

CITY OF TORRANCE	Wireless Policy Number 1
CITY COUNCIL POLICY	
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GENERAL SUBJECT: SMALL WIRELESS FACILITIES	

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SECTION 1. GENERAL PROVISIONS

SECTION 1.1. PURPOSE AND INTENT

- (a) On September 27, 2018, the Federal Communications Commission (“FCC”) adopted a *Declaratory Ruling and Third Report and Order*, FCC 18-133 (the “*Small Cell Order*”), in connection with two informal rulemaking proceedings entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84. In general, the *Small Cell Order*: (1) restricted the fees and other compensation state and local governments may receive from applicants; (2) required all aesthetic regulations to be reasonable, no more burdensome than those applied to other infrastructure deployments, objective and published in advance; (3) mandated that local officials negotiate access agreements, review permit applications and conduct any appeals within significantly shorter timeframes; and (4) created new evidentiary presumptions that make it more difficult for local governments to defend themselves if an action or failure to act is challenged in court. This controversial order significantly curtailed state and local authority over wireless and wireline communication facilities reserved to them in the Telecommunications Act. Municipalities, large and small, urban and rural, from all over the United States challenged the *Small Cell Order* in federal court. On August 12, 2020, the United States Court of Appeals for the Ninth Circuit invalidated many aesthetic restrictions in the *Small Cell Order* but largely upheld the other limitations. *Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020). The court specifically invalidated the requirements that aesthetic regulations be objective and no more burdensome than those applied to other infrastructure deployments. See *id.* at 1039–42. Although municipalities may exercise reasonable discretion over small wireless facilities, they must do so within the short shot clock time limits. Municipalities sought review by the United States Supreme Court on the Ninth Circuit’s decision to uphold the FCC’s fee restrictions, but the Supreme Court recently denied that petition. See Order Denying Petition for Certiorari, *Sprint Corp. v. FCC*, No. 20-1354 (June 28, 2021). Thus, the *Small Cell Order*, as modified by the Ninth Circuit’s partial invalidation, is final with no further pending judicial review.
- (b) The City of Torrance intends this Policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City’s jurisdictional and territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City’s local values, which include without limitation the aesthetic character of the City, its

neighborhoods and community. This Policy is also intended to reflect and promote the community interest by (1) ensuring that an appropriate balance between public and private interests is maintained; (2) protecting the City's visual character from potential adverse impacts and/or visual blight created and/or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.

- (c) This Policy is intended to establish clear procedures for application intake and completeness review. The City Council finds that chronically incomplete applications significantly contribute to unreasonable delay and create barriers to infrastructure deployment. Chronically incomplete applications unfairly prejudice other applicants who may be prepared to submit complete applications for infrastructure in the same or substantially the same location. Chronically incomplete applications also unfairly prejudice the City's ability to act on such applications within the "presumptively reasonable" timeframes established by the FCC. The provisions in this Policy afford applicants and City staff opportunities for direct, real-time communication about completeness issues to mitigate incomplete applications prior to submittal. The provisions in this Policy also encourage applicants to timely respond to incomplete notices.
- (d) This Policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California state law.

SECTION 1.2. GENERAL DEFINITIONS

- (a) **Undefined Terms.** Undefined phrases, terms or words in this section will have the meanings assigned to them in 1 U.S.C. § 1, as may be amended or superseded, and, if not defined therein, will have their ordinary meanings. If any definition assigned to any phrase, term or word in this section conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control. All

references to codified statutes, regulations or other rules shall be deemed to refer to such statutes, regulations or other rules as they may be amended or superseded.

(b) **Defined Terms.**

- (1) **“accessory equipment”** means equipment other than antennas used in connection with a small wireless facility. The term includes “transmission equipment” as defined by the FCC in 47 C.F.R. § 1.6100(b)(8).
- (2) **“amateur station”** means the same as defined by the FCC in 47 C.F.R. § 97.3, which defines the term as “a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.” This term includes amateur radio antennas and related facilities used for amateur radio services.
- (3) **“antenna”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b).
- (4) **“approval authority”** means the City official or appointed/elected body responsible for application review and vested with authority to approve, conditionally approve or deny such applications as provided in this Policy. The approval authority for applications in connection with small wireless facilities shall be the Director.
- (5) **“Code”** means City of Torrance Municipal Code.
- (6) **“collector”** means a roadway designed as intermediate capacity road that provides access between local streets and the arterial street system. Speeds are generally higher than on local streets, on-street parking may be limited in to provide smoother traffic flow, and there are generally one or two moving lanes in each direction. The term “collector” as used in this Policy is defined in the City of Torrance General Plan, Circulation and Infrastructure Element.
- (7) **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g).
- (8) **“concealed”** or **“concealment”** means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include but are not limited to: (1) facade or rooftop mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; (3) equipment cabinets in the public rights-of-way painted or wrapped to match the background; and (4) an isolated or standalone faux-tree.

- (9) “**CPUC**” means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- (10) “**decorative pole**” means any pole that includes decorative or ornamental features, design elements and/or materials for aesthetic purposes.
- (11) “**Director**” means the Community Development Department Director or the Director’s designee.
- (12) “**eligible facilities request**” means the same as defined in 47 U.S.C. § 1455(a)(2), and as interpreted by the FCC in 47 C.F.R. § 1.6100(b)(3).
- (13) “**FAA**” means the Federal Aviation Administration or its duly appointed successor agency.
- (14) “**FCC**” means the “Federal Communications Commission”, as constituted by the Communications Act of 1934, Pub. L: 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.
- (15) “**Fire Safety Authority**” means the City of Torrance Fire Department or the Fire Safety Authority’s designee.
- (16) “**freeway**” means a roadway designed primarily for limited-access, high-speed, divided roads included in the state and federal highway systems. A freeway’s purpose is to carry regional through traffic. The term “freeway” as used in this Policy is defined in the City of Torrance General Plan, Circulation and Infrastructure Element.
- (17) “**historic resource**” means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources or as defined in Code Section 91.50.020(u). The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.
- (18) “**local streets**” means a roadway designed primarily to provide direct access to individual parcels and are not designed for through traffic, but should move traffic toward the nearest collector street. Speeds on local streets are relatively low, on-street parking is usually permitted and are typically two-lane roadways without medians. The term “local streets” as used in this Policy is defined in the City of Torrance General Plan, Circulation and Infrastructure Element.
- (19) “**major arterial**” means a roadway designed to link to corridors such as principal arterials. These arterials can accommodate trips and capacity at a lower level than principal arterials. Direct access to adjacent parcels should be

minimized to maximize speed and limit interference with flow. The term “major arterial” as used in this Policy is defined in the City of Torrance General Plan, Circulation and Infrastructure Element.

- (20) “**ministerial permit**” means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City’s jurisdiction. Ministerial permits may include, without limitation, any building permit, construction and excavation permit, electrical permit, mechanical permit, and/or any similar over-the-counter approval issued by the City’s departments.
- (21) “**minor arterial**” means a roadway designed are intermediate-capacity roadways that provide local access to major commercial and industrial parcels, as well as some regional access. Minor arterials normally have two travel lanes in each direction, may have central medians, and are used to bring together traffic from collector roads. The term “minor arterial” as used in this Policy is defined in the City of Torrance General Plan, Circulation and Infrastructure Element.
- (22) “**OTARD**” means any “over-the-air reception device” subject to 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and certain fixed wireless antennas not greater than one meter in diameter.
- (23) “**personal wireless services**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii).
- (24) “**personal wireless service facilities**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i).
- (25) “**persons entitled to notice**” means all properties and real property owners as shown on the most recent equalized assessment roll within 300 feet from the location where a small wireless facility is proposed measured laterally in both directions and on both sides of the street. Mailed notice will be deemed given to real property owners when sent to the address listed on the most recent equalized assessment roll.
- (26) “**principal arterial**” means a road designed to be a capacity roadway that provides regional access. Direct access to adjacent parcels should be minimized to maximize speed and limit interference with flow. Hawthorne Boulevard, a divided roadway with four travel lanes in each direction over most of its length, is the only roadway designated as a principal arterial. The term “principal arterial” as used in this Policy is defined in the City of Torrance General Plan, Circulation and Infrastructure Element.
- (27) “**prohibited support structure**” means any support structure on which the City prohibits the deployment of wireless facilities, except when authorized as a

preapproved design pursuant to this Policy. Prohibited support structures include decorative poles; traffic signal poles, cabinets or related structures; new, non-replacement wood poles; and any utility pole scheduled for removal within 18 months from the time the approval authority acts on the application for such pole.

- (28) **“public right-of-way”** or **“public rights-of-way”** means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes
- (29) **“RF”** means radio frequency.
- (30) **“Section 6409”** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended or superseded.
- (31) **“shot clock”** means the presumptively reasonable time defined by the FCC in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless service facilities.
- (32) **“small wireless facility”** or **“small wireless facilities”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(f).

SECTION 2. SMALL WIRELESS FACILITIES

SECTION 2.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- (a) **Applicable Facilities.** Except as expressly provided otherwise in this Policy, the provisions in this Policy shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small wireless facilities within the public rights-of-way or on private property within the City’s jurisdictional and territorial boundaries.
- (b) **Small Cell Permit.** All small wireless facilities shall require a “small cell permit” subject to the approval authority’s prior review and approval as further specified below:
 - (1) **Tier 1 Small Cell Permit.** A tier 1 small cell permit shall be required for all small wireless facilities that do not require a tier 2 small cell permit.
 - (2) **Tier 2 Small Cell Permit.** A tier 2 small cell permit shall be required for all small wireless facilities proposed: (i) in a discouraged location pursuant to Section

2.6(c); (ii) on a discouraged support structure pursuant to Section 2.6(g); (iii) without a preapproved design pursuant to Section 2.8; (iv) with a preapproved design pursuant to Section 2.8 but such preapproved design is limited to specific areas pursuant to Section 2.8(c)(1) and the small wireless facility proposal is not located in such specific areas; or (v) that otherwise require a limited exception pursuant to Section 3.

- (c) **Eligible Facilities Requests.** Notwithstanding anything in this Policy to the contrary, this Policy shall not be applicable to eligible facilities requests and/or other applications submitted for approval pursuant to Section 6409.
- (d) **Other Permits and Approvals.** In addition to a small cell permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid small cell permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such small cell permit may be denied without prejudice. Any small cell permit granted under this Policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the small cell permit requirement under Section 2.1(e) does not exempt the same wireless facilities or other infrastructure deployments from any other permits or approvals, which includes without limitation any ministerial permits from the City.
- (e) **Exemptions.** Notwithstanding anything in this Policy to the contrary, this Policy shall not be applicable to the following:
 - (1) wireless facilities operated by the City for public purposes;
 - (2) small wireless facilities installed completely indoors and used to extend personal wireless services into a business or subscriber's private residence, such as a femto cell or indoor distributed antenna system;
 - (3) OTARD antennas;
 - (4) antennas and related transmission equipment used in connection with a duly authorized amateur station; or
 - (5) wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D.

- (f) **Administrative Orders and Regulations.** In addition to the requirements of this Policy, the City Council authorizes the approval authority to adopt such orders or regulations as the approval authority deems necessary or appropriate to protect and maintain public health, safety, welfare and convenience. All small wireless facilities must conform to all applicable orders and regulations issued by the approval authority, unless the approval authority, in its discretion, grants a prior written waiver to deviate, in whole or in part, any such order or regulation. Waivers by the approval authority shall be considered approved or denied on a competitively neutral and nondiscriminatory basis. The approval authority shall develop and publish guidelines to implement any waivers authorized by this section.

SECTION 2.2. SMALL CELL PERMIT APPLICATION REQUIREMENTS

- (a) **Small Cell Permit Application Contents.** The approval authority shall not approve any requests for authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy small wireless facilities except upon a complete and duly filed application consistent with this section and any other written rules or requirements the City or the approval authority may establish from time to time in any publicly-stated format. All applications for a small cell permit must include all the information and materials required in this Section 2.2(a).
- (1) **Application Form.** The applicant shall submit a complete, duly executed small cell permit application on the then-current form prepared by either the Director (if for a small wireless facility located outside the public rights-of-way) or the Director (if for a small wireless facility located within the public rights-of-way).
- (2) **Application Fee.** The applicant shall submit the applicable permit application fee adopted by City Council resolution and any standard public notice fee adopted by City Council resolution, fee schedule or the Code. Batched applications must include the applicable small cell permit application fee for each small wireless facility in the batch. If no small cell permit application fee has been adopted, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the City for its reasonable costs incurred in connection with the application within 10 days after the City issues a written demand for reimbursement. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.
- (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains,

handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all structures within 750 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, either as approved by the applicable utility company or in a preliminary form if an approved plan is not yet available, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders; and (v) include engineered traffic control plans that show the traffic control for the project, drawn in accordance with the latest version of the California Manual on Uniform Traffic Control Devices or City standards by a registered California civil engineer or traffic engineer with the preparer's stamp and signature shown on the traffic control plans.

- (4) **Site Survey.** For any small wireless facility proposed to be located within the public rights-of-way, the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer prior to January 1, 1982, or a California licensed or registered land surveyor. The survey must identify and depict all existing boundaries, encroachments and other structures within 50 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.
- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the small wireless facility from a vantage point approximately than 50 feet from the proposed support structure or location.
- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the

applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a small cell permit as provided in Section 2.4(e).

- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (8) **Public Notices.** At the time the applicant submits the application, the applicant shall submit a mailing list for all persons entitled to notice, a copy of applicant’s methodology for determining such persons entitled to notice, and any standard public notice fee adopted by City Council resolution, fee schedule or the Code. The applicant shall also submit photographic evidence of the posted public notice required pursuant to Section 2.4(a).
- (9) **Regulatory Authorization.** The applicant shall submit evidence of the applicant’s regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.
- (10) **Site Agreement.** For any small wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit a partially-executed site agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City’s form site agreement except as may be indicated on the form itself. Any unpermitted changes to the City’s form site agreement shall be deemed a basis to deem the application incomplete. Refusal to accept the terms and conditions in the City’s site agreement shall be an independently sufficient basis to deny the application.
- (11) **Title Report and Property Owner’s Authorization.** For any small wireless facility proposed to be installed on any private property not owned or controlled

by the City, the applicant must submit: (i) a title report issued within 30 days from the date the applicant filed the application; and (ii) if the applicant is not the property owner, a written authorization signed by the property owner identified in the title report that authorizes the applicant to submit and accept a small cell permit in connection with the subject property.

(12) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer licensed by the State of California for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer(s) that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits.

(13) **Underground Service Alert Membership.** The applicant shall submit evidence that applicant is a member in good standing with the Underground Service Alert of Southern California ("**DigAlert**").

(b) **Additional Requirements.** The City Council authorizes the approval authority to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the approval authority finds necessary, appropriate or useful for processing any application governed under this Policy. All such requirements and materials must be in written form and publicly stated to provide all applicants with prior notice.

SECTION 2.3. SMALL CELL PERMIT APPLICATION SUBMITTAL AND REVIEW

(a) **Requirements for a Duly Filed Application.** Any application for a small cell permit will not be considered duly filed unless submitted in accordance with the requirements in this Section 2.3(a).

(1) **Submittal Appointment.** Unless the approval authority establishes an alternative submittal procedure pursuant to Section 2.3(d), all applications must be submitted to the City at a pre-scheduled appointment with the approval authority. Applicants may submit one application per small wireless facility up to a maximum of five separate applications for small wireless facilities together as a batched application per appointment as provided in Section 2.3(c). Applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project. The approval authority shall use reasonable efforts to

provide the applicant an appointment within five working days after the approval authority receives a written request from a potential applicant. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed, whether the City retains, returns or destroys the materials received.

- (2) **Pre-Submittal Conference.** The City strongly encourages, but does not require, applicants to schedule and attend a pre-submittal conference with the approval authority for all proposed projects that involve small wireless facilities. A voluntary pre-submittal conference is intended to streamline the review process through informal discussion between the applicant and staff that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments and/or divisions responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The approval authority shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.
- (b) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this Policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the approval authority within 60 calendar days after the approval authority deems the application incomplete in a written notice to the applicant. The approval authority, in the approval authority's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 60th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control. As used in this Section 2.3(b), a "substantive response" must include the materials identified as incomplete in the approval authority's notice.
- (c) **Batched Applications.** Applicants may submit up to five individual applications for a small cell permit in a "batch" to be reviewed together at the same time; provided, however, that (i) all small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type; (ii) each application in a batch must meet all the requirements for a complete application, which includes without limitation the

application fee for each application in the batch; (iii) if any individual application within a batch is deemed incomplete, the entire batch shall be automatically deemed incomplete; (iv) if any application is withdrawn or deemed withdrawn from a batch, all other applications in the entire batch shall be automatically deemed withdrawn; and (v) if any application in a batch fails to meet the required findings for approval, the entire batch shall be denied in the manner described in Section 2.4(g).

- (d) **Additional Procedures.** The City Council authorizes the approval authority to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the approval authority deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.
- (e) **Peer and Independent Consultant Review.** The City Council authorizes the approval authority to, in the approval authority's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the approval authority in connection any permit application. The approval authority may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (i) permit application completeness and/or accuracy; (ii) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (iii) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (iv) whether and to what extent a proposed project will comply with applicable laws; (v) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and (vi) any other issue identified by the approval authority that requires expert or specialized knowledge, which includes, without limitation, any issues related to an exception requested by the applicant pursuant to Section 3. The approval authority may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant. Subject to applicable law, in the event that the approval authority elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the City a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the approval authority. The approval authority may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. If the deposit exceeds the total costs for

consultant's services, the approval authority shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the approval authority. If the reasonable costs for the independent consultant's services exceed the deposit, the approval authority shall invoice the applicant for the balance. The City shall not issue any building permit or construction and excavation permit to any applicant with any unpaid invoices.

SECTION 2.4. APPROVALS AND DENIALS; NOTICES

- (a) **Posted Public Notice.** Concurrently with submitting an application for either a tier 1 or tier 2 small cell permit, the applicant shall: (1) post notice on the proposed project site in a location near to and visible from the public rights-of-way and (2) provide the Community Development Department with photographic evidence that such notice has been posted. For a tier 1 small cell permit application, the applicant is responsible for maintaining, replacing and updating the sign as necessary for not less than 10 days from the date the application is submitted or until the approval authority acts on the application (whichever occurs last). For a tier 2 small cell permit application, the applicant is responsible for maintaining, replacing and updating the sign as necessary during the duration of the application review process until the approval authority acts on the application. The sign must be updated by the applicant with the application number assigned to the application by the Community Development Department within three business days following such assignment of an application number. The sign shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for the duration of the notice period. The sign shall be at least two feet wide by three feet tall. The sign shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, pedestrians or other users in the public rights-of-way. The City encourages applicants to consult with the Community Development Department on placement locations to avoid any potential hazards.
- (b) **Mailed Public Notice.** Prior to any approval, conditional approval or denial of a tier 2 small cell permit, the City shall mail public notice to all persons entitled to notice.
- (c) **Public Notice Contents.** In addition to any other requirements, all notices required under Sections 2.4(a) and (b) shall include: (1) a general project description with photo simulations; (2) the applicant's identification and contact information as provided on the application submitted to the City; (3) contact information for the approval authority; and (4) a statement that the FCC requires the City to act on small cell permit applications, which includes any administrative appeals, in 60 days for attachments to existing structures and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review. For a tier 1 small cell permit application, the notice shall also include a statement that the approval authority will act on the application without a public hearing. For a tier 2 small cell permit application, the notice shall also include a statement that the approval

authority will act on the application without a public hearing but will accept written public comments that evaluate the application for compliance with the standards in Section 2.6 and Section 2.7.

- (d) **Administrative Review.** For a tier 1 small cell permit application, the approval authority shall approve, conditionally approve or deny a complete and duly filed tier 1 small cell application over-the-counter without a public hearing. For a tier 2 small cell permit application, not less than 10 calendar days after the City mails the public notice required in Section 2.4(b), the approval authority shall approve, conditionally approve or deny a complete and duly filed tier 2 small cell permit application without a public hearing.
- (e) **Required Findings.** The approval authority may approve or conditionally approve a complete and duly filed application for a small cell permit when the approval authority finds:
 - (1) the proposed project qualifies as a “small wireless facility” as defined by the FCC;
 - (2) the proposed project will not impair the integrity and character of the zoning district in which it is to be located;
 - (3) the subject site is physically suitable for the proposed project;
 - (4) the proposed project will be compatible with existing and proposed future land uses within the zoning district and the general area in which the proposed use is to be located;
 - (5) the proposed project will encourage and be consistent with the orderly development of the City as provided for in the General Plan and any applicable Specific Plan or Redevelopment Plan;
 - (6) the proposed location, size, design, and operating characteristics of the proposed project would not be detrimental to the public interest, health, safety, convenience or welfare;
 - (7) the proposed project will not produce any damage or nuisance from noise, smoke, odor, dust or vibration or hazard from explosion, contamination or fire;
 - (8) the applicant has shown that it can obtain any wireline communications and electrical service connections necessary to operate the small wireless facility and the project plans show the proposed route for all such connections between their source and the small wireless facility;

- (9) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
- (10) all requirements for public notices for the application have been provided by the applicant.

For any complete tier 1 small cell permit application that the approval authority verifies has met all of the requirements of Section 2.1(b), the approval authority shall presume that the proposed project also complies with the findings required under Sections 2.4(e)(2), (3), (4), (5) and (6). No such presumption shall be applicable to the required findings under Sections 2.4(e)(1), (7), (8), (9) and (10).

- (f) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or state laws, nothing in this Policy is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any permit application governed under this Policy as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, the Code, and/or this Policy.
- (g) **Decision Notices.** Within five calendar days after the approval authority acts on a small cell permit application or before the shot clock expires (whichever occurs first), the approval authority shall notify the applicant by written notice. If the approval authority denies the application (with or without prejudice), the written notice must contain the reasons for the decision.
- (h) **Appeals.** Any decision by the approval authority shall be final and not subject to any administrative appeals. Nothing in this section or this Policy is intended to prevent or discourage an interested persons or entities from providing the City with information that may be used to initiate permit revocation proceedings.

SECTION 2.5. STANDARD CONDITIONS OF APPROVAL

- (a) **Standard Conditions.** Except as may be modified in subsection (b), all small cell permits issued under this Policy shall be automatically subject to the conditions in this Section 2.5(a) and these conditions shall be deemed to be incorporated by reference to any small cell permit approved or deemed approved by law.
 - (1) **Permit Term.** This small cell permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this small wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless

expressly provided otherwise in such permit or approval or required under federal or state law.

- (2) **Permit Renewal.** The permittee may apply for permit renewal not more than one year before this small cell permit expires. The permittee must demonstrate that the subject small wireless facility complies with all the conditions of approval associated with this small cell permit and all applicable provisions in the Code and this Policy that exist at the time the decision to renew or not renew is rendered. The approval authority may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Code, this Policy or other applicable law. Upon renewal, this small cell permit will automatically expire 10 years and one day from its issuance.
- (3) **Approved Plans.** Any construction plans submitted to the Community Development Department shall incorporate the small cell permit, together with all conditions of approval and the photo simulations associated with the small cell permit (collectively, the “**Approved Plans**”). The permittee must construct, install and operate the small wireless facility in substantial compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the small wireless facility, shall be subject to the approval authority’s prior review and approval.
- (4) **CPUC GO-159A Certification.** Within 15 business days after the City issues a small cell permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk and Director.
- (5) **Build-Out Period.** This small cell permit will automatically expire 12 months from the approval date (the “build-out period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, support structure or the small wireless facility and/or its use. The permittee may request in writing, and the City may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for a six-month extension. If the build-out period and any extension finally expire, this small cell permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- (6) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved under this Policy or deemed-approved by law, or prior to the final inspection

required for such a small wireless facility, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data, RF compliance and radiation report, and site photographs.

- (7) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this small cell permit. At all times, the permittee shall keep the site area free from all litter and debris at all times. The permittee shall regularly inspect the small wireless facility to determine whether any maintenance is needed. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism on the small wireless facility within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (8) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“laws”) applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this small cell permit, which includes without limitation any laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the approval authority. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee’s obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Code, this Policy, any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee’s obligation to comply in all respects with all applicable provisions in the Code, this Policy, any permit, any permit condition or any applicable law or regulation.
- (9) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee’s or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site and/or small wireless facility. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Code. The

restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The approval authority may issue a stop work order for any activities that violates this condition in whole or in part. If the approval authority finds good cause to believe that ambient noise from a small wireless facility or related equipment violates applicable provisions in the Code, the approval authority, in addition to any other actions or remedies authorized by the small cell permit, the Code or other applicable laws, may require the permittee to commission a noise attenuation study by a qualified professional to evaluate the small wireless facility's compliance.

- (10) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the small wireless facility and related equipment and/or improvements to ensure compliance with this small cell permit and all associated conditions upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (11) **Permittee's Contact Information.** At all times relevant to this small cell permit, the permittee shall keep on file with the City basic contact and site information. This information shall include, but is not limited to, the following: (A) the name, physical address, notice address (if different), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) site operator, (ii) equipment owner, (iii) site manager and (iv) agent for service of process; (B) the small wireless facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator, equipment owner and site manager; and (C) a toll-free telephone number to the small wireless facility's network operations center where a live person with power-down control over the small wireless facility is available 24 hours-per-day, seven days-per-week. Within 10 business days after a written request by the City, the permittee shall furnish the City with an updated form that includes all the most-current information described in this condition.
- (12) **Indemnification.** The permittee and, if applicable, the property owner upon which the small wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses

and from any and all claims, demands, law suits, writs and other actions or proceedings (“claims”) brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City’s approval of this small cell permit, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee’s or its agents’, directors’, officers’, employees’, contractors’, subcontractors’, licensees’ or customers’ acts or omissions in connection with this small cell permit or the small wireless facility. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that 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 the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee’s indemnification obligations under this condition are a material consideration that motivates the City to approve this small cell permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this small cell permit.

(13) **Insurance.**

(A) **Policies and Limits.** At all times relevant to this small cell permit, the permittee shall obtain and maintain insurance policies as follows:

- (1) **Commercial General Liability Insurance.** Insurance Services Office Form CG 00 01 covering Commercial General Liability (“CGL”) on an “occurrence” basis, with limits not less than \$2,000,000 per occurrence or \$4,000,000 in the aggregate. If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location. CGL insurance must include coverage for the following: Bodily Injury and Property Damage; Personal Injury/Advertising Injury; Premises/Operations Liability; Products/Completed Operations Liability; Aggregate Limits that Apply per Project; Explosion, Collapse and Underground (“UCX”) exclusion deleted; Contractual Liability with respect to the permit; Broad Form Property Damage; and Independent Consultants Coverage. The policy shall contain no endorsements or provisions limiting coverage for (i) contractual liability; (ii) cross liability exclusion for claims or suits by one insured against another; (iii) products/completed operations liability; or (iv) contain any other exclusion contrary to the conditions in this permit.
- (2) **Automotive Insurance.** Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if permittee has no owned autos,

Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

- (3) **Workers' Compensation Insurance.** The permittee shall certify that it is aware of the provisions of California Labor Code § 3700, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and further certifies that the permittee will comply with such provisions before commencing work under this permit. To the extent the permittee has employees at any time during the term of this permit, at all times during the performance of the work under this permit the permittee shall maintain insurance as required by the State of California, with Statutory Limits.
- (B) **Claims-Made Policies.** If the permittee maintains any required insurance under a claims-made form, the permittee shall maintain such coverage continuously throughout the permit term and, without lapse, for at least three years after the permit term expires so that any claims that arise after the expiration in connection with events that occurred during the permit term are covered by such claims-made policies.
- (C) **Umbrella or Excess Liability Policies.** If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for CGL or automotive insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. Permittee shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- (D) **Additional Insured; Separation of Insureds.** The CGL and automotive insurance policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees as additional insureds. The required insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees.
- (E) **Primary Insurance; Waiver of Subrogation.** The required insurance shall be primary with respect to any insurance programs covering the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees. All policies for the required CGL, automotive and workers' compensation insurance shall provide that the

insurance company waives all right of recovery by way of subrogation against the City in connection with any damage or harm covered by such policies.

- (F) **Term; Cancellation Notice.** The permittee shall maintain the required insurance throughout the permit term and shall replace any certificate, policy, or endorsement which will expire prior to that date. The permittee shall use its best efforts to provide thirty (30) calendar days' prior written notice to the City of the cancellation or material modification of any applicable insurance policy; provided, however, that in no event shall the permittee fail to provide written notice to the City within 10 calendar days after the cancellation or material modification of any applicable insurance policy. The permittee shall promptly take action to prevent cancellation or suspension, reinstate cancelled coverage or obtain coverage from a different qualified insurer.
 - (G) **Certificates.** Before the City issues any permit, the permittee shall deliver to the Director insurance certificates and endorsements, in a form satisfactory to the Director, that evidence all the coverage required above. In addition, the permittee shall promptly deliver complete copies of all insurance policies and endorsements upon a written request by the Director.
 - (H) **Insurer Rating.** Unless approved in writing by the City, all required insurance shall be placed with insurers authorized to do business in the State of California and with a current A.M. Best rating of at least A-:VIII.
- (14) **Performance Bond.** Before the Community Development Department issues any permits required to commence construction in connection with this small cell permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. Prior to any amendment, modification or renewal of the small cell permit, the Director may reevaluate the amount and terms of the performance bond reasonably necessary to cover the

cost to remove the improvements and restore all affected areas and may require the amount of the performance bond to increase or amend the performance bond requirements to reflect the then-current circumstances at the time of amendment, modification or renewal of the small cell permit. The issuer of any performance bond must have a bond rating acceptable to the City's Risk Manager or his/her designee. If the bond rating of the issuer of the performance bond is downgraded below the standards acceptable to the City's Risk Manager or his/her designee, the permittee must furnish a new performance bond acceptable to the Director and the City's Risk Manager or his/her designee within 10 days of such downgrade. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition. The performance bond shall be in addition to any cash deposit or bond required by the City for a construction and excavation permit or other similar permit.

- (15) **Construction and Excavation Permit Deposit.** Notwithstanding anything to the contrary in this Policy, prior to the issuance of a construction and excavation permit by the City Engineer, the permittee shall be required to provide a surety to the City in the form and amount required by Section 74.6.4 of the Code as it may be amended or superseded.
- (16) **Permit Revocation.** Any small cell permit granted under this Policy or deemed approved by the operation of law may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the small wireless 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). Any small cell permit granted under this Policy or deemed approved by operation of law may be revoked only by the City Council after a duly noticed public hearing. Before any public hearing to revoke a small cell permit granted under this Policy or deemed approved by the operation of law, the Director must issue a written notice to the permittee that specifies (i) the small wireless 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). The City Council may revoke a small cell permit when it finds substantial evidence in the written record to show that the small wireless facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the small wireless facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a small cell 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 small cell permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

- (17) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the small cell permit application, small cell permit, the Approved Plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the small cell permit (collectively, “records”). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City’s regular files will control over any conflicts between such City-controlled copies or records and the permittee’s electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.
- (18) **Abandoned Facilities.** The small wireless facility authorized under this small cell permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall apply for a construction and excavation permit and/or any other ministerial permit(s) required to perform the removal, shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities, and shall reimburse the City for all such costs 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs.
- (19) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee’s direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an

appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the City. The permittee shall be responsible to maintain any replacement landscape features for a three-year period after such landscaping has been installed. Notwithstanding anything in this condition to the contrary, the City may agree in a written agreement signed by the permittee to accept an annual in-lieu fee to perform the maintenance work on the permittee's behalf.

- (20) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the small cell permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.
- (21) **Future Undergrounding Programs.** Notwithstanding any term remaining on any small cell permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must also underground its equipment, except the antennas and any approved electric meter or related electric-service equipment required by the electric service provider to remain above ground, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition; provided, however, that the Director may approve an alternative concealment plan for such equipment that complies with the City's then current design regulations. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- (22) **Electric Meter Upgrades.** If the small wireless facility includes a separate or ground-mounted electric meter pedestal and the commercial electric utility provider adopts or changes its rules obviating the need for a separate or

ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for a construction and excavation permits and/or any other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.

- (23) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this small cell permit. If the Public Works Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.
- (24) **RF Exposure Compliance Affirmations.** On or before January 30th during each year that the small wireless facility remains in existence, the permittee shall submit a written affidavit to the Director, signed by an RF engineer familiar with the then-current equipment deployed and operated at the small wireless facility, that affirms, under penalty of perjury, that the installation complies with all applicable FCC rules and regulations for human exposure to RF emissions and will not cause members of the general public to be exposed to RF levels that exceed the maximum permission exposure levels deemed safe by the FCC.
- (25) **Underground Service Alert.** The permittee shall maintain and keep current its membership in DigAlert throughout the term of any small cell permit granted

under this Policy. Prior to any excavation performed in the streets, the permittee shall observe and perform all notice and other obligations required under applicable laws, which includes, without limitation, California Government Code §§ 4216 *et seq.*, as may be amended or superseded.

- (26) **Successors and Assigns.** The conditions, covenants, promises and terms contained in this small cell permit will bind and inure to the benefit of the City and permittee and their respective successors and assigns.
 - (27) **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with this small cell permit or the small wireless facility or other infrastructure approved under this small cell permit, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
 - (28) **City's Standing Reserved.** The City's grant or grant by operation of law of a permit pursuant to this Policy does not waive, and shall not be construed to waive, any standing by the City to challenge any (i) FCC rules or regulations that interpret the Telecommunications Act, the Spectrum Act or (i) any permit issued pursuant to this Policy.
 - (29) **Severable Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (i) such provision or its application to such person, entity or circumstance will be deemed severed from this small cell permit; (ii) all other provisions in this small cell permit or their application to any person, entity or circumstance will not be affected; and (iii) all other provisions in this small cell permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
- (b) **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any small cell permit as the Director deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection (a) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment need for compliance with the Code, this policy, generally applicable health and safety requirements and/or any other applicable laws.

SECTION 2.6. LOCATION REQUIREMENTS

- (a) **Locations.** To assist applicants, staff and the approval authority understand and respond to the community's aesthetic preferences and values, this Section 2.6 describes preferred and discouraged locations and support structures for small wireless facilities.

- (b) **Preferred Locations in the Public Rights-of-Way.** The City requires small wireless facilities in the public rights-of-way to be installed at locations, ordered from most preferred to least preferred, as follows:
 - (1) locations within commercial, industrial or non-residential districts on or along principal arterials;
 - (2) locations within commercial, industrial or non-residential districts on or along major arterials;
 - (3) locations within commercial, industrial or non-residential districts on or along minor arterials;
 - (4) locations within commercial, industrial or non-residential districts on or along collectors;
 - (5) locations within commercial, industrial or non-residential districts on or along local streets;

- (c) **Discouraged Locations in the Public Rights-of-Way.** Applicants shall not propose to install small wireless facilities in a discouraged location unless no alternative site in a preferred location would be technically feasible. If all preferred locations are technically infeasible, the applicant shall use the least-discouraged location. The following locations are discouraged, and ordered from least discouraged to most discouraged:
 - (1) any location on or within 250 feet from a historic resource;
 - (2) any location within the Hillside and Local Coastal Overlay Zone or a designated scenic corridor;
 - (3) locations within residential districts on or along principal arterials;
 - (4) locations within residential districts on or along major arterials;
 - (5) locations within residential districts on or along minor arterials;
 - (6) locations within residential districts on or along collectors;
 - (7) locations within residential districts on or along local streets;

- (8) any location in any district within 750 feet from any structure approved for a residential use.
- (d) **Additional Location Standards in the Public Rights-of-Way.** In addition to all other standards in this Section 2.6, small wireless facilities and all associated antennas, accessory equipment or improvements in the public rights-of-way shall:
- (1) be placed as close as possible to alignment with the property line that divides two parcels abutting the public rights-of-way;
 - (2) not be placed directly in front of any ground-level door;
 - (3) not be placed directly in front of any first- or second-story window;
 - (4) on arterials, be placed as close to mid-block as technically feasible and consistent with the other location requirements in this Policy;
 - (5) not be placed within any clear zone at any intersections;
 - (6) not be placed within any visibility triangle area that crosses a front property line and blocks visibility above 42 inches from grade level;
 - (7) not be placed in any location that obstructs view lines for traveling vehicles, bicycles and pedestrian;
 - (8) not be placed in any location that obstructs views of any traffic signs or signals;
 - (9) not be placed in any location that obstructs illumination patterns for existing streetlights;
 - (10) for new, non-replacement support structures, be placed at least 50 feet from any streetlight, utility pole or other similar support structure.
- (e) **Preferred Locations Outside the Public Rights-of-Way.** The City prefers small wireless facilities outside the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:
- (1) City- owned property;
 - (2) parcels within industrial zones;
 - (3) parcels within commercial zones.
- (f) **Preferred Support Structures in the Public Rights-of-Way.** The City requires small wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:

- (1) existing or replacement streetlight poles owned by Southern California Edison or other similar utility company;
 - (2) existing or replacement wood utility poles;
- (g) **Discouraged Support Structures in the Public Rights-of-Way.** Applicants shall not propose to install small wireless facilities on discouraged support structures in the public rights-of-way unless no alternative site on a preferred support structure in the public rights-of-way would be technically feasible. If all preferred support structures are technically infeasible, the applicant shall use the least-discouraged support structure. The following support structures are discouraged, and ordered from least discouraged to most discouraged:
- (1) new, non-replacement streetlight poles owned by Southern California Edison or other similar utility company;
 - (2) new, non-replacement poles for small wireless facilities;
 - (3) existing, replacement or new, non-replacement streetlight poles owned by the City.
- (h) **Preferred Support Structures Outside the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures outside the public rights-of-way, ordered from most preferred to least preferred, as follows:
- (1) existing buildings or other non-tower structures previously approved for use as a support structure for personal wireless service facilities;
 - (2) other existing buildings or non-tower structures;
 - (3) existing or replacement poles or towers;
 - (4) new, non-replacement towers for small wireless facilities;
- (i) **Prohibited Support Structures.** The City prohibits small wireless facilities to be installed on the following support structures, whether located in the public rights-of-way or not:
- (1) decorative poles;
 - (2) traffic signals, signs, poles, cabinets and related devices;
 - (3) any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the small cell permit application;

- (4) new, non-replacement wood poles;
 - (5) any existing streetlight or similar structure with an existing LS-1 tariff rate that would be converted to an LS-2 or LS-3 tariff rate as a result of the installation; and
 - (6) any new structure that would add an LS-2 or LS-3 tariff rate to the City's infrastructure.
- (j) **Replacement Pole Locations.** All replacement poles must be:
- (1) located as close to the removed pole's location as possible;
 - (2) aligned with the other existing poles along the public rights-of-way; and
 - (3) compliant with all applicable standards and specifications issued by the City, which may include, without limitation, requirements related to aesthetics, materials and safety.

SECTION 2.7. DESIGN STANDARDS

(a) **General Standards.**

- (1) **Noise.** Small wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in Division 4, Chapter 6 of the Code as either may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district.
- (2) **Lights.** Small wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. Any light beacons or lightning arresters shall be included in the overall height calculation. The provisions in this subsection shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy. All new or replacement street lights and street light 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 as identified or required by the approval authority.
- (3) **Landscape Features.** Small wireless facilities shall not displace any existing landscape features unless: (A) such displaced landscaping is replaced with

native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance shall be maintained in a neat and clean condition and kept well-manicured and sufficiently watered. Dead vegetation and litter shall not be allowed to gather. The replacement of dead trees and other vegetation shall be made in conformance with the approved landscaping plan within a reasonable period and must comply with Code Section 75.1.13.

- (4) **Site Security Measures.** Small wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.
- (5) **Fire Safety.** All small wireless facilities shall include (A) a power shut off immediately accessible to fire service personnel, through a Knox box or similar rapid-access system approved by the Fire Safety Authority, upon arrival at the scene of a fire and/or anticipated power surge due to power being turned off or on for any reason; (B) surge protection devices capable of mitigating a direct or partial direct lightning discharge; (C) surge protection devices capable of mitigating significant electrical disturbances that may enter the small wireless facility via conductive cables; (D) at least one-hour fire resistant interior surfaces to be used in the composition of all structures; and (E) monitored automatic fire notification and suppression systems for all small wireless facilities as approved by the applicable Fire Safety Authority.
- (6) **Signage; Advertisements.** All small wireless facilities must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, Occupational Safety and Health Administration or other United States governmental agencies for compliance with RF emissions regulations.
- (7) **Compliance with Health and Safety Regulations.** All small wireless facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) ("**ADA**").

(b) **Small Wireless Facilities in the Public Right-of-Way.**

(1) **Overall Height.** No antenna may extend more than five feet above the support structure plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations, or the maximum height limit for structures in the adjacent applicable zoning district or overlay zone (whichever is less).

(2) **Antennas.**

(A) **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure. If an antenna shroud or radome is technically infeasible, alternative concealment techniques or elements must be employed.

(B) **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume and all antennas may not exceed six cubic feet in volume.

(3) **Accessory Equipment.**

(A) **Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing utilities are primarily located underground; (ii) on the pole or support structure; (iii) integrated into the base of the pole or support structure; or (iv) ground-mounted in a concealed manner. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.

(B) **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Vault lids shall not exhibit logos or commercial advertisements. Applicants shall not be permitted to install an underground vault in a location that: (i) would cause any existing tree to be materially damaged or displaced or (ii) does not comply the City's minimum sidewalk standards and applicable law, which includes without limitation compliance with the ADA.

- (C) **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure.
- (D) **Surface-Mounted Accessory Equipment.** The provisions in this subsection 3(D) are applicable to all surface-mounted and base-mounted accessory equipment in connection with small wireless facilities.
- (i) **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.
- (ii) **Ground-Mounted Accessory Equipment.** On collector roads and local roads, the city prefers ground-mounted accessory equipment to be concealed as follows: (i) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; and (ii) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks. On arterial roads outside underground utility districts, proposed ground-mounted accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets.
- (iii) **Accessory Equipment Volume.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed in a residential district; or (ii) seventeen (17) cubic feet in volume if installed in a non-residential district. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the

non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.

- (iv) **Public Safety; Visibility.** Notwithstanding anything in this subsection 3(D) to the contrary, to promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, no individual ground-mounted accessory equipment cabinet may exceed four feet in height and two feet in length or width. Ground-mounted and base-mounted equipment cabinets shall not have any horizontal flat surfaces greater than 1.5 square inches to prevent litter or other objects left on such surfaces.
- (4) **Streetlights.** Applicants that propose to install small wireless facilities on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.
- (5) **Wood Utility Poles.** Applicants that propose to install small wireless facilities on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.
- (6) **New, Non-Replacement Poles.** Applicants that propose to install small wireless facilities on a new, non-replacement pole must install a new, non-replacement pole substantially similar to the City's standards and specifications for streetlights but without a luminaire and designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole without a luminaire and capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. Such metal or composite pole must be finished to substantially resemble a Marbelite pole in accordance with the City's standards and specifications. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas on a new, non-replacement pole must

be installed above the pole within a single, canister style shroud or radome that tapers to the pole. If an antenna shroud or radome is technically infeasible, alternative concealment techniques or elements must be employed.

- (7) **Encroachments over Private Property.** No small wireless facility, or any antenna, accessory equipment or other improvements associated with a small wireless facility, may extend onto or over any private or public property outside the public rights-of-way without the property owner's prior written consent.
- (8) **Backup Power Sources.** The approval authority may approve secondary or backup power sources on a case-by-case basis. The approval authority shall not approve any permanent fossil-fuel based backup power sources within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.
- (9) **Obstructions; Public Safety.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (F) access to any fire escape.
- (10) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
- (11) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.

- (12) **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet, but the approval authority shall not approve a separate ground-mounted electric meter pedestal.
- (13) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.

(c) **Small Wireless Facilities Outside the Public Right-of-Way.**

- (1) **Overall Height.** Small wireless facilities on private property may not extend more than five feet above the support structure plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations, or exceed the applicable height limit for structures in the applicable zoning district or overlay zone (whichever is less).
- (2) **Setbacks.** Small wireless facilities on private property may not encroach into any applicable setback for structures in the subject zoning district.
- (3) **Backup Power Sources.** The approval authority may approve secondary or backup power sources on a case-by-case basis. The approval authority shall not approve any fossil-fuel generators or other similarly noisy or noxious generators in or within 250 feet from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- (4) **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must be the minimum size necessary to reasonably accommodate the proposed use.
- (5) **Towers, Poles and Other Freestanding Small Wireless Facilities.** All new towers, poles or other freestanding structures that support small wireless facilities must be made from a metal or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated

enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome. If an antenna shroud or radome is technically infeasible, alternative concealment techniques or elements must be employed. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole height shall not exceed the height limit for the applicable zoning district or overlay zone. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches.

(6) **Building-Mounted Small Wireless Facilities.**

- (A) **Preferred Concealment Techniques.** All applicants must propose new non-tower small wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the applicant may propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).
- (B) **Facade-Mounted Equipment.** When small wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve facade-mounted equipment in accordance with this Section 2.7(c)(6)(B). All facade-mounted equipment must be concealed behind screen walls and mounted flush to the facade. The approval authority may not approve "pop-out" screen boxes. Except in industrial zones, the approval authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade.

SECTION 2.8. PREAPPROVED DESIGNS

- (a) **Preface.** To expedite the review process for small cell permit applications, promote uniform aesthetics in the public rights-of-way and encourage collaborative designs among applicants and the City that blend with surrounding environment, the City strongly encourages preapproved designs. This Section 2.8 sets out the process to establish or repeal a preapproved design and the review procedures and findings applicable to these applications.
- (b) **Applications for Preapproved Designs.** This Section 2.8(b) sets out the process and requirements to establish a new preapproved design for use in future

applications for small cell permits. The procedures and requirements are not intended for applications for authorization to place, construct or modify any small wireless facility.

- (1) **Application Form and Content.** The Director shall prepare, publish and maintain an application form for requests to establish a preapproved design. In addition to all other requirements specified by the Director, the application shall include (A) scaled conceptual plans and drawings; (B) photo simulations that depict the proposed preapproved design in typical locations within the City; and (C) an application fee adopted by City Council resolution, or if no preapproved design application fee has been adopted, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the City for its reasonable costs incurred in connection with the application within 10 days after the City issues a written demand for reimbursement. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.
- (2) **Pre-Submittal Conferences.** The Director shall provide prospective applicants with the opportunity to schedule and attend a pre-submittal conference with City staff. The City requires pre-submittal conferences for all applications to establish a preapproved design. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, any latent issues in connection with the proposed preapproved design, such as compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments and/or divisions responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The Director shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.
- (3) **Submittal Appointments.** All applications must be submitted to the Director at a pre-scheduled appointment with the Community Development Department. The Director shall use reasonable efforts to provide the applicant with an appointment within five working days after the Community Development Department receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.

- (4) **Optional Mockup.** The Director, in the Director's discretion, may require an applicant for a preapproved design to erect a full-scale mockup to aid the City's review. The mockup may use actual or replica equipment to show all visible elements. The mockup shall be placed on City-owned property and maintained throughout the preapproval review process.

(c) **Approvals; Denials; Repeals.**

- (1) **Required Findings to Establish a Preapproved Design.** An application for a preapproved design may not be approved unless the proposed preapproved design is found to be (i) in substantial conformance with the applicable design requirements in Section 2.7 and (ii) architecturally compatible with the areas in which the preapproved design would be available. If the findings may be made for some but not all areas within the City, the recommendation for approval may be limited to specific areas identified by the approval authority in its written findings.
 - (2) **Director's Action.** After the Director receives a completed application for a preapproved design, the Director may approve, revise or deny the application for a preapproved design. The Director's action shall not require a noticed public hearing. Approvals or denials by the Director shall be: (i) made in writing; (ii) made available to the applicant and the public; (iii) immediately effective; and (iv) final and not subject to any further appeals.
 - (3) **Repeal.** A preapproved design may be repealed only by the Director in a written statement containing the reasons for the repeal. An application to repeal a preapproved design may be made by the Director on such official's own motion. Nothing in this section is intended to prevent or discourage an interested persons or entities from providing the Director with information that may be used to initiate repeal proceedings.
 - (4) **Consultation with Public Works.** Before the Director approves or repeals a preapproved design, the Director shall consult with the Public Works Director to address impacts on the public rights-of-way, City projects and any related issues.
- (d) **Nondiscrimination.** An established preapproved design may be used by any applicant, whether the applicant originally initiated the preapproval process or not. The Director's decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the preapproved plans. Any other vendor or manufacturer that fabricates a small wireless facility to the standards and specifications in the preapproved design with like materials, finishes and overall quality shall be acceptable as a preapproved design.
- (e) **Modified Findings for Approval.** For any complete small cell permit application using a preapproved design, the Director shall presume that the proposed project

complies with the findings required under Sections 2.4(e)(2), (3), (4), (5) and (6) unless the preapproved design is limited to specific areas pursuant to Section 2.8(c)(1) and the proposed project is not located within such specific areas. No such presumption shall be applicable to the required findings under Sections 2.4(e)(1), (7), (8), (9) and (10).

SECTION 3. SPECIAL EXCEPTIONS FOR FEDERAL OR STATE PREEMPTION

- (a) **Preface.** The provisions in this Section 3 establish a procedure by which the City may grant an exception to the standards in this Policy but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the approval authority shall consider the findings in Section 3(b) in addition to the findings required under Section 2.4(e). Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.
- (b) **Required Findings.** The approval authority shall not grant any limited exception pursuant to this Section 3 unless the approval authority finds all the following:
- (1) the applicant has provided the approval authority with a reasonable and clearly defined technical service objective to be achieved by the proposed small wireless facility;
 - (2) the applicant has provided the approval authority with a detailed written statement that explains why: (A) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or (B) a provision in this Policy, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law;
 - (3) the applicant has provided the approval authority with a written statement that contains a detailed and fact-specific explanation as to why the proposed small wireless facility cannot be deployed in compliance with the applicable provisions in this Policy, the Code, the General Plan and/or any specific plan;
 - (4) the applicant has provided the approval authority with a meaningful comparative analysis with the factual reasons why all alternative locations and/or designs identified in the administrative record (whether suggested by the applicant, the City, public comments or any other source) are not technically feasible or potentially available to reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed small wireless facility;

- (5) the applicant has demonstrated that the proposed location and design is the least non-compliant configuration that will reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed small wireless facility, which includes without limitation a meaningful comparative analysis into multiple smaller or less intrusive facilities dispersed throughout the intended service area;
 - (6) the exception requested by the applicant does not compromise or excuse compliance any fire safety or other public safety standard; and
 - (7) the exception is narrowly tailored such that any deviation from this Policy is only to extent necessary for compliance with federal or state law.
- (c) **Evidentiary Standard.** The applicant shall have the burden to prove to the approval authority that an exception should be granted pursuant to this Section 3. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.
- (d) **Expert Review.** Independent expert and/or consultant review will generally be appropriate when considering an exception request.
- (e) **Legal Review.** Any exception request shall require the consultation of the City Attorney as to the validity and legal justification for the exception.

SECTION 4. VIOLATIONS

Any use or condition caused or permitted to exist that violates any provision in this Policy shall be and hereby is declared a public nuisance and may be subject to summary abatement and citations as set forth in Division 9, Chapter 2, Article 35 of the Code, remedies provided under California Code of Civil Procedure Section 731, or any other remedy available to the City.