



STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: December 18, 2019

PLANNER: Katie Crockett, Associate Planner

SUBJECT: **Zoning Amendment 19-189, Small Cell Ordinance**, consideration of a City-initiated proposal to amend portions of Chapters 17.88 (Definitions), 17.28 (Special Uses), 17.16 (Applications), and 17.12 (Development Review Process) of the Zoning Ordinance to update permitting requirements for small wireless telecommunications facilities.

REQUIRED FINDINGS

The following findings shall be made to recommend adoption of the proposed Zoning Amendment. The draft resolution (Attachment 1) and analysis section of this report provide an assessment of the compliance with these findings.

Zoning Amendments, Section 17.16.040(F)(1), Required Findings:

- a. The proposed amendment is consistent with the General Plan; and
- b. The proposed amendment will not adversely affect the public health, safety, and welfare.

BACKGROUND

On September 26, 2018, the Federal Communications Commission (“FCC”) adopted Declaratory Ruling and Order No. 18-133 (“the Order”), implementing rules that limit the City’s ability to regulate the deployment of small wireless telecommunications facilities (“small cells”). The Order limits the timeframe within which the City must review and permit small cells, including all permits or permissions (the “shot clock”), and limits the fees the City can charge. Furthermore, the Order limits the types of design standards or restrictions that the City can place on small cells. However, the City may exercise reasonable control as to time, place, and manner of construction within the public right of way (ROW). The City may also impose aesthetic requirements as long as they do not result in the actual or effective prohibition of small cells and the requirements are no more burdensome than those applied to other similar infrastructure deployments.

The City currently requires a Conditional Use Permit (CUP) or City Antenna Permit (CAP) for small cells depending on where they are located and how the facility is designed. A CAP is required for small cells that are entirely consistent with the 2008 City Wireless Master Plan with regard to location and design. CAPs require DRSC review and a noticed public hearing before the Zoning Administrator. All other small cells require a CUP, which

requires DRSC review and a noticed public hearing before the Planning Commission. Both permits require a deposit, which staff time is billed against. The initial deposit is typically \$5,000. Decisions of the Zoning Administrator and Planning Commission are appealable to the City Council. Because of the new restrictions on fees, shot clock, and design standards set forth in the Order, the current permitting required by the City's Zoning Ordinance for wireless telecommunications facilities is not feasible and could potentially render the City unable to comply with the Order.

On May 21, 2019, the City Council initiated a Zoning Amendment ("Amendment") to modify portions of Chapters 17.88 (Definitions), 17.28 (Special Uses), 17.16 (Applications), and 17.12 (Development Review Process) of the Zoning Ordinance to modify the small cell procedures, requirements, and design standards. The Council further requested an informational update regarding staff's research related to the Amendment prior to formal consideration of the Amendment.

Following initiation of the Amendment the City established a Small Wireless Facilities webpage on the City's website. The webpage has been used to provide background information on small cells, to provide public meeting information, to publish documents associated with the ordinance, and as a repository for staff and expert presentations related to small cells. Furthermore, following initiation of the Amendment, staff has maintained a contact list of interested parties. The list includes members of the public and wireless industry representatives (including AT&T, Crown Castle, Verizon, Ericsson, and T-Mobile). All persons requesting to be notified about the Amendment have been included in the list. The list has been used to notify the public about upcoming meetings, published drafts of the ordinance and other related documents for review, and to solicit comments.

Since initiation of the Amendment the following activities related to small cells have occurred:

- August 20, 2019 - City Council received and filed a report regarding staff's research related to the Amendment.
- October 16, 2019 - Planning Commission, at a Study Session, received a presentation by Andrew McCardle, Associate, Best, Best & Krieger, regarding key provisions of Federal and State law that govern small cell placement.
- October 23, 2019 - Design Review Subcommittee (DRSC) reviewed a draft of the small cell Design and Development Standards and requested that staff provide maps at future meetings illustrating minimum separation options for small cells from other cell sites and sensitive uses.
- November 8, 2019 - a draft Amendment (dated November 7, 2019) and supporting documents were posted to the City's website for public review and a notice of its availability was provided to the interested parties list maintained by the Planning Division.
- November 20, 2019 - Planning Commission held a public workshop with presentations by staff and experts in the field of radio frequencies ("RF") and received public comment on the draft Amendment. Following the public workshop,

staff, consulting attorney, RF experts, and industry representatives (AT&T, Verizon, etc.) were available at tables outside the Council Chambers to answer questions from the public.

- December 4, 2019 - Planning Commission, at a Study Session, discussed and provided feedback on three key provisions of the Amendment: (1) minimum separations from other cell sites and sensitive uses, (2) process and appeals, and (3) design criteria.

Noticing

Public notice was published per City and State requirements. Public comment has been received and is summarized in Attachment 2.

DISCUSSION

Regulation of Small Cells in Other Cities

Jurisdictions vary in their regulation of small cells, but are required meet the FCC standards of “reasonable” and “no more burdensome” than those applied to other infrastructure deployments and may not constitute an actual or effective prohibition of a wireless service or service level. In drafting the proposed ordinance and design and development criteria, staff reviewed many small cell ordinances and policies from other jurisdictions, which varied broadly in specific regulations set forth for small cells. For example, in Irvine and Costa Mesa the minimum separation from a residential structure is 50 feet and 75 feet, respectively, while Encinitas and Petaluma apply a 500 foot minimum separation. Additionally, jurisdictions vary widely on how these applications are approved, whether administratively or at a noticed public hearing. Many jurisdictions, such as Encinitas, require a noticed public hearing for all appeals. Other jurisdictions, such as Santa Monica do not allow appeals. Although some cities researched by staff adopted more restrictive standards than others, there is no guarantee that the more restrictive ordinances are legally defensible, or possible to implement given existing shot clock and fee constraints.

Proposed Zoning Amendment

There are several key provisions of the Amendment (Attachment 5.a-5.c):

- New Small Cell Permit Type – “Wireless Permit”

Wireless Permits would be reviewed administratively with the City Planner as the decision-making authority and the Community Development Director as the appeal decision-making authority. Applications must meet design criteria reviewed by the DRSC and Planning Commission, and approved by the City Council. Administrative review is recommended due to restrictive shot clocks of 60 days for small cells on existing support structures or 90 days for small cells on new support structures. Public hearings require an increased amount of report writing, public

notice preparation, and administrative tasks. The City must provide the public hearing notice to the newspaper approximately 17 days before a public hearing. This accounts for nearly one third of the 60-day shot clock and therefore staff recommends alternative noticing procedures.

- Alternative Noticing Procedure

Two property owner notifications are recommended for Wireless Permit application to accommodate the small cell shot clock limitations:

- (1) A notice of application mailed by the City to all property owners within a 300-foot radius of the subject site no later than 10 calendar days following the receipt of an application for a Wireless Permit; and
- (2) A notice of date of decision mailed by the City to all property owners within a 300-foot radius of the subject site at least 10 calendar days in advance of the decision date. Decisions will be posted on the City's website the date the decision is rendered. Notice of date of decision would also be mailed for appeals decisions.

These notices serve the purpose of informing nearby property owners of a new application, allow public questions and concerns to be responded to by staff early in the process, and informs property owners of the procedures to appeal the decision.

- Alternative Appeals Procedure

Appeals must be filed within three business days of the date of decision (e.g. if the decision is made/posted on Monday, appeals must be filed by close of business on Thursday). Property owners are provided a minimum of 13 days in the notice of date of decision, (10 calendar days prior to decision and three business days following the decision) to prepare for a potential appeal. Health and/or safety concerns related to RF exposure may not be grounds for an appeal.

- New Design and Development Standards ("the Standards")

The Standards establish size and design criteria in general and specifically for various types of installations (such as lightpoles, utility poles, etc.). These include the allowable placement locations of antennas and equipment on the support structure, required shrouding of above-ground equipment, that shrouds be colored and textured to match any existing support structure, and that existing or replacement poles are preferred.

Minimum separations between cell sites and from residences and parks are as follows:

- 100 feet from residential or mixed use properties
- 500 feet from K-12 schools

- 200 feet from other cell sites if existing or replacement poles are used; 300 feet if a new slimline pole is required.

These minimum distances were established by reviewing City distance radius maps. Large segments along several main City public rights-of-way such as Avenida Pico, Avenida Vista Hermosa, El Camino Real, Camino Vera Cruz, Camino de los Mares, and Avenida La Pata would be eligible for small cell placement at a distance of one hundred feet from residential or mixed use properties. Increasing the distance to just 200 feet eliminates large portions of several of these rights-of-way. A distance of 500 feet renders almost all of these rights-of-way prohibited except for Avenida La Pata, and portions of Avenida Pico, particularly around the Rancho San Clemente Business Park. Because the land area of schools is much more limited than that of residential, the larger buffer around schools did not impact areas available for small cell installations to the degree that changes in the residential buffer did. Minimum separations from parks were not included because the City's Wireless Master Plan prefers some types of wireless communications facilities in City parks, particularly those on lightpoles. Staff did not believe it prudent to adopt a Zoning Code amendment that would directly conflict with an existing adopted master plan.

The distance between cell sites was chosen based upon feedback from residents concerned with small cell proliferation and aesthetic concerns, and wireless industry preference for very small separations or no required separations. Feedback from the Planning Commission received at the December 4, 2019 Study Session was also incorporated.

- Allowance for Exception Requests

The applicant can request an exception to a particular standard or requirement in instances where the ordinance or Standards would cause a prohibition of any personal wireless service any carrier wishes to provide. This provision is necessary to comply with Federal regulations. To be granted an exception, the applicant would need to demonstrate how the ordinance or Standards are prohibiting the applicant from providing a personal wireless service to a particular area. Exceptions would be granted only to the degree necessary to remedy the prohibition. Exception requests are reviewed through the Wireless Permit process and must be requested by the applicant at the time of the initial application.

The Amendment was drafted with the goals of ensuring aesthetics and safety are maintained, while providing objective standards and a streamlined review to facilitate compliance with FCC mandated shot clocks and fee limitations. In addition to incorporation of comments from the public and from the industry (Attachment 2), staff incorporated DRSC and Planning Commission recommendations as noted in Attachment 3. Minutes from the Planning Commission Study Session and Wireless Workshop are included as Attachment 4.

GENERAL PLAN CONSISTENCY

The proposed amendment is consistent with the goals and policies of the General Plan, as outlined in Table 1, below.

Table 1: General Plan Consistency

Goal/Policy	Consistency Finding
<p>General Plan Public Services, Facilities, and Utilities Element “Primary Goal” of providing “efficient public utilities that meet local needs.”</p>	<p><i>Consistent.</i> Cell service is a public utility in increasing demand by the public, including residents, businesses, and visitors. The Amendment creates a streamlined review procedure for small wireless facilities and design standards which favor the smallest equipment installations possible and utilization of existing infrastructure to meet increasing demands to densify signal.</p>
<p>General Plan Policy M-1.18 seeks to promote the City’s visual character by encouraging “undergrounding or stealthing of overhead utility lines and equipment, cellular facilities, and related ground-mounted structures.”</p>	<p><i>Consistent.</i> The Design Standards require undergrounding of all equipment which is not mounted to the pole and does not permit generators in the right of way. The Standards also favor utilization of existing infrastructure (such as streetlights and utility poles), so the streetscape remains uninterrupted by additional utility infrastructure.</p>
<p>General Plan Policy NR-2.07 seeks to “implement a utilities undergrounding plan to avoid adverse impacts to aesthetic resources caused by public utilities” where feasible. Where undergrounding is not possible, “such features shall be located and designed to reduce their visibility” and in developed areas shall be “consistent with prevailing architectural character and scale.”</p>	<p><i>Consistent.</i> The Design Standards require undergrounding of all equipment which is not mounted to the pole. The standards favor utilization of existing infrastructure and requires that new or replacement support structures match those in the area with regard to size, color, and finish.</p>
<p>General Plan Policy NR-7.02 requires outdoor light shielding methods to minimize light trespass and glare consistent with dark skies goals.</p>	<p><i>Consistent.</i> The standards require that all streetlights and streetlight fixtures be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way, and that any indicator lights of the small cell facility be screened and not visible from adjacent properties.</p>
<p>General Plan Safety Element which seeks to provide excellent emergency services</p>	<p><i>Consistent.</i> Emergency response systems can utilize enhanced cellular</p>

<p>and response, including police, fire, and emergency medical care.</p>	<p>technology to more precisely locate callers more quickly. Enhanced cellular service also helps to ensure that the public, which is more and more interconnected through cellular service instead of land-lines, receives emergency alerts.</p>
<p>General Plan Mobility & Complete Streets Element which seeks to reduce the need for automobile commuting through land use strategies, and by promoting telecommuting.</p>	<p><i>Consistent.</i> Enhanced wireless networks increase connectivity required for telecommuting.</p>
<p>Coastal Land Use Plan Policy PUB-5.e., which states the City should encourage “undergrounding or stealthing of overhead utility lines and equipment, cellular facilities and related ground-mounted structures.”</p>	<p><i>Consistent.</i> The Design Standards require undergrounding of all equipment which is not mounted to the pole and does not permit generators in the right of way. The Standards also favor utilization of existing infrastructure (such as streetlights and utility poles), so the streetscape remains uninterrupted by additional utility infrastructure.</p>
<p>Coastal Land Use Plan Policy VIS-6.b., which states “Utilities, traffic signals, and public and private signs and lights shall not adversely impact Public View Corridors, consistent with safety needs.”</p>	<p><i>Consistent.</i> The Design Standards prohibit new poles within designated view corridors and have reduced height increase allowances for existing poles within view corridors.</p>
<p>Coastal Land Use Plan Policy VIS-9, requires utilities to be underground where feasible and where not feasible, designed to reduce their visibility, not adversely impact public view corridors and be consistent with prevailing architectural character and scale.</p>	<p><i>Consistent.</i> The Design Standards require undergrounding of all equipment which is not mounted to the pole. The standards favor utilization of existing infrastructure and requires that new or replacement support structures match those in the area with regard to size, color, and finish.</p>

ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA)

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it is a zoning amendment that will result in no direct physical change in the environment due to adoption of the ordinance. It further has no potential to result in a reasonably foreseeable indirect physical change in the environment because the exact size, number, location, layout, or other physical characteristics of any small cell is unknown and cannot be foreseen with any degree of certainty at this time. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries. Moreover, when and if an application for installation is submitted, the City will at that time

conduct preliminary review of the application in accordance with CEQA. Preliminary CEQA review of each project reviewed pursuant to the proposed Amendment will include both individual and cumulative environmental effects.

Alternatively, even if the Ordinance is a “project” within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt from CEQA because adoption of the Ordinance is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time.

Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation(s) would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The Class 3 exemption applies to the “construction and location of limited numbers of new, small facilities or structures” and the “installation of small new equipment and facilities in small structures.” The Class 3 exemption applies to the installation of wireless communications equipment at multiple locations. (See *Aptos Residents Association v. County of Santa Cruz* (2018) 20 Cal.App.5th 1039 [finding the proposed installation of 13 microcell transmitters at different locations each consisting of an antenna mounted on an extender pole with related pole-mounted equipment to be exempt under the Class 3 exemption]; *Robinson v. City and County of San Francisco* (2012) 208 Cal.App.4th 950 [finding a series of approximately 40 proposed wireless telecommunications equipment installations to be fastened to utility poles throughout the City to be exempt under the Class 3 exemption]; *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012 [finding the installation of 726 metal utility boxes housing telecommunications equipment on city sidewalks to be exempt under the Class 3 exemption].) The Class 4 exemption applies to minor public or private alterations to the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees.

RECOMMENDATION

Staff recommends the Planning Commission:

1. Recommend the City Council find the Amendment is not a project pursuant to CEQA (CEQA Guidelines Section 15378), or alternatively that it is exempt under the common sense exemption (CEQA Guidelines Section 15061(b)(3)); and

2. Adopt Resolution PC 19-043, recommending the City Council: (1) adopt an ordinance to amend portions of Chapters 17.88 (Definitions), 17.28 (Special Uses), 17.16 (Applications), and 17.12 (Development Review Process) of the Zoning Ordinance to update permitting requirements for small wireless telecommunications facilities; and (2) adopt a resolution adopting the Design and Development Standards referenced in the Ordinance.

Attachments:

1. Resolution No. PC 19-043
2. Summary of Public Comment
3. Planning Commission Recommendations (from Minutes of the Study Session 12/4/19)
4. Minutes of the Study Session 12/4/19 and the Workshop 11/20/19, and DRSC 10/23/19
5. Draft Small Cell Ordinance
 - a. Ordinance
 - b. Design and Development Standards
 - c. Standard Conditions of Approval

RESOLUTION NO. PC 19-043

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RECOMMENDING THE CITY COUNCIL: (1) ADOPT AN ORDINANCE TO AMEND PORTIONS OF CHAPTERS 17.88 (DEFINITIONS), 17.28 (SPECIAL USES), 17.16 (APPLICATIONS), AND 17.12 (DEVELOPMENT REVIEW PROCESS) OF THE ZONING ORDINANCE TO UPDATE PERMITTING REQUIREMENTS FOR SMALL WIRELESS TELECOMMUNICATIONS FACILITIES; AND (2) ADOPT A RESOLUTION ADOPTING THE DESIGN AND DEVELOPMENT STANDARDS REFERENCED IN THE ORDINANCE.

WHEREAS, the Municipal Code does not address small wireless telecommunications (“small cell”) facilities explicitly; and

WHEREAS, the Federal Communications Commission (FCC) adopted new rules related to the City’s ability to regulate small cell facilities; and

WHEREAS, the City desires to create reasonable regulations for small cell facilities and procedures for reviewing applications for small cell facilities compliant with the FCC rules; and

WHEREAS, the City of San Clemente, California (“City”) is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, pursuant to the laws of the State of California, the City has the authority to adopt such ordinances as it deems necessary and appropriate to assure good government in the City, to protect and preserve the City’s rights, property and privileges, and to preserve peace, safety and good order; and

WHEREAS, State CEQA Guidelines section 15378 provides that administrative activities of governments that will not result in direct or indirect physical changes in the environment do not constitute a “project” as defined by the State CEQA Guidelines (Cal. Code Regs., title 14, § 15000 et seq.) and therefore are exempt from CEQA and no further environmental review is required; and

WHEREAS, on May 21, 2019 the City Council voted to initiate a Zoning Amendment to modify portions of Chapters 17.88 (Definitions), 17.28 (Special Uses), 17.16 (Applications), and 17.12 (Development Review Process) of the Zoning Ordinance to modify the procedures, requirements, and design standards for small cells.

WHEREAS, on December 18, 2019, the Planning Commission held a duly noticed public hearing on the proposed Zoning Amendment, considered testimony and other

evidence, and recommended the City Council approve and adopt this Ordinance and approve and adopt the associated Design and Development Standards referenced in the Ordinance.

NOW, THEREFORE, the Planning Commission of the City of San Clemente does resolve as follows:

Section 1. Incorporation of Recitals.

The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. CEQA Findings.

Based upon all the evidence presented in the administrative record, including but not limited to the staff report for the proposed Zoning Amendment, the Planning Commission hereby finds and determines that this Zoning Amendment is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a “project” within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council’s adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Orange within five working days of the passage and adoption of the Ordinance.

Section 3. Zoning Amendment (ZA) Findings.

With regard to Zoning Amendment 19-189, the Planning Commission finds the following:

- A. The Zoning Amendment is consistent with the General Plan's goals and policies, including the following:
 1. A primary goal of the General Plan Utility Element is to provide "efficient public utilities that meet local needs." Cell service is a public utility in increasing demand by the public, including residents, businesses, and visitors. The Amendment creates a streamlined review procedure for small wireless facilities and design standards which favor the smallest equipment installations possible and utilization of existing infrastructure to meet increasing demands to densify signal.
 2. Mobility Element Policy M-1.8 and Coastal Land Use Plan Policy PUB-5.e seeks to promote the City's visual character by encouraging "undergrounding or stealthing of overhead utility lines and equipment, cellular facilities, and related ground-mounted structures." The Design Standards require undergrounding of all equipment which is not mounted to the pole and does not permit generators in the right of way. The Standards also favor utilization of existing infrastructure (such as streetlights and utility poles), so the streetscape remains uninterrupted by additional utility infrastructure.
 3. Natural Resources Element Policy NR-2.07 and Coastal Land Use Plan Policy VIS-9 seek to implement a utilities undergrounding plan to avoid adverse impacts to aesthetic resources caused by public utilities"where feasible. Where undergrounding is not possible, such features shall be located and designed to reduce their visibility and in developed areas shall be "consistent with prevailing architectural character and scale." The Design Standards require undergrounding of all equipment which is not mounted to the pole. The standards favor utilization of existing infrastructure and requires that new or replacement support structures match those in the area with regard to size, color, and finish.
 4. A primary goal of the General Plan Safety Element is to provide excellent emergency services and response, including police, fire, and emergency medical care. Emergency response systems can utilize enhanced cellular technology to more precisely locate callers more quickly. Enhanced cellular service also helps to ensure that the public, which is more and more interconnected through cellular service instead of land-lines, receives emergency alerts.
 5. A primary goal of the General Plan Mobility Element seeks to reduce the need for automobile commuting through land use strategies, and by

promoting telecommuting. Enhanced wireless networks increase connectivity required for telecommuting.

6. Coastal Land Use Plan Policy VIS-6.b., requires “Utilities, traffic signals, and public and private signs and lights shall not adversely impact Public View Corridors, consistent with safety needs.” The Design Standards prohibit new poles within designated view corridors and have reduced height increase allowances for existing poles within view corridors.
- B. The Zoning Amendment will actually promote the public health, safety, and welfare as follows:
1. The Zoning Amendment allows the City to place reasonable zoning controls on small cell facilities and regulate them with regard to time, place, and manner within the right of way.
 2. The Design Standards implementing the Zoning Amendment expressly requires that “All wireless facilities in the right-of-way, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the right-of-way; impede the flow of vehicular or pedestrian traffic; impair the primary use and purpose of poles/signs/traffic signals or other infrastructure; interfere with outdoor dining areas or emergency facilities; or otherwise obstruct the accessibility of the right-of-way. Further, all wireless facilities and associated equipment in the right-of-way shall comply with Americans with Disabilities Act (ADA) requirements.”
 3. Wireless facilities in the right of way are required to obtain an encroachment permit and wireless facilities on private property are required to obtain a building permit. Structural specifications, electrical connections, and other safety matters are reviewed during both of these types of permit processes.
 4. Standard Conditions of Approval can and will be applied to Wireless Permits issued pursuant to this Amendment. Standard Conditions include a requirement that the permittee maintain compliance at all times with all federal, state, and local laws, including federal limitations for safe radiofrequency (RF) exposure. Furthermore the Standard Conditions require RF exposure compliance testing following installation. This field testing is in addition to RF compliance information which must be submitted at the time of application. Under the Standard Conditions, the City can revoke permits which are not in compliance with applicable laws.

Section 4. Planning Commission Recommendation.

Based on the entire record before the Planning Commission, all written and oral evidence presented to the Planning Commission, and the findings made and evidence

discussed in the staff report and this Resolution, the Planning Commission hereby recommends that the City Council: (1) approve and adopt an Ordinance entitled: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING PORTIONS OF CHAPTERS 17.88(DEFINITIONS), 17.28 (SPECIAL USES), 17.16 (APPLICATIONS), AND 17.12 (DEVELOPMENT REVIEW PROCESS) OF THE ZONING ORDINANCE TO UPDATE PERMITTING REQUIREMENTS FOR SMALL WIRELESS TELECOMMUNICATIONS FACILITIES", set forth as Attachment 5.a to the accompanying staff report, and incorporated here by reference; and (2) approve and adopt a Resolution adopting the Design and Development Standards, set forth as Attachment 5.b to the accompanying staff report, and incorporated here by reference.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Planning Commission on December 18, 2019.

Chair

CERTIFICATION:

I HEREBY CERTIFY this Resolution was adopted at a regular meeting of the City of San Clemente Planning Commission on December 18, 2019, carried by the following roll call vote:

AYES: COMMISSIONERS:
 NOES: COMMISSIONERS:
 ABSTAIN: COMMISSIONERS:
 ABSENT: COMMISSIONERS:

Secretary of the Planning Commission

Small Cell Ordinance
Summary of Public Comment

The below comments are a summary of the comments received. Staff has made every effort to forward along to Commissioners and Council Members any public comments not sent directly to the Planning Commission and/or City Council. All public comments are available for review in the file.

Public Comment: Limit RF exposure for “sensitive areas” such as residential properties, schools, and parks. Requested minimum separations varied from “as far as possible” to 1,500 feet.

Staff Response: *By law, separation distances cannot be based upon concerns related to RF exposure. Therefore RF exposure was not used as a basis in staff determining minimum separation distances. However, minimum separations are included based upon aesthetics. Lee Afflerbach, CTC Technology and Energy, stated at the Public Workshop on November 20, 2019 that based upon the small cells he has seen (which utilize much higher powered radios than those thus far proposed in San Clemente), a 30-foot separation, even directly at antenna height, would definitely meet the limitations for safe exposure to RF established by the FCC. Requiring RF levels to be anything more restrictive than the FCC-set limits contained in FCC Office of Engineering and Technology Bulletin 65 would run afoul of the law. Furthermore, each site must demonstrate both individual and cumulative compliance with the FCC’s limitations for safe exposure. See Standard Condition No. 12.*

Public Comment: Require large separations between cell facilities. Many separation distances are cited in various comments ranging as high as 1,500 feet.

Staff Response: *A minimum separation is included of 200 feet if existing or replacement poles are used and 300 feet if a new pole is proposed. The FCC states that minimum separations which are “reasonable” can be required by cities, but that some separations would not be reasonable. Staff believes the minimum separations in the draft Ordinance are reasonable because individual carriers have typically been siting small cells approximately 1,000 feet apart in San Clemente. If multiple carriers need coverage for a similar area, this allows them to place small cells at approximately the same spacing as existing streetlight poles on most major streets.*

Public Comment: Require small cells to locate in commercial and industrial zones only.

Staff Response: *The Design and Development Standards state a preference for those sites in Commercial and Industrial zones or in rights of way adjacent to commercial and industrial zones. Furthermore, the Standards require a minimum separation of 100 feet to residential and mixed use property lines and 500 feet from school property lines. This protects residential properties and schools from aesthetic impacts related to utility infrastructure, while still providing for large areas on major rights of way throughout the City where small cells could be located and which are in close enough proximity to residential properties to provide service to those areas.*

Public Comment: Prohibit small cell facilities in Very High Fire Hazard Severity Zones.

Staff Response: *List of prohibited locations in the Design and Development Standards now includes locations within Very High Fire Hazard Severity Zones as designated by the Orange County Fire Authority.*

Public Comment: A public hearing before the Planning Commission or the City Council should be required for initial decisions and/or appeals. Alternately, public hearing before the Planning Commission or City Council should be required for requests for exception and for appeals while initial decisions for applications that do not include an exception request could remain administrative.

Staff Response: *The draft Ordinance maintains administrative review for all applications, including those containing exceptions and for all appeals. The reason for administrative review are the restrictive FCC shot clocks of 60 days or 90 days, depending on the type of facility. Public hearings require an increased amount of report writing, notice preparation, and administrative tasks. For public hearings, notices must be published in the newspaper and mailed to those entitled notice (usually property owners within 300-foot) at least 10 days in advance of the hearing. This requires submittal of the notice to the newspaper several days in advance of the publishing date. The City's current deadline schedule requires the planner provide the notice for publishing to administrative staff 21 days in advance of the hearing to ensure proper reviews, to account for any non-business days, and to accommodate work on other duties. This accounts for approximately one third of the 60-day shot clock. By not requiring a public hearing, this frees the City from mandated-noticing requirements, which given the shot clocks imposed upon the City, are very time-intensive. Alternative noticing is still provided. Furthermore, if the initial authority on exception requests were the Planning Commission, this would not leave room for an appeal since preparing for a Planning Commission Public Hearing and a City Council public hearing would result in exceeding the shot clock for some facilities, even with negligible time to actually review submitted applications (10 days to review, plus 21 days lead time for public notice and report/packet preparation prior to hearing, plus 10 day appeal period, plus 21 day public notice and report/packet preparation = 62 days, which would exceed the shot clock requirement for a new facility and leaves little staff time to review).*

Public Comment: Extend the appeal period from two business days to 10 business days.

Staff Response: *First, 10 business days could result in up to 13 calendar days (due to alternating Friday closures – this would not factor in any holidays). Given the fact that appeals are to be included in shot clock timeframes and notice timelines, this would make compliance with shot clocks nearly impossible. The appeal period has been lengthened to three business days and due to the modified noticing requirements (notice of application no more than 10 calendar days after the City receives an application, and notice of date of determination at least 10 calendar days prior to a decision being rendered), members of the public would have ample time to review an application, the City has additional time to answer questions and address concerns raised, and members*

of the public would have sufficient time to prepare for a potential appeal in advance of a decision being rendered.

Public Comment: Ordinance should be retroactive to affect all pending projects.

Staff Response: *Language has been included in the Ordinance (see Attachment 5.a, Exhibit B, Section 17.16.075(C)(1)(b) to address this comment.*

Public Comment: Maintain a Cellular Master Plan. The last updated list of cellular sites maintained by the City is from 2008.

Staff Response: *The City has an Adopted Wireless Master Plan (2008), which is still currently in effect. The City will be updating the Wireless Master Plan in the near future. As a part of this, City records will be utilized to update the City's inventory of cell sites. In the meantime, all small cell applications are listed, by status, on the City's Small Wireless Facilities webpage.*

Public Comment: We shouldn't be relying on the FCC to determine what safe RF exposure is. They are a captured agency and their guidelines for maximum safe exposure to RF are from 1996.

Staff Response: *This is not an issue of local control. Per federal regulations, the City is prohibited from establishing any other limits on exposure than those established by the FCC. The FCC Office of Engineering and Technology Bulletin 65 sets limits for RF exposure. The FCC recently looked into updating their standards, but determined that the existing limitations are sufficient. They did, however, revise their implementing rules to reflect modern technology and today's uses. They outline their basis for their determination and new implementing rules in FCC Memorandum Opinion and Order No. 19-126, adopted on November 27, 2019. The Order states, among other reasons, that the existing exposure limits were adopted following recommendations from the U.S. EPA, FDA, and other federal health and safety agencies, and that while research is ongoing, no evidence has moved these sister health and safety agencies to issue substantive policy recommendations for strengthening RF exposure regulation. The new implementing rules set forth more specific exemption criteria based on separation distance (from the RF source to the location where a human could potentially experience exposure). This concern has come up several times due to topography in San Clemente (with antennas being at the same height as a residential yard or windows into residences).*

Public Comment: The City cannot rely upon the provision allowing applicants to apply for an exception to the criteria to excuse standards that are infeasible, unreasonable, or prohibitive in conflict with federal and/or state law.

Staff Response: *As drafted, staff believes the standards set forth are reasonable controls of time, place, and manner related to the installation and operation of small wireless telecommunications facilities. Standards, such as separation distances, are reasonable in that they leave large available areas where the deployment of small cells are permitted, particularly along many major arterials, and in proximity to business centers, residential development, and recreational activities. In those instances, where a carrier would need*

to locate in a prohibited location, which based on the areas available for small cell deployment should not represent a majority of cases, the exception request is an option available to applicants. The design criteria are reasonable in that they protect aesthetics in ways that in most instances should be technically feasible. This assertion is based upon the fact that carrier feedback has been incorporated with regard to the height and size of a variety of typical small cell installations, and that stealthing techniques are based upon current feasible best practices (such as utilizing enclosures and shrouds for equipment, utilizing non-metered service, and using the smallest electrical meter available where non-metered service is not an option).

Public Comment: Height limitations less than 50 feet should be removed as they are inconsistent with allowances in the FCC's definition of "small wireless facilities."

Staff Response: *The height limitations included in the draft for various types of installations are meant to protect aesthetics and as such, vary depending on the type of installation. For example if a streetlight pole were 50 feet tall this would be significantly out of character with the other streetlights in the City which generally vary (depending on the street) from 22 feet to 32 feet. The limitations, as drafted are within the City's zoning authority to ensure aesthetics are maintained. Furthermore feedback from the industry has generally been that taller heights are not needed for a variety of typical small cell installation types. In the rare instance where a taller height allowance is needed, yet within the FCC definition of a "small wireless facility" the exception request is an option available to applicants.*

Public Comment: Minimum separations from residential property and school property are too burdensome and create areas where small cell deployment would be excluded. Minimum separations to schools should be measured from occupiable buildings, not property line.

Staff Response: *As drafted, staff believes the minimum separations set forth are reasonable controls of time, place, and manner related to the installation and operation of small wireless telecommunications facilities. The separation distances, are reasonable in that they leave large available areas where the deployment of small cells are permitted, particularly along many major arterials, and in proximity to business centers, residential development, and recreational activities. In those instances, where a carrier would need to locate in a prohibited location, which based on the areas available for small cell deployment should not represent a majority of cases, the exception request is an option available to applicants. With regard to the school minimum separations, because these standards are based upon aesthetics and not exposure, and because large portions of school programming (recess, sports games, lunch facilities, etc.) occur outside, staff believes utilizing a separation from occupiable buildings is arbitrary.*

Public Comment: The City should remove the provisions requiring a 300-foot separation from other cell facilities as it risks effectively prohibiting wireless service and is not needed for concealed sites (since they ostensibly do not affect aesthetics).

Staff Response: *The City has modified the separation between cell sites to 200 feet if existing or replacement poles are used as this meets the city's objective of preventing additional visual clutter in rights of way. 300 feet is still required if a new, non-replacement*

pole will be required. The City does not believe this will be prohibitive. In the event that several carriers require additional infrastructure in a small area an exception is in option in those instances. While staff believes the design standards will result in generally uniform facilities which blend with existing development, these sites are not entirely “concealed” and visual clutter with the proliferation of small cells remains a concern of the City and within it’s reasonable zoning and time, place, manner control authority.

Public Comment: All references to “coverage gap tests to analyze an effective prohibition should be removed because they are premised on “an unduly narrow reading of the statute [47USC, Section 332(c)(7)(B)(i)(II)] and an outdated view of the marketplace.” Instead, analysis of effective prohibition should focus on “the service the provider wished to provide, incorporating the capabilities and performance characteristics it wishes to employ, including facilities deployment to provide existing services more robustly, or at a better level of quality...”

Staff Response: *Explicit references to coverage gap have been removed from the ordinance.*

Public Comment: Providers of personal wireless telecommunications services have a statewide franchise right to access and construct telecommunications facilities in the public rights of way in order to furnish wireless services so long as it does not “incommode” the public use of the public rights of way (Public Utilities Code Section 7901). These design and development standards limit that right.

Staff Response: *The City has the right to impose reasonable regulations related to the time, place, and manner of installation or operation of small cells in the right of way. As drafted, staff believes the standards set forth are reasonable controls of time, place, and manner related to the installation and operation of small wireless telecommunications facilities. Standards, such as separation distances, are reasonable in that they leave large available areas where the deployment of small cells is permitted, particularly along many major arterials, and in proximity to business centers, residential development, and recreational activities. In those instances where a carrier would need to locate in a prohibited location, which based on the areas available for small cell deployment should not represent a majority of cases, the exception request is an option available to applicants. The design criteria are reasonable in that they protect aesthetics in ways that in most instances should be technically feasible. This assertion is based upon the fact that carrier feedback has been incorporated with regard to the height and size of a variety of typical small cell installations, and that stealthing techniques are based upon current feasible best practices (such as utilizing enclosures and shrouds for equipment, utilizing non-metered service, and using the smallest electrical meter available where non-metered service is not an option). In the event that these reasonable controls of time, place, and manner would prevent a particular carrier from providing a wireless service or improving service, a provider can apply for an exception request.*

Small Cell Ordinance
Planning Commission (PC) Recommendations (from Study Session
12/4/19)

Facility Design:

PC Comment: Recommended language regarding requirements to shroud antennas as well as other pole-mounted equipment.

Staff Response: *Incorporated. See Design and Development Standards Section 4, A.4.a.*

PC Comment: Recommended shrouds and enclosures on poles be colored and textured the same as the pole.

Staff Response: *Incorporated. See Design and Development Standards Section 4, A.4.b.*

PC Comment: Recommended a minimum clearance from ground to any equipment that projects from mid-pole locations.

Staff Response: *Incorporated. See Design and Development Standards Section 5 A.6, B.5, and C.4.*

PC Comment: Recommended a maximum width for slimline (stand-alone) poles be included in the Design Standards.

Staff Response: *Incorporated. See Design and Development Standards Section 5, C.2*

Minimum Separations:

PC Comment: Requested additional language to allow a 200-foot separation between cell sites only if existing/replacement poles are used; the 300-foot separation between cell sites should remain if a new (non-replacement) pole is proposed.

Staff Response: *Incorporated. See Design and Development Standards Section 4, B.2.e.*

PC Comment: Established that the City cannot require that multiple carriers use the same locations, but can express a preference for co-locating. Additionally, the City cannot express a preference for carriers that are set up for multiple users.

Staff Response: *Incorporated. The Design and Development Standards prefer existing support structures (Section 4, B.1.b., B.2.a.). Furthermore, Standard Condition No. 16 encourages collocation.*

PC Comment: Generally supported the proposed separations as recommended by staff with the modification to the site-to-site separation, as previously noted.

Staff Response: *Incorporated. The proposed separations from residential and mixed use properties, parks, and from other cell sites remain as reviewed in the December 4, 2019*

Study Session, except as modified in Design and Development Standards Section 4, B.2.e.

Process and Appeals:

PC Comment: Suggested staff provide notice to residents when the application is submitted, or 10 days to 2 weeks before it is to be considered or the shot clock runs out, so that residents are aware of the decision being made, and also made aware that they only have 2 days to appeal a decision once it's been made.

Staff Response: *Incorporated. The Draft Ordinance, Exhibit B, Section 17.16.075.F.2 and 3 provide for a notice of application to be mailed by the City to all property owners within 300 feet no more than 10 calendar days from receipt of an application for a wireless permit and a notice of date of decision to be mailed by the City to all property owners within 300 feet at least 10 calendar days in advance of the date a decision will be rendered by the City. Additionally, the appeal period was lengthened to three business days.*

PC Comment: Commented that additional time for the appeal process would have allowed additional time for residents to gather signatures, do research, gather funds for appeal fees, etc. Established from staff that due to the shot clock timing, this would not allow staff adequate time to effectively process the application.

Staff Response: *Incorporated. The draft maintains the administrative review for both initial decisions and appeals. However, with a modified noticing procedure and appeals length to allow more time for public review and appeals.*

PC Comment: Commented that preference would be that the Planning Commission or City Council have the purview to review the appeals, but due to shot clock timing and Brown Act Regulations, this is not possible.

Staff Response: *Incorporated. The draft maintains the administrative review for both initial decisions and appeals. However, with a modified noticing procedure and appeals length to allow more time for public review and appeals.*

PC Comment: Recommended that "significant gap" language should be kept/left flexible in the Ordinance in the event this test is proven to be allowed.

Staff Response: *No incorporated. Based on feedback from the City Attorney's office this specific language was omitted from the ordinance. It could be added back at a later time if and when existing regulations change.*

PC Comment: Suggested review of the Ordinance after one year to determine if potential to expand the appeals process.

Staff Response: *Noted. This can be calendared by staff once the Ordinance is adopted. Depending on timing, this review could be concurrent with the Wireless Master Plan Update.*

**MINUTES OF THE
 REGULAR MEETING OF THE STUDY SESSION
 OF THE CITY OF SAN CLEMENTE
 PLANNING COMMISSION
 December 4, 2019 @ 6:00 p.m.
 City Council Chambers
 100 Avenida Presidio
 San Clemente, CA 92672**

CALL TO ORDER

Chair Ruehlin called the Regular Meeting of the Study Session of the Planning Commission of the City of San Clemente to order at 6:03 p.m. in City Council Chambers, located at 100 Avenida Presidio, San Clemente, CA 92672.

ROLL CALL

Commissioners Present: Donald Brown, Jason Talley, Zhen Wu; Chair pro tem Barton Crandell, Vice Chair Michael Blackwell, Chair Jim Ruehlin

Commissioners Absent: Chris Kuczynski

Staff Present: Gabriel J. Perez, City Planner
 Katie Crockett, Associate Planner
 Cecilia Gallardo-Daly, Community Development Director
 Andrew McCardle, Attorney
 Eileen White, Recording Secretary

AGENDA

A. Small Cell Ordinance Discussion – (Crockett)

Key aspects of the ordinance will be presented for questions and discussion amongst the Planning Commission, as follows:

1. Facility Design – specific design criteria for small cell installations
 - a. Staff review of facility design
 - b. Commission questions and comments on facility design
2. Minimum Separations – from residential, schools, and from cell site to cell site
 - a. Staff review of minimum separations
 - b. Commission questions and comments on minimum separations
3. Process and Appeals – type of review, appeals, noticing
 - a. Staff review of process and appeals
 - b. Commission questions and comments

Katie Crockett, Associate Planner, narrated a PowerPoint Presentation entitled, "Small Cell Ordinance, Planning Commission Study Session," dated December 4, 2019. A copy of the Presentation is on file in Planning Division. She distributed a flyer indicating the City's Street Light Standards as well as maps demonstrating areas where small cells would be permitted to be installed using 100 to 1,000 feet buffers. She reviewed three key aspects of the Ordinance and requested Commission input.

In response to questions, Associate Planner Crockett advised that carriers wishing to install ground mounted equipment must apply for an exception; that although shrouding is preferred, it's not clear at this time whether shrouding of antennas can be used when/if the small cell sites are converted to 5G; that the support structure must be the same as the standard pole it is being put on. Staff recommendation for separation of small cells to residential properties is 100 feet. Residents have stated this is too close, and carriers have said that it is prohibitive. Carriers must apply for an exception if they wish to install a small cell site closer than 100 feet. The proposed Ordinance is a first step to regulating small cells; the City plans to update the City's Wireless Master Plan in the coming months which could include other regulations related to small cells.

Andrew McCardle, Attorney, updated the Commission on a 9th Circuit Court of Appeals case regarding coverage gaps and how that works with the FCCs limitations; explained situation whereby the City could request information on why an alternative site was considered technically infeasible.

Commissioners provided commentary as follows:

Facility Design

- Recommended language regarding requirements to shroud antennas as well as other pole-mounted equipment.
- Recommended shrouds and enclosures on poles be colored and textured the same as the pole.
- Recommended a minimum clearance from ground to any equipment that projects from mid-pole locations.
- Recommended a maximum width for slimline (stand-alone) poles be included in the Design Standards.

Minimum Separations

- Requested additional language to allow a 200-foot separation between cell sites only if existing/replacement poles are used; the 300-foot separation between cell sites should remain if a new (non-replacement) pole is proposed.
- Established that the City cannot require that multiple carriers use the same locations, but can express a preference for co-locating. Additionally, the City cannot express a preference for carriers that are set up for multiple users.

- Generally supported the proposed separations as recommended by staff with the modification to the site-to-site separation, as previously noted.

Process and Appeals

- Established from staff that the proposed 2-day appeal process is due to the Federally imposed shot clock timing. Also established that the shotclocks are calendar days, and include time for appeals.
- Suggested staff provide notice to residents when the application is submitted, or 10 days to 2 weeks before it is to be considered or the shot clock runs out, so that residents are aware of the decision being made, and also made aware that they only have 2 days to appeal a decision once it's been made.
- Commented that additional time for the appeal process would have allowed additional time for residents to gather signatures, do research, gather funds for appeal fees, etc. Established from staff that due to the shot clock timing, this would not allow staff adequate time to effectively process the application.
- Commented that preference would be that the Planning Commission or City Council have the purview to review the appeals, but due to shot clock timing and Brown Act Regulations, this is not possible.
- Recommended that "significant gap" language should be kept/left flexible in the Ordinance in the event this test is proven to be allowed.
- Suggested review of the Ordinance after one year to determine if potential to expand the appeals process.

Report received and filed.

COMMISSION COMMENTS

None

RECESS

The Commission recessed until the start of the regular session.

Respectfully submitted,

Jim Ruehlin, Chair

Attest:

Gabriel J. Perez, City Planner

DRAFT

These minutes were approved at the Planning Commission meeting of 12-04-2019.

**MINUTES OF THE
ADJOURNED STUDY SESSION
OF THE CITY OF SAN CLEMENTE
PLANNING COMMISSION
November 20, 2019 @ 5:00 p.m.
City Council Chambers
100 Avenida Presidio
San Clemente, CA 92672**

CALL TO ORDER

Chair Ruehlin called the Adjourned Study Session of the Planning Commission of the City of San Clemente to order at 5:05 p.m. in City Council Chambers, located at 100 Avenida Presidio, San Clemente, CA 92672.

ROLL CALL

Commissioners Present: Donald Brown, Jason Talley, Zhen Wu; Vice Chair Michael Blackwell, Chair Jim Ruehlin

Commissioners Absent: Chris Kuczynski, Chair pro tem Barton Crandell

Staff Present: Gabriel J. Perez, City Planner
Katie Crockett, Associate Planner
Cecilia Gallardo-Daly, Community Development Director
Eileen White, Recording Secretary
Andrew McCardle, Attorney

AGENDA

A. Small Cell Ordinance Workshop

1. Staff Introduction to Small Cell Ordinance, Katie Crockett
2. Regulatory Framework (Brief Overview), Andrew McCardle
3. SOARA Presentation on RF
4. City RF Consultant Presentation, Lee Afflerblach, Columbia Telecommunications
5. Commission Comment/Questions
6. Public Comment/Q&A

Katie Crockett, Associate Planner, narrated a PowerPoint Presentation entitled, "Small Cell Ordinance, Public Workshop, Staff Presentation," dated November 20, 2019. A copy of the Presentation is on file in Planning Division. She reviewed the timeline of the Ordinance generation process, its goals, and key provisions including the Permit process, appeal process, and proposed separation

requirements. She recommended the Commission hear the presentations from two experts in the field, hear public testimony, and provide input. The Ordinance will be presented to the Commission at a later meeting for additional input and recommendation.

Mike Pettus, RF/Wireless Engineer, narrated a PowerPoint Presentation entitled, "Small Cell RF Study, City of San Clemente," dated November 2019. A copy of the Presentation is on file in Planning Division. He reviewed the various forms of electromagnetic energy and the Electromagnetic Spectrum. He discussed the Institute of Electrical and Electronics Engineers (IEEE) Engineering Safety Guidelines, including Maximum Permissible Exposure (MPE), facility operating conditions and radio power factors; reviewed equipment proposed for small cells in the City and site locations.

Lee Afflerbach, City RF Consultant, Columbia Telecommunications, narrated a PowerPoint Presentation entitled, "Small Cell Wireless Telecommunications and RF Emissions Workshop" dated November 20, 2019. A copy of the Presentation is on file in Planning Division. He discussed how the Macro Tower and Small Cells will provide Multi-Band Capacity Enhancement for Broadband Wireless facilities; provided definitions of the proposed equipment and typical configurations; discussed Federal RF Exposure Standards; reviewed Small Cell RF Emissions patterns, analysis, and signage recommendations.

In response to questions, Associate Planner Crockett advised some cities do not allow an appeals process due to potential that the appeal process is difficult to accommodate within Federally mandated shotlocks; noted the City intends to ask for 2 sets of envelopes for public notices for each application for ease of noticing in the event of an appeal. Staff is still developing application requirements, and the application packet is not ready at this time.

In response to questions, Engineer Pettus defined "non-occupational" exposure limits as the general consumer and "occupational" exposure limits as an engineer or other professional in the field with knowledge that allows them to be exposed to higher RF levels. The calculations use worst-case scenarios with conservative exposure levels, safe distances, and time limits to avoid any overexposure. He noted none of the equipment in the Small Cell sites approved by the City of Sna Clemente approaches high levels of exposure.

In response to questions, Consultant Engineer Afflerbach emphasized the need for distance between the Small Cell Sites as well as the amount being emitted horizontally. He recommended for an average small cell (using two 160 watt radios at full power) that an appropriate minimum horizontal separation would be approximately 25-30 feet to meet FCC RF exposure limits. He encouraged the City to continue measuring levels and suggested the City should create and maintain a data base of all existing RF emitting devices.

Chair Ruehlin opened the public hearing.

Tiffany Johansson, resident, requested the distance from residences be greater than 100 feet; commented that firefighters are exempt from having cell towers at their firehouses; quoted a study that found rats got cancer from RF exposure; asked why cell companies are uninsurable. She requested the City adopt an ordinance similar to the one adopted by the city of Encinitas.

Kristy Neuhausen, resident, suggested safe distances would be 500 to 1,000 feet away from homes or schools; quoted a study indicating higher rates of cancer/decreased fertility due to cell phone distances from bodies; questioned why the industry is protected by mandates when there is so much evidence indicating ill effects; requested the City do more to protect its residents.

Kourtney Morrow, resident, commented that evidence is available indicating damage from RF exposure; questioned why the City's appeal process is limited to 2 days; commented that noticing should be greater than those residences within a 300-foot radius of proposed sites; suggested the City follow Encinitas and Laguna Beach's leads in limiting installations.

Laura Fisher, resident, requested information on the biological effects on those living close by cell towers; noted a tower is proposed for a location only 58 feet from her home, 30 feet from her property line. Additionally, she stated that only 2 non-elected City employees are involved in the approval/appeal process, and questioned whether that was a fair process. She suggested a third-party expert should review technical aspects of applications. She asked that superior alternatives be considered and requested additional information be provided.

Jeff Perkin, resident, opined that the Federal rules are industry friendly; questioned if there is research on the cumulative effects of RF emissions; noted the World Health Organization categorizes RF as a possible human carcinogen and noted a group of doctors opposed to 5G. He also noted the large number of electronic devices now in homes, resulting in 24/7 exposure.

Jim Nelson, no city of residence given, opined that 100 feet from residences was not adequate, stated that 300 feet notification is not adequate; asked what is the purpose of the new cell sites; suggested too many cell sites are being proposed for this small area.

Bill Kreutinger, no city of residence given, concurred that an ordinance was needed; noted that as a member of the South Orange Amateur Radio Association, he is well versed in radio waves, frequencies, etc., and offered to help provide information, monitor RF, be on hand to answer questions to help the community.

Gail Trask, resident, questioned the need for additional cells; referred to a study with results indicating adverse effects down to insect and plant levels; referenced

a school experiencing a cancer cluster; noted an employee she spoke with from the Capistrano Unified School District said they are undertaking to have cell sites removed from their school properties. She referred to studies indicating fertility damage to kids constantly exposed to RF emissions; commented on mental impacts to kids who should be out enjoying the outdoors rather than glued to screens.

Mike Farrier, Verizon Wireless Representative, thanked staff for their effort to provide insight into the operations of cell carriers; noted that without constant updating and improvement of the wireless infrastructure system, the levels of service currently enjoyed will diminish greatly and may stop entirely. Demand for data is growing and anticipated to continue to grow. Verizon is committed to being a good neighbor and installing sites only where warranted; all are dependent on the cell sites and cell carriers to provide service for work, emergency, social, etc., communication.

Ann-Marie Hines, resident, noted her teacher husband retired early due to iPad usage in schools; cautioned that the effects of RF emissions are being ignored/are unknown at this time; compared the use of small cell sites as a boon to telecommunications to the use of radium after it was developed. It was only after all the adverse effects were noted that it was pulled from the market. She requested that humans not be used for an experiment; suggested fiber optics are a better alternative; noted inability to install on fire station property.

Kristina Krich, resident, cautioned that use of cell towers is threatening children's lives; referred to the death of an 8 year old boy, who lived near 3 cell towers, to cancer; requested the City join with other cities to stand up to big business and not be afraid of litigation; suggested 500 feet from both residences and homes would be safer for children.

Chair Ruehlin closed the public hearing.

Associate Planner Crockett reviewed maps indicating potential allowed locations for small cell sites with separations of 1,000, 500, 300, and 100 from residences and schools; noted the distance finally recommended/chosen has to be tied to aesthetics; advised carriers would be able to apply for exceptions for installations not meeting the separation requirements, and to do so would have to prove that the exception is necessary in order for them to meet their goal and they are taking the least amount of exception possible. The approval would be administrative because there are federal mandates that the fees are low and turnaround is very fast.

Commission comments/suggestions:

- Suggested that due to San Clemente’s topography, and the fact that the energy travels horizontally, there may be additional consideration given to distances.
- Established from staff that the relatively short 2-day appeal period reflects the Federally-mandated short time period for turnaround.
- Established from staff that co-locations are possible, but not probable.
- Established from staff that warning signs will be posted at various locations on or near cell sites; cell sites can be turned off if maintenance is required.
- Requested information on the typical distribution of energy for a small cell; requested this information be provided if/when another workshop is scheduled.
- Established from staff that noticing will be provided for administrative actions.

Report received and filed.

RECESS

Staff, Lee Afflerbach - City RF expert consultant, Mike Pettus - SOARA expert, and participating wireless carriers, were available for further questions/information outside the Chambers following the meeting. The information sharing session outside Chambers continued until 8:10 p.m.

COMMISSION COMMENTS

None

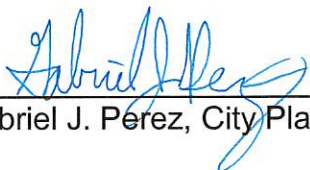
RECESS – The Commission continued the Regular Session.

Respectfully submitted,



Jim Ruenlin, Chair

Attest:



Gabriel J. Perez, City Planner

**CITY OF SAN CLEMENTE
MINUTES OF THE REGULAR MEETING OF THE
DESIGN REVIEW SUBCOMMITTEE
OCTOBER 23, 2019**

Subcommittee Members Present: Bart Crandell, Zhen Wu
Subcommittee Members Absent: Michael Blackwell

Staff Present: Senior Planner Stephanie Roxas, Associate Planner Katie Crockett, Assistant Planner Jonathan Lightfoot, Assistant Planner David Carrillo, Community Development Director Cecilia Gallardo-Daly, City Attorney Andrew McCardle

1. MINUTES

The Subcommittee approved the minutes from the September 11, 2019 meeting.

The Subcommittee continued the minutes from the September 25, 2019 meeting due to a lack of quorum.

2. ARCHITECTURAL REVIEW OF THE FOLLOWING ITEMS:

A. Zoning Amendment 19-189, Small Cell Ordinance Design Regulations, City-wide (Crockett)

Review of proposed design and location standards for small wireless telecommunications facilities, which will be incorporated into the proposed ordinance to amend permitting requirements for small wireless telecommunications facilities.

Associate Planner Katie Crockett summarized the staff report and narrated a PowerPoint presentation, which is on-file with the Planning Division.

Andrew McCardle, from Best Best & Krieger (BB&K), provided legal guidance on the proposed ordinance and existing regulations by the Federal Communications Commission (FCC). Mr. McCardle answered questions regarding the proposed exception criteria contained within the draft ordinance and the FCC's interpretation on what constitutes an effective prohibition. He clarified that local standards must be objective, non-discriminatory, and cannot treat wireless carriers differently from other utility providers. Mr. McCardle discussed how the shotclock provisions may impact City processing timelines and how the technology behind small cell facilities may require sites to be closer to their intended service coverage area.

Chair Crandell opened the item for public comments.

Franklin Orozco, representing AT&T, requested more flexibility in the design standards. He recommended the City consider allowing the shroud diameter to

exceed 150% of the pole (maximum 14 inch diameter), and allowing the shroud height to be up to 72 inches above the height of the pole.

Rickard Soderberg representing AT&T, stated that AT&T's comments were emailed directly to staff and the Planning Commission. He recommended the City consider eliminating the 150% maximum shroud diameter, recommended the City consider allowing small cells on smaller traffic signal poles, recommended the City reconsider the 300-foot spacing between cell sites (require a shorter distance between sites), and stated that collocation is not recommended by AT&T.

Bert Levesque, President for Harbor View Estates Homeowners Association, expressed concern over the potential proliferation of wireless antennas throughout the neighborhood, expressed concern over potential abandoned antenna facilities, and supported prohibiting antennas where the FCC rules are unclear or ambiguous.

Art Cartwright, resident of the New Providence Association, expressed concern over the proposed exception criteria and recommended the City consider a firm setback standard from residential properties.

Laura Fischer, resident, stated she lives near the proposed wireless site on Camino Vera Cruz. Ms. Fischer stated she believes the proposed 100-foot setback from residential properties is insufficient. She summarized her research of other cities with small cell wireless ordinances with larger residential separation requirements. Ms. Fischer requested the City to consider a minimum 250-foot residential setback requirement. Ms. Fischer stated she believes the 300-foot separation requirement between cell sites is insufficient. She requested the City incorporate regulations into the ordinance that address fire safety, wind loads, and lighting impacts. She supported updating the Wireless Master Plan and opposed allowing wireless facilities to proliferate throughout residential neighborhoods. Ms. Fischer expressed concern over wireless carriers providing evidence to show there is a gap in service coverage as the information may be biased. She encouraged the City to enforce the distance separation requirements and not allow exceptions.

Kortney Morrow, resident, stated she believed that the 100 foot residential setback requirement is already insufficient, and she believed that wireless carriers asking for exceptions to that standard should be unacceptable. She expressed a preference for larger setback requirements from sensitive uses, such as 1,000 feet from residential properties and 1,500 feet from schools and parks, and exceptions would be more acceptable if larger setbacks were imposed. Ms. Morrow summarized her research of other cities with small cell ordinances with larger residential setback requirements. She requested the City require wireless carriers to remove any poles that become outdated or unused due to technological advances, and she supported use of consistent pole designs between different carriers.

Michael Farragher, representing Verizon Wireless, requested the City allow wireless carriers to continue providing input while the proposed ordinance and design and development standards are being drafted. He stated that wireless carriers generally

would like to minimize the number of sites needed but that larger setback requirements may result in carriers being unable to improve wireless services in areas lacking coverage.

In response to questions raised during public comments, Community Development Director Cecilia Gallardo-Daly clarified that wireless carriers are required into a Master License Agreement with the City that would include obligations to remove wireless poles and equipment when no longer in use. Associate Planner Katie Crockett further clarified that a standard condition requiring removal of wireless facilities and equipment no longer in use is included in the draft ordinance, which will be presented to the Planning Commission at a later date.

Chair Crandell closed the public comments section of the item. The Design Review Subcommittee (DRSC) discussed the project, and made the following comments either individually or as a group:

- Deliberated on the proposed location criteria and potential distance separation requirements from sensitive uses; ultimately the Subcommittee stated these aspects of the Ordinance must be discussed further with the Planning Commission and City Council to develop a policy consensus.
- Requested that the 300 foot buffer from other wireless facilities should apply to both small cell and macro sites.
- Requested clarification on why small cells would not be permitted on traffic signals. Staff described concerns raised by the Public Works Department that could affect the traffic signal timing. Staff determined there were sufficient alternative locations, and, therefore, the standard would not result in an effective prohibition.
- Discussed various topics, including tapered designs versus straight pole designs, vaulted equipment versus pedestals, the intent of the “occupiable building” preferred location standard, slimline poles, and potentially adding trees to soften the pole aesthetics.
- Requested staff to provide maps at upcoming meetings illustrating the different setback options.

The Subcommittee concluded that the location criteria must be discussed further with the Planning Commission and City Council to develop a policy consensus. Chair Crandell reiterated that interested members of the public will be notified of all upcoming meetings related to the proposed Small Cell Ordinance and design and development standards. The Subcommittee recommended forwarding the public comments received to the Planning Commission for consideration.

B. Historic Property Preservation Agreement (HPPA) 19-190, Cocores Residence (Carrillo)

A request for a Mills Act agreement between the City and the owners of a historic private residence at 102 West Avenida Cadiz.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING PORTIONS OF CHAPTERS 17.88(DEFINITIONS), 17.28 (SPECIAL USES), 17.16 (APPLICATIONS), AND 17.12 (DEVELOPMENT REVIEW PROCESS) OF THE ZONING ORDINANCE TO UPDATE PERMITTING REQUIREMENTS FOR SMALL WIRELESS TELECOMMUNICATIONS FACILITIES

WHEREAS, the City of San Clemente, California (“City”) is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, pursuant to the laws of the State of California, the City has the authority to adopt such ordinances as it deems necessary and appropriate to assure good government in the City, to protect and preserve the City’s rights, property and privileges, and to preserve peace, safety and good order; and

WHEREAS, the City deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas and other structures within the City’s public rights-of-way, in public utility easements, and on private streets, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the City Council of the City of San Clemente:

SECTION 1. The foregoing Recitals are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. Amendment. The City Code Chapter 17.88 is hereby amended to add the following definitions:

“Base Station” has the same meaning as set forth in 47 C.F.R. Section 1.6100(b)(1), or any successor provision.

“Eligible Facilities Request” has the same meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.

“Personal Wireless Services” has the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

“Public Right-of-Way, or ROW” means the improved or unimproved surface or subsurface of any public street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. The ROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways, public utility easements, and landscaped lots.

“Small Cell Facility” has the same meaning as “small wireless facility” in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):

- (1) The facility—
 - (i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or
 - (ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or
 - (iii) does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;
- (5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and
- (6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).”

“Support Structure” means any structure capable of supporting a base station.

“Tower” means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for personal wireless services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

“Wireless Permit” means a permit issued pursuant to Section 17.16.075 authorizing the placement or modification of a small cell facility of a design specified in the permit at a particular location within the City; and the modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.

“Wireless Telecommunications Facility” means the transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s).”

SECTION 3. Amendments to the San Clemente Municipal Code Chapter 17.28. The San Clemente Municipal Code Section 17.28.240 is hereby amended as set forth in Exhibit A, attached hereto.

SECTION 4. Amendments to the San Clemente Municipal Code Chapter 17.16. The San Clemente Municipal Code Chapter 17.16 is hereby amended to add Section 17.16.075, which is set forth in Exhibit B, attached hereto.

SECTION 5. Amendments to the San Clemente Municipal Code Chapter 17.12. The City San Clemente Municipal Code Chapter 17.12 is hereby amended as set forth in Exhibit C, attached hereto.

SECTION 6. The City Manager, or his or her delegate, is directed to execute all documents and to perform all other necessary City acts to implement this Ordinance.

SECTION 7. **CEQA.** This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a “project” within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council’s adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Orange within five working days of the passage and adoption of the Ordinance.

SECTION 8. Severability. If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, _____ valid, _____ and _____ enforceable.

SECTION 9. In accordance with _____, this ordinance shall become effective on the _____ day following its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF SAN CLEMENTE this _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

_____, City Attorney

Exhibit A

17.28.240 - Public Utilities.

- A. **Purpose and Intent** . The purpose of this section is to ensure that public utility facilities, such as substations or reservoirs, and antennas (other than satellite antennas and antennas on City property, which are regulated elsewhere) are located and built in a manner which is compatible with adjacent uses. An additional purpose of this section is to define the review process for public utilities initiated by the City and those initiated by outside agencies. Please refer to Section 17.28.070, Antennas on City Property, and Section 17.28.080, Satellite Antennas, for regulations for other types of antennas.
- B. **Review Requirements** .
1. City Projects. For the required review process for City-initiated public utility projects, please refer to the City's Public Works Department policy on the review of capital improvement projects.
 2. Projects Initiated by Outside Agencies/Applicants.
 - a. Major utilities shall require the approval of a Conditional Use Permit, in accordance with Section 17.16.060, Conditional Use Permits. Major utilities shall include, but shall not be limited to, reservoirs, utility substations, including electrical distribution and transmission substations, and above-ground pump stations, such as sewage and potable water system pump stations, antennas (other than satellite antennas, ~~and~~ antennas on City property, and small cell facilities) and similar facilities. If the installation of the antenna is stealth, as determined by the City Planner, then the process is administrative and no Conditional Use Permit is required. The standards in Subsection (C)(1), Minimum Standards for Projects Initiated by Outside Agencies, Major Utilities, shall apply to major utilities initiated by outside agencies. The City Engineer shall be responsible for determining whether a utility is major.
 - b. Minor utilities shall be permitted outright, subject to the concurrent review requirements found in Section 17.12.090, Consideration of Concurrent Applications. Minor utilities shall include, but shall not be limited to, below-ground pump stations, stand pipes, and transformers. The standards in Subsection (C)(2), Minimum Standards for Projects Initiated by Outside Agencies, Minor Utilities, shall apply to minor utilities initiated by outside agencies. The City Engineer shall be responsible for determining whether a utility is minor.
 - c. Public utility distribution and transmission line towers and poles, and underground facilities for distribution of gas, water, telephone and electricity shall be allowed in all zones without obtaining a Conditional Use Permit. However, all routes and heights of proposed electric transmission systems of 69 KV and over, telephone main trunk cables, from one central office to another and water or gas transmission mains which are above ground, shall be located in conformance with the General Plan of the City.
 - d. Small cell facilities shall require the approval of a Wireless Permit in accordance with Section 17.16.075.
 3. Modifications to Existing Antenna Facilities. The City Planner shall review and decide on requests to modify existing wireless towers or base station structures that support antennas, transceivers, or other related equipment. This includes the addition and removal of wireless transmission equipment such as the co-location of new transmission equipment, the removal of transmission equipment, or the replacement of transmission equipment. Modifications shall not substantially change the physical dimensions of the wireless tower or base station, as defined by the Federal Communications Commission. The City Planner may approve projects that meet minimum standards in Section 17.28.070(D)(5).
- C. **Minimum Standards for Projects initiated by Outside Agencies.**
1. Major Utilities.

- a. Compatibility. All buildings, structures and landscaping shall be visually compatible with surrounding development.
 - b. Development Standards. The standards for major utilities shall be determined through the Conditional Use Permit process.
 - c. Location. Please refer to the permitted and conditional use tables in Chapters 17.32, Residential Zones and Standards through 17.48, Public Zones and Standards.
2. Minor Utilities.
- a. Compatibility. All minor utilities shall be placed underground or shall be screened in accordance with Section 17.24.050, Building Equipment and Services and Their Screening.
 - b. Development Standards. Minor utilities shall comply with the standards for ground-mounted equipment in Section 17.24.050, Building Equipment and Services and Their Screening.
 - c. Location. Please refer to the permitted and conditional use tables in Chapters 17.32, Residential Zones and Standards through 17.48, Public Zones and Standards.
 - d. Parking. The parking requirements for a public utility use such as an electric distribution and transmission substation, public utility service yard or similar use may be waived or modified, subject to the approval of a Conditional Use Permit in accordance with Section 17.16.060, Conditional Use Permits, upon a finding that the use requires no full-time or permanent employees.
3. Modifications of Existing Wireless Towers or Base Station Structures. Refer to Section 17.28.070(D)(5) for minimum standards that apply to modifications of existing wireless towers or base station structures.

4. Small Cell Facilities.

- a. Design and Development Standards. The design and development standards, which contain aesthetic and location criteria for small cell facilities shall be adopted by Resolution of the City Council.

(Ord. 1304 § 21, 2005; Ord. 1172 § 3 (part), 1996)

(Ord. No. 1594, § 3(Exh. A, § 30), 5-5-2015)

Exhibit B

17.16.075 – Wireless Permits.

A. Purpose and Intent. It is the purpose of this Section to establish a process for managing, and uniform standards for acting upon, requests for the placement of Small Cell Facilities consistent with the City's obligation to promote the public health, safety, and welfare, and to manage the public rights-of-way, and to ensure that the public is not incommoded by the use of the public rights-of-way for the placement of wireless facilities. The City recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable Federal and State law regarding the placement of personal wireless services facilities.

B. Authority.

1. The City Planner is the reviewing authority for applications to install or modify small cell facilities in the City. The City Planner shall make decisions on such applications and has the authority to, among all other actions related to the processing of applications, issue application forms and materials and issue conditions of approval for a wireless permit. If the City Planner determines that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, then the applicable requirements of this Code and any related design and development standards may be waived, but only to the minimum extent required to avoid the prohibition or violation.
2. Any person may appeal the City Planner's decision to the Community Development Director. Notwithstanding Section 17.12.140(A)(2)(a), all appeals must be filed within three (3) business days of the written decision of the City Planner, unless the Community Development Director extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law. The appeal must be filed with a short and plain statement about the basis for the appeal, which may be supplemented after the appeal period has expired but before the appeal decision. Appeals of an approval shall not be permitted when based solely on the environmental effects from radiofrequency emissions that are compliant with applicable FCC regulations and guidelines. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the personal wireless services facility. The Community Development Director may decide the issues *de novo*. Notwithstanding Section 17.12.140(A)(1)(a), the Director's written decision will be the final decision of the City. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

C. Applicability.

1. In general.
 - a. There shall be a type of permit entitled a "Wireless Permit," which shall be subject to all of the requirements of this Section and other applicable portions of the Code. Unless exempted, every person who desires to place a small cell facility must obtain a Wireless Permit authorizing the placement or modification in accordance with this Code.
 - b. All facilities for which applications were not approved prior to the effective date of the ordinance codified in this Section shall be subject to and comply with all provisions of this Section and other applicable portions of the Code, including the design and development standards adopted pursuant to Section 17.28.240(C)(4)(a).
2. Exemptions. This Section does not apply to: (a) The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes; or (b) Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

3. Other applicable requirements. In addition to the Wireless Permit required herein, the placement of a small cell facility in the City requires the persons who will own or control those facilities to obtain all permits required by applicable law, and to comply with applicable law, including, but not limited, applicable law governing radio frequency (RF) emissions.

D. **Application Filing.** Applicant shall submit in person a paper copy and an electronic copy of any application, amendments, or supplements to an application, or responses to requests for information regarding an application to: City of San Clemente City Planner, at 910 Calle Negocio, San Clemente, 92673.

1. Pre-submission meeting. Prior to filing an application for a wireless permit, an applicant is encouraged to schedule a pre-application meeting with the City Planner to discuss the proposed facility, the requirements of this Code, and any potential impacts of the proposed facility.

2. Application content. An applicant shall submit an application on the form approved by the City Planner, which may be updated from time-to-time, but in any event shall require the submission of all required fee(s), documents, information, and any other materials necessary to allow the City Planner to make required findings and ensure that the proposed facility will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare. If no form has been approved, applications must contain all information necessary to show that applicant is entitled to the wireless permit requested, and must specify whether the applicant believes state or federal law requires action on the application within a specified time period.

3. Fees: Application fee(s) shall be required to be submitted with any application for a Wireless Permit. The City Council is hereby authorized to determine, or cause to be determined, the amount, type, and other terms of such fee(s) from time to time by means of resolution. Notwithstanding the foregoing, no application fee(s) shall be refundable, in whole or in part, to an applicant for a Wireless Permit unless paid as a refundable deposit.

4. Incompleteness. Wireless permit applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, the City Planner shall notify the applicant in writing specifying the required material omitted from the application.

5. Automatic withdrawal of incomplete applications. Any application for a wireless permit shall be automatically deemed withdrawn by the applicant when the applicant fails to submit a substantive response to the City Planner within 90 calendar days from the date the application is deemed incomplete by written notice. For purposes of implementing this section, "substantive response" must include, at a minimum, the materials identified as incomplete in the written incomplete notice, and a written response to each comment included in the incomplete notice.

E. **Requests for Exceptions.**

1. Generally. If the applicant demonstrates that the strict application of this Section would result in the effective prohibition of personal wireless service or otherwise violate state or deferral law, an exception may be granted by the City to the standard or standards causing the effective prohibition, but only to the minimum extent required to avoid the prohibition or violation; all other provisions, standards, and criteria would remain in effect.

2. Burden of proof. The applicant shall have the burden to prove to the City that the exception should be granted.

3. Timing of request. Requests for exception made by the applicant may only be made at the time of initial application.

F. **No Public Hearing; Public Notice; and Appeal Provisions.**

1. There are no public hearings for applications for Wireless Permits.

2. A Notice of Application shall be mailed by the City to all property owners within 300 feet of the subject site no more than 10 calendar days following submittal of an application for a Wireless

Permit. The Notice of application shall contain the precise location and description of the proposed facility. The Notice of Application shall also contain a description of the administrative process for determinations on Wireless Permits.

3. The City may, in its discretion, send a courtesy notice of the date a decision on a Wireless Permit application will be rendered by the reviewing authority at least 10 calendar days in advance of the decision date to the applicant and to all property owners within 300 feet of the subject site. Decisions will be posted on the City's website the date that the decision is rendered. Notices pursuant to this section shall be provided both for the decision on an application as well as any appeal decision.
4. The reviewing authority's decision may be appealed per Section 17.16.075(B)(2).

G. Required Findings; Decisions; Consultants.

1. Findings Required for Approval.

a. The City Planner or Community Development Director, as the case may be, shall approve an application for a Wireless Permit if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

i. The proposed project complies with all applicable Design and Development Standards or findings have been made for an exception;

ii. The proposed project is in a preferred location, or the findings have been made for an exception;

iii. The proposed project fits within the definition of "small cell facility;"

iv. The applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to radiofrequency emissions; and

v. The required notice(s) have been given in accordance with this title.

b. For requests for exceptions to the small cell Design and Development Standards, the City Planner or Community Development Director, as the case may be, shall approve a request for exception if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

i. A denial of the facility based on the application's noncompliance with a specific provision or requirement would violate state law, federal law, or both; and

ii. That the exception deviates from this Section and/or the Design and Development Standards to the least extent necessary to prevent a violation of federal or state law or both (i.e. there are no viable, technically feasible, and aesthetically equivalent or superior alternatives that comply with this Section and the Design and Development Standards that could prevent the violation of state or federal law).

2. Decisions. Decisions on an application by the City Planner or Community Development Director shall be in writing and include the reasons for the decision. Decisions shall be posted on the City's website and mailed to the applicant. Decisions on appeals shall also be mailed to the person or entity who appealed the decision, if different than the applicant.

3. Independent Consultants. The City Planner or Community Development Director, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any application under this Section. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.

H. **Conditions of Approval.** The City Planner or Community Development Director, as the case may be, shall impose conditions on all permits granted pursuant to this Section. A list of standard conditions for Wireless Permit approvals is maintained by and available from the Planning Division.

DRAFT

Exhibit C

Amendment. Add a row to Table 17.12.020, as is shown below:

Permit Application	Final Authority	Public Hearings
<u>Wireless Permit</u>	<u>City Planner</u>	<u>No</u>

17.12.140 - Appeals of an Action.

A. Appeals by the Public.

1. Right to Appeal.
 - a. Decisions of the Community Development Director or City Planner. Any person may appeal a decision of the Community Development Director and/or City Planner, except for a decision on a Wireless Permit, to the Planning Commission. The Planning Commission's decision may be appealed to the City Council, whose decision shall be final. Appeals of decisions of the City Planner on Wireless Permits are governed by Section 17.16.075(b)(2).
 - b. Decisions of the City Manager on City Antenna Permits. Any person may appeal a decision of the City Manager on City Antenna Permits to the Planning Commission. The Planning Commission's decision may be appealed to the City Council, whose decision shall be final.
 - c. Decisions of the Zoning Administrator, or Planning Commission. Any person may appeal a decision of the Zoning Administrator or Planning Commission to the City Council. The City Council's decision on the appeal shall be final.
2. Time Limits for Filing an Appeal.
 - a. Decisions of the Community Development Director or City Planner. Except for appeals on Wireless Permit decisions, An appeal of a decision made by the Community Development Director or City Planner shall be filed with the Planning Division within 10 consecutive calendar days following the decision sought to be appealed. Appeals of decisions of the City Planner on Wireless Permits are governed by Section 17.16.075(b)(2).
 - b. Decisions of the City Manager on City Antenna Permits. An appeal of a decision made by the City Manager on a City Antenna Permit shall be filed with the Planning Division within 10 consecutive calendar days following the decision sought to be appealed.
 - c. Decisions of the Zoning Administrator or Planning Commission. An appeal of the decision of the Zoning Administrator, or Planning Commission shall be filed in the office of the City Clerk or with the City Planner within 10 consecutive calendar days following the decision sought to be appealed.
 - d. Calculation of the Appeal Period. For the purpose of calculating the appeal period, the first day of the appeal period shall be the day immediately following the day on which the decision occurred. Other than appeals on Wireless Permits, The final day of the appeal period shall be the tenth calendar day following the first day of the appeal period, at 5:00 p.m. If the last day to appeal falls on a holiday or on a Saturday or Sunday, the following business day shall be deemed the last day to appeal.
3. Method of Appeal. Appeals shall be in writing on a form obtained from the Planning Division or City Clerk. The appellant shall State the specific reasons for the appeal. Appeal applications shall include the required fee and public notifications materials. Unless otherwise provided for in Table 17.12.100, Public Hearing Requirements, of this chapter public notification materials shall consist of postage pre-paid envelopes addressed to each person owning property within 300

feet of the property which is the subject of the appeal, as such names appear on the latest County equalized tax assessment role.

B. Appeals by the City Council.

1. **Right to Appeal.** The City Council may appeal any decision of the Zoning Administrator or Planning Commission by calling up the decision for consideration by the City Council, in accordance with Subsection (B)(3) of this section.
2. **Time Limits for Appealing a Decision.** An appeal by the City Council shall be made by the time the City Council receives and files the official transmittal of the decision on an application, through minutes, action memorandum or otherwise, by the body having original jurisdiction over the matter.
3. **Method of Appeal.** Appeals by the City Council shall be by a majority vote of the City Council at a regular or adjourned regular City Council meeting.

C. Public Notice of the Appeal. Notice of the public hearing on the appeal shall be provided as required in Section 17.12.100, Public Hearing and Notification, of this title. As indicated in Subsection (D) of this section, Time Limit for Hearing an Appeal, stamped envelopes for mailing the public hearing notices shall be provided by the appellant.

D. Time Limit for Hearing an Appeal. Public hearings on appeals shall be held within 60 days of the City Clerk or Planning Division's receipt of a completed appeal application. The City Clerk shall notify the applicant, in writing, of the date established for the public hearing within 10 days of receipt of a completed appeal application. The appellant, or applicant if the City Council is the appellant, must provide the City with stamped envelopes for public notification, by 20 days prior to the scheduled hearing on the appeal, or the appeal shall be taken off the City Council's calendar and the appellant shall have waived any and all rights to such appeal.

E. Scope of Review. The body hearing the appeal shall not be limited to the issues raised on the appeal, but rather shall be entitled to review new evidence and to consider all elements of the appealed action. At the close of the public hearing on the appeal, the appellate body may reverse, affirm, revise or modify original action on the application being appealed.

F. Effective Date of Appealed Actions. Please refer to Section 17.12.130, Effective Date of Decision on an Action, of this chapter, Effective Date of Decision.

(Ord. 1172 § 3 (part), 1996)

**CITY OF SAN CLEMENTE (THE “CITY”)
DESIGN AND DEVELOPMENT STANDARDS (“STANDARDS”)
FOR SMALL CELL FACILITIES**

SECTION 1. PURPOSE. The purpose of these Design and Development Standards is to establish aesthetic and development criteria for small wireless facilities.

SECTION 2. AUTHORITY. Adoption of these Standards and modifications thereof shall be made by resolution of the City Council.

SECTION 3. DEFINITIONS. The definitions set forth in Section 17.88 of the Municipal Code are incorporated by reference into these Standards.

SECTION 4. GENERAL DESIGN AND DEVELOPMENT STANDARDS. The following design and development standards shall apply to all small wireless facilities:

A. Visual Criteria.

1. Generally. Facilities shall be sited to minimize view impacts to surrounding properties and shall be designed such that the least visible means possible is used.
2. Height. Except as otherwise provided herein, the height of the adjacent zone or 10% taller than the existing support structure or adjacent infrastructure most similar to the support structure if a new support structure is required, whichever is taller.
3. Size.
 - a. The size of all small wireless facilities shall not exceed the size limitations in these standards and shall never exceed the size limits in the definition of a “small wireless facility” as defined in the City of San Clemente Municipal Code.
 - b. Unmetered electric service shall be used wherever feasible. When unmetered service is not feasible, the smallest electric meter and disconnect available shall be used, unless placed in an underground vault.
 - c. To maintain visual consistency for various types of small wireless facilities, Section C contains additional size limitations for particular types of small wireless facility installations (e.g. streetlight pole, utility pole, etc.).

4. **Stealthing.** Small cell facilities shall be stealthed utilizing the applicable methods below and the design criteria in Section C of these Standards. Where these stealthing methods are not possible, the applicant must request an exception to the criteria, with justification for why the exception is needed as required in Section F, Exceptions.:
 - a. All pole-mounted equipment, including antennas, and radios, shall be screened from view using shrouds or other enclosures.
 - b. The finish of all screens, shrouds, and equipment enclosures mounted to lightpoles or utility poles shall match that of the structure to which is affixed including color and texture and shall not be reflective.
 - c. Equipment not mounted to or incorporated into the pole shall be placed underground.
 - d. Where a pedestal equipment enclosure is utilized, the enclosure shall be integrated into the design of the pole and utilize the same finishes including color and texture.
 - e. Where an exception is requested and granted for above-ground equipment that is not pole-mounted, other screening methods shall be used, such as decorative enclosures, landscape screening, or placement in an inconspicuous location.
 - f. Cabling and wiring shall be run internally within all poles. Where it is not technically feasible to run cabling and wiring internally (as in wood utility poles), then all cabling and wiring shall be within a conduit affixed directly to the face of the pole for much of the length of the cable as possible. The conduit and visible cabling shall be painted and textured to match the pole as closely as possible.

B. Location.

1. **Preferred Locations.** The following locations are preferred:
 - a. Placement on existing structures on private property in commercial and industrial zones.

- b. Mounted on existing or replacement infrastructure such as streetlights and utility poles in the right of way adjacent to commercial and industrial zones.
 - c. New structures on private property in commercial and industrial zones.
2. Prohibited Locations. Wherever possible, the following locations shall be avoided. If the following locations cannot be avoided, the applicant must request an Exception to the criteria, with justification for why the Exception is needed as required in Section F, Exceptions.
- a. New poles (i.e. not an existing or replacement lightpole, utility pole, or similar infrastructure) in the right of way.
 - b. Location of antennas directly at window/door height of adjacent buildings within 200 feet, unless the facility is entirely screened from view of the affected building.
 - c. Within 100 feet of a historic property, as designated on the City's list of historic resources, unless the facility is not visible from the right of way directly abutting the historic property.
 - d. Strand-mounted facilities.
 - e. Within 200 feet of another existing, approved, or planned (for which application has been made to the City) wireless telecommunications facility, as measured from the antenna structure, where existing (or replacement) poles are utilized. Where a new pole is required, the minimum separation to any other existing or permitted wireless telecommunications facility is 300 feet.
 - f. Within 100 feet of residential or mixed-use property, as measured from the property line.
 - g. Within 500 feet from existing public or private K-12 schools, as measured from the property line.
 - h. Any location within a Very High Fire Hazard Severity Zone, as designated by the Orange County Fire Authority.

- i. Within scenic vistas/corridors as defined in the San Clemente General Plan and Coastal Land Use Plan, except when located on existing or replacement infrastructure and where the facility increases the height of the existing infrastructure by no more than 10 percent.
 - j. Attached to historic structures, as designated on the City's list of historic resources.
 - k. Generators are not permitted in any public or private right of way.
 - l. Wireless facilities are prohibited on traffic signal poles.
- C. **Noise.** Small cells and all associated antennas, accessory equipment and other improvements must comply with all applicable noise control standards and regulations in the San Clemente Municipal Code Chapter 8.48 and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable zone.
- D. **Lights.** All streetlights and streetlight fixtures must be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way in a manner consistent with any other standards and specifications by the as identified or required by the City Engineer. All antennas, accessory equipment and other improvements with indicator or status lights must be installed in locations and within enclosures such that indicator or status lights are not visible from adjacent properties.
- E. **Landscaping.** Removal of trees/landscaping to accommodate facilities is not permitted unless replaced with like kind/size or better in a ROW location deemed acceptable by the City Planner. Removal of trees/landscaping to accommodate facilities in the ROW is not permitted unless replaced with like kind/size or better in a ROW location deemed acceptable by the City Planner or City Engineer. Landscaping shall be used to screen ground-mounted equipment wherever possible.
- F. **Safety.** All wireless facilities in the right-of-way, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the right-of-way; impede the flow of vehicular or pedestrian traffic; impair the primary use and purpose of poles/signs/traffic signals or other infrastructure; interfere with outdoor dining areas or emergency facilities; or otherwise obstruct the accessibility of the right-of-way. Further, all wireless facilities and

associated equipment in the right-of-way shall comply with Americans with Disabilities Act (ADA) requirements.

- G. **Curb Setback Requirements.** There are no specific curb setbacks. However, all facilities must maintain minimum sidewalk clearances. Within pedestrian districts (as designated within Specific Plans or overlays) the minimum resulting sidewalk shall not be less than 10 feet or less than the existing sidewalk width, whichever is smaller.

SECTION 5. SPECIFIC DESIGN AND DEVELOPMENT STANDARDS. The following design and development standards shall apply for specific types of small cell facilities.

- A. **Streetlight Poles.** For existing, replacement, or new streetlights (note: new streetlights require approval of an Exception).
1. All antennas and pole-mounted equipment shall be mounted at the top of a pole within a shroud. Alternatively, if the volume of pole-mounted equipment is larger than can be accommodated within the shroud at the top of the pole, a decorative pole-base shroud can be used in conjunction with a shrouded antenna(s) at the top of the pole. Antenna and equipment “backpacks” installations are not permitted.
 2. The diameter of wireless facilities mounted at the top of a light pole shall be as close to the pole’s diameter as technically feasible, not to exceed 18 inches, unless decorative elements dictate otherwise. The size of a decorative base-shroud shall be as small as technically feasible and the diameter shall not exceed 250 percent of the pole diameter at the base of the pole and shall not exceed 42 inches in height.
 3. The maximum height of wireless facilities mounted at the top of a lightpole is 72 inches from the top of the existing pole when no base equipment shroud is proposed. The maximum height of wireless facilities mounted at the top of a lightpole where a base-shroud is used shall be 36 inches from the top of the existing pole. In the case of new lightpoles, the height of the “existing pole” shall be the same as the height of the nearest lightpole in the vicinity.
 4. Wireless facilities and shrouds shall match the color and appearance of the streetlight pole to reduce visual impacts and shall not contain any reflective finishes.

5. New or replacement streetlight poles shall match the design (color, dimensions, height, style, and materials) of the existing poles in the vicinity to the greatest extent feasible. In no case shall the diameter of a new or replacement streetlight pole exceed 18 inches.
6. Other than conduit and pole-base shrouds and enclosures, pole-mounted equipment shall be a minimum of eight feet above finished grade.

B. Utility Poles. For existing and replacement utility poles.

1. All antennas and radio relay units (RRUs) shall be mounted at the top of a pole in a shroud, unless the antenna itself is camouflaged to appear as a part of the pole, then the antenna itself need not be shrouded. Alternatively, if the volume of RRUs is larger than can be accommodated within the shroud at the top of the pole, stacked RRUs mounted as closely to the pole as possible are permitted.
2. The wireless facility diameter shall be as close to the pole's diameter as technically feasible.
3. The maximum height of utility pole facilities is limited to a 10% increase in the existing pole height, or the minimum required to comply with California Public Utilities Commission (CPUC) General Orders, whichever is greater.
4. All installations on utility poles shall fully comply with the CPUC General Orders. None of these standards are meant to conflict with or cause violation of any CPUC General Order.
5. Other than conduit and pole-base shrouds and enclosures, pole-mounted equipment shall be a minimum of eight feet above finished grade.

C. Slimline poles. A new slimline pole to support a small cell facility is prohibited unless an exception is approved by the City.

1. All antennas, shrouds, RRUs, and conduit shall be incorporated into the pole design. Antennas and equipment shall not be mounted to the side of the pole or on a mid-pole arm.
2. Slimline poles shall be designed to resemble existing poles near the subject location, including size, height, color, materials, style, and pole distribution and spacing. In no case

shall the diameter of a new slimline pole exceed 18 inches.

3. The height of slimline poles including the antenna and shroud shall be no greater than 35 feet or 10% taller than other similar poles not already containing small wireless facilities in the vicinity, whichever is greater.
4. Other than conduit and pole-base shrouds and enclosures, pole-mounted equipment shall be a minimum of eight feet above finished grade.

D. Building-mounted facilities. For facilities mounted on an existing building.

1. Building-mounted facilities shall comply with the height limits for the zone, except where this would conflict with applicable state or federal regulation.
2. Building-mounted antennas shall be stealthed to the maximum extent feasible. Stealthing techniques could include mounting behind a roof-parapet or other enclosure, or painting antennas to match the building. Modifications to the facades of buildings in certain zones may require additional discretionary approvals.
3. Equipment enclosures shall be screened to the greatest extent feasible.

SECTION 6. EXCEPTIONS. For the City to grant an exception to one or more of these Standards pursuant to Zoning Code Section 17.16.075E, the Applicant must provide substantial evidence in their written application materials including, but not limited to, the following:

- A. For exceptions to location criteria: As required by the application form, an analysis of at least three alternative sites within 500 feet of the proposed location.
- B. For exceptions to stealthing or design criteria: If available, an analysis of at least three alternative designs.

Wireless Permit Standard Conditions

Conditions applicable to all Wireless Permits

1. *Code Compliance.* The Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of rights-of-way, as applicable.
2. *Permit Duration.* A Wireless Permit shall be valid for a period of ten (10) years, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such Permit shall automatically expire, unless an extension or renewal has been granted. A person holding a Wireless Permit must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least ninety (90) days prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.
3. *Timing of Installation.* The installation and construction authorized by a Wireless Permit shall begin within one (1) year after its approval, or it will expire without further action by the City. This period may be extended at the City Planner's discretion if good cause is shown. The installation and construction authorized by a Wireless Permit shall conclude, including any necessary post-installation repairs and/or restoration to the ROW, within thirty (30) days following the day construction commenced.
4. *Commencement of Operations.* The operation of the approved facility shall commence no later than six (6) months after the completion of installation, or the Wireless Permit will expire without further action by the City. This period may be extended at the City Planner's discretion if good cause is shown.
5. *Inspections; Emergencies.* The City or its designee may enter onto the facility area to inspect the facility upon forty-eight (48) hours prior notice to the Permittee. The Permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The city shall make an effort to contact the Permittee prior to disabling or removing any facility elements, but in any case shall notify Permittee within twenty-four (24) hours of doing so.

6. *Contact.* The Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a 24-hour emergency phone number.
7. *Insurance.* Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of \$5 million per occurrence for bodily injury and property damage and \$6 million general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy.
8. *Indemnities.* The Permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the city or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the city's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the Permittee or, if applicable, the property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the city becomes aware of any such actions or claims the city shall promptly notify the Permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or Permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
9. *Adverse Impacts on Adjacent Properties.* Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility. The Permittee shall, at its sole cost and expense, repair and restore any and all damages to public and private properties that result from any activities performed in connection with the installation, maintenance, or repair of a small wireless facility in the public right of way.
10. *Noninterference.* 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 permitted activity or encroachment, 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 a Wireless Permit, 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 in the public rights-of-way to be affected by Permittee's facilities.

11. *General Maintenance.* The site and the facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on facilities must be removed at the sole expense of the Permittee within forty-eight (48) hours after notification from the City.
12. *RF Exposure Compliance.* All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, a qualified expert chosen by the City must conduct on-site post-installation RF emissions testing, at Permittees sole cost and expense to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
13. *Testing.* Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:00 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
14. *Modifications.* No changes shall be made to the approved plans without review and approval in accordance with applicable federal, state, and local regulations.
15. *Abandonment.* If a facility is not operated for a continuous period of ninety (90) days, the Wireless Permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the ninety (90) day period (i) the City Engineer has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation or the Permittee has notified the City Engineer of its intent to vacate the site, the Permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the City Engineer. The Permittee shall provide written verification of the removal of the facilities within thirty (30) days of

the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at Permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned, but will not be effective for the entirety thereof until all users cease use thereof.

16. *Encourage Collocation.* Where the facility site is capable of accommodating a collocated facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow collocation of third party facilities, provided the parties can mutually agree upon reasonable terms and conditions.
17. *Records.* The Permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the Permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the City, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the Permittee.
18. *Attorney's Fees.* In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.
19. *Permit Revocation.* Any Wireless Permit may be revoked in accordance with the provisions and procedures in this Wireless Permit condition. The City Planner may initiate revocation proceedings when the City Planner has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before any public hearing to revoke a permit pursuant to this condition, the City Planner must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A wireless permit may be

revoked only by the City Council after a duly notice public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with one or more applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the City Planner shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

Conditions Specifically for Facilities in the ROW, In Public Utility Easements, and on Private Streets

20. *No Right, Title, or Interest.* The permission granted by a Wireless Permit shall not in any event constitute an easement on or an encumbrance against the right-of-way. No right, title, or interest (including franchise interest) in the right-of-way, or any part thereof, shall vest or accrue in Permittee by reason of a Wireless Permit or the issuance of any other permit or exercise of any privilege given thereby.
21. *No Possessory Interest.* No possessory interest is created by a Wireless Permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that City has given to Permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a Wireless Permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.
22. *Site License Agreement.* Prior to any work in the public right-of-way on City-owned utilities/poles, a fully executed license agreement for use of the subject site, shall be in place between the City and the wireless carrier and/or operator of the wireless telecommunications facility. To the extent permitted by law, the applicant shall be responsible for any City Attorney cost associated with review and approval of the license agreement. This permit is not a substitute for such agreement.
23. *Encroachment Permits Required.* Prior to any work in the public right-of-way, the applicant shall submit for and obtain and Encroachment Permit to cover the inspection of the actual work in the public right-of-way. The public sidewalk shall remain open at all times of construction, unless otherwise approved by the City Engineer.

24. *Conflicts with Improvements.* For all facilities located within the ROW, the Permittee shall remove or relocate, at its expense and without expense to the city, any or all of its facilities when such removal or relocation is deemed necessary by the city by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way. Relocation shall occur within 90 days after receiving notification from the City. Relocations and modifications are subject to applicable federal, state, and local regulations at the time the modification or relocation is required.
25. *Street Re-paving.* Prior to issuance of any Encroachment Permit, if it is determined that proposed work involves cutting into existing street paving that is subject to the City's Moratorium Policy, the City Engineer shall establish repair standards which may include repaving the entire width of the street in the area of the proposed work.
26. *As-Built Drawings.* After installation of the facility. As-built drawings shall be in an electronic format acceptable to the City Engineer.
27. *Annual Certification.* Each year on January 30, the applicant shall be responsible to submit an affidavit which shall certify: (1) the facility permitted by this Wireless Permit remains in use; and (2) that the facility remains covered by insurance as required in these conditions. For facilities not still in use, see "Abandonment" in these conditions of approval. Such annual certification may be combined with the certification for other small wireless telecommunications facilities in the right-of-way from the same wireless carrier or facility operator.