make oral or*  
36 *written presentations relating to the rate. The city or county shall*  
37 *include a description of the rate in the notice and agenda of the*  
38 *public meeting in accordance with the Ralph M. Brown Act*  
39 *(Chapter 9 (commencing with Section 54950.5) of Part 1 of*  
40 *Division 2 of Title 5).*

1 (D) *The city or county may approve the ordinance or resolution*  
 2 *to adopt or increase the rate at a regularly scheduled open meeting*  
 3 *that occurs at least 30 days after the initial public meeting*  
 4 *described in subparagraph (C).*

5 (3) *A judicial action or proceeding to attack, review, set aside,*  
 6 *void, or annul an ordinance or resolution adopting, or increasing,*  
 7 *a fee described in this subdivision, shall be commenced within 120*  
 8 *days of the effective date of the ordinance or resolution adopting*  
 9 *or increasing the fee. A city or county or interested person shall*  
 10 *bring an action described in this paragraph pursuant to Chapter*  
 11 *9 (commencing with Section 860) of Title 10 of Part 2 of the Code*  
 12 *of Civil Procedure in a court of competent jurisdiction.*

13 (4) *This subdivision does not prohibit a wireless service provider*  
 14 *and a city or county from mutually agreeing to an annual*  
 15 *administrative permit fee or attachment rate that is less than the*  
 16 *fees or rates established above.*

17 ~~(d)~~

18 (e) *A city or county shall not discriminate against the*  
 19 *deployment of a small cell on property owned by the city or county*  
 20 *and shall make space available on property not located in the public*  
 21 ~~*right-of-way*~~ *rights-of-way under terms and conditions that are no*  
 22 *less favorable than the terms and conditions under which the space*  
 23 *is made available for comparable commercial projects or uses.*  
 24 *These installations shall be subject to reasonable and*  
 25 *nondiscriminatory rates, terms, and conditions, which may include*  
 26 *feasible design and collocation standards.*

27 ~~(e) Nothing in this section shall be construed to~~

28 (f) *This section does not alter, modify, or amend any franchise*  
 29 *or franchise requirements under state or federal law, including*  
 30 *Section 65964.5.*

31 ~~(f)~~

32 (g) *For purposes of this section, the following terms have the*  
 33 *following meanings:*

34 (1) *“Micro wireless facility” means a small cell that is no larger*  
 35 *than 24 inches long, 15 inches in width, 12 inches in height, and*  
 36 *that has an exterior antenna, if any, no longer than 11 inches.*

37 ~~(1)~~

38 (2) (A) *“Small cell” means a wireless telecommunications*  
 39 *facility, as defined in paragraph (2) of subdivision (d) of Section*

1 65850.6, ~~using or a wireless facility that uses~~ licensed or unlicensed  
2 spectrum *and* that meets the following qualifications:

3 (i) ~~All antennas~~ *The small cell antennas* on the structure,  
4 excluding the associated equipment, total no more than six cubic  
5 feet in volume, whether ~~in a single an~~ array or separate.

6 ~~(ii) (I) The associated equipment on pole structures does not~~  
7 ~~exceed 21 cubic feet provided that any individual piece of~~  
8 ~~associated equipment or pole structures do not exceed nine cubic~~  
9 ~~feet.~~

10 *(ii) Any individual piece of associated equipment on pole*  
11 *structures does not exceed nine cubic feet.*

12 *(iii) The cumulative total of associated equipment on pole*  
13 *structures does not exceed 21 cubic feet.*

14 *(iv) The cumulative total of any ground-mounted equipment*  
15 *along with the associated equipment on any pole or nonpole*  
16 *structure does not exceed 35 cubic feet.*

17 ~~(H)~~

18 (v) The following types of associated ancillary equipment are  
19 not included in the calculation of equipment volume:

20 ~~(ia)~~

21 *(I) Electric meters and any required pedestal.*

22 ~~(ib)~~

23 *(II) Concealment elements.*

24 ~~(ic)~~

25 *(III) Any telecommunications demarcation box.*

26 ~~(id)~~

27 *(IV) Grounding equipment.*

28 ~~(ie)~~

29 *(V) Power transfer switch.*

30 ~~(if)~~

31 *(VI) Cutoff switch.*

32 ~~(ig)~~

33 *(VII) Vertical cable runs for the connection of power and other*  
34 *services.*

35 *(VIII) Equipment concealed within an existing building or*  
36 *structure.*

37 (B) “Small cell” includes a micro wireless ~~facility that is no~~  
38 ~~larger than 24 inches long, 15 inches in width, 12 inches in height,~~  
39 ~~and that has an exterior antenna, if any, no longer than 11 inches.~~  
40 *facility.*

1 (C) “Small cell” does not include either of the following:

2 ~~(i) Coaxial or fiber optic cables that do not exclusively provide~~  
 3 ~~service to that small cell.~~

4 *(i) Wireline backhaul facility, which is defined to mean a facility*  
 5 *used for the transport of communications data by wire from*  
 6 *wireless facilities to a network.*

7 *(ii) Coaxial or fiber optic cables that are not immediately*  
 8 *adjacent to or directly associated with a particular antenna or*  
 9 *collocation.*

10 ~~(ii)~~

11 *(iii) Wireless facilities placed in any historic district listed in*  
 12 *the National Park Service Certified State or Local Historic Districts*  
 13 *or in any historical district listed on the California Register of*  
 14 *Historical Resources or placed in coastal zones subject to the*  
 15 *jurisdiction of the California Coastal Commission.*

16 *(iv) The underlying vertical infrastructure.*

17 ~~(2)~~

18 (3) (A) “Vertical infrastructure” means all poles or similar  
 19 facilities owned or controlled by a city or county that are in the  
 20 ~~public right-of-way~~ *rights-of-way* or public utility easements and  
 21 meant for, or used in whole or in part for, communications service,  
 22 electric service, lighting, traffic control, or similar functions.

23 (B) For purposes of this paragraph, the term “controlled” means  
 24 having the right to allow subleases or sublicensing. A city or county  
 25 may impose feasible design or collocation standards for small cells  
 26 placed on vertical infrastructure, including the placement of  
 27 associated equipment on the vertical infrastructure or the ground.

28 ~~(g)~~

29 *(h) Existing agreements between a wireless service provider,*  
 30 *or its agents and assigns, and a city, a county, or a city or county’s*  
 31 *agents and assigns, regarding the leasing or licensing of vertical*  
 32 *infrastructure entered into prior to before the effective operative*  
 33 *date of this section remain in effect, subject to applicable*  
 34 *termination provisions. The operator of a small cell may accept*  
 35 *the rates of this section for small cells that are the subject of an*  
 36 *application submitted after the agreement is terminated pursuant*  
 37 *to the terms of the agreement, or other provisions in the existing*  
 38 *agreement, or unless otherwise modified by mutual agreement of*  
 39 *the parties. A wireless service provider may require the rates of*  
 40 *this section for new small cells sites that are deployed after the*

1 *operative date of this section in accordance with applicable change*  
2 *of law provisions in the existing agreements.*

3 ~~(h)~~

4 (i) Nothing in this section shall be construed to *authorize or*  
5 *impose an obligation to charge a use fee different than those that*  
6 *authorized by Part 2 (commencing with Section 9510) of Division*  
7 *4.8 of the Public Utilities Code on a local publicly owned electric*  
8 *utility.*

9 (j) *This section does not change or remove any obligation by*  
10 *the owner or operator of a small cell to comply with a local*  
11 *publicly owned electric utility's reasonable and feasible safety,*  
12 *reliability, and engineering policies.*

13 (k) *A city or county shall consult with the utility director of a*  
14 *local publicly owned electric utility when adopting an ordinance*  
15 *or establishing permitting processes consistent with this section*  
16 *that impact the local publicly owned electric utility.*

17 (l) *Except as provided in subdivisions (a) and (b), nothing in*  
18 *this section shall be construed to modify the rules and*  
19 *compensation structure that have been adopted for an attachment*  
20 *to a utility pole owned by an electrical corporation or telephone*  
21 *corporation, as those terms are defined in Section 216 of the Public*  
22 *Utilities Code pursuant to state and federal law, including, but*  
23 *not limited to, decisions of the Public Utility Commission adopting*  
24 *rules and a compensation structure for an attachment to a utility*  
25 *pole owned by an electrical corporation or telephone corporation,*  
26 *as those terms are defined in Section 216 of the Public Utilities*  
27 *Code.*

28 (m) *Nothing in this section shall be construed to modify any*  
29 *applicable rules adopted by the Public Utilities Commission,*  
30 *including General Order 95 requirements, regarding the*  
31 *attachment of wireless facilities to a utility pole owned by an*  
32 *electrical corporation or telephone corporation, as those terms*  
33 *are defined in Section 216 of the Public Utilities Code*

34 ~~(i)~~

35 (n) *The Legislature finds and declares that small cells, as defined*  
36 *in this section, have a significant economic impact in California*  
37 *and are not a municipal affair as that term is used in Section 5 of*  
38 *Article XI of the California Constitution, but are a matter of*  
39 *statewide concern.*

1 SEC. 4. Section 65964.5 is added to the Government Code, to  
2 read:

3 65964.5. Except as provided in Sections 65964, 65964.2, and  
4 65850.6, or as specifically required by state law, a city or county  
5 may not adopt or enforce any regulation on the placement or  
6 operation of communications facilities in the rights-of-way by a  
7 provider authorized by state law to operate in the rights-of-way,  
8 and may not regulate any communications services or impose or  
9 collect any tax, fee, or charge not specifically authorized under  
10 state law.

11 ~~SEC. 4.~~

12 SEC. 5. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 a local agency or school district has the authority to levy service  
15 charges, fees, or assessments sufficient to pay for the program or  
16 level of service mandated by this act, within the meaning of Section  
17 17556 of the Government Code.

O