



City of Santa Barbara California

PLANNING COMMISSION STAFF REPORT

REPORT DATE: June 3, 2016
AGENDA DATE: June 16, 2016
PROJECT: Wireless Communications Facilities Ordinance
TO: Planning Commission
FROM: City Attorney's Office, (805) 564-5326
 Ariel Calonne, City Attorney
 N. Scott Vincent, Assistant City Attorney *N.S.V.*

I. PURPOSE OF MEETING

The purpose of the meeting is for the Planning Commission to hold a public hearing concerning proposed amendments to the City's Zoning Ordinance regarding the regulation of wireless communication facilities and for the Planning Commission to provide a written recommendation to the City Council regarding the proposed amendments to the City's Zoning Ordinance.

II. EXECUTIVE SUMMARY

The tremendous growth in personal wireless services has created an increased demand for new wireless antennas and equipment. It is expected that carriers will continue to roll out new facilities in Santa Barbara to accommodate the rapidly growing need for increased network capacity and data throughput speed.

Wireless Communication Facilities (WCF) are regulated by federal, state, and local laws. Federal law significantly limits the City's ability to regulate WCFs. Under federal law, a local agency's decisions cannot have the effect of prohibiting the provision of wireless service or unreasonably discriminating among wireless service providers. Also, under federal law, the City may not regulate the placement, construction or modification of wireless communication facilities on the basis of the environmental effects of radio frequency (RF) emissions, so long as the facilities comply with the Federal Communications Commission (FCC) regulations concerning such emissions.

Within these limitations, federal law generally preserves local zoning authority over factors such as height and property line setbacks. In addition, within the public right of way, the City retains the ability to regulate the placement of wireless facilities in order to prevent conflicts with other right of way uses. However, changes to state and federal law continue to erode these abilities.

The City's current ordinance regulating cellular telephone antennas was added to Section 28.94.030 (Uses Permitted in Specific Zones) of Chapter 28.94 (Conditional Use Permits) of the Municipal Code in 1994. The ordinance refers to outdated technology, contains provisions that impermissibly intrude into areas of regulation that are fully occupied by the FCC, and provides

little guidance to decision makers on how to make decisions regarding visual impacts. The City's current ordinance is not an effective means to reasonably regulate wireless facilities deployment in a manner consistent with the City's values and the law.

Changes in state and federal law have made it necessary to update the City's ordinance. The City Attorney's Office has contracted with a law firm that specializes in telecommunications law to draft a modern ordinance that will enable the City to effectively regulate the installation and modification of WCFs within the frame work of state and federal law.

The City Attorney's Office and our outside counsel, Telecom Law Firm, will present the proposed Wireless Facilities Ordinance to the Planning Commission and explain the various aspects of the ordinance. The Planning Commission will be asked to hold a public hearing and receive comment from members of the public. At the end of the public hearing, the Planning Commission will be asked to provide a recommendation to the City Council regarding the proposed Wireless Facilities Ordinance.

III. LEGAL AND REGULATORY BACKGROUND

A. Telecommunications Act – In General [47 U.S.C. § 332(c)(7)]

Under section 332(c)(7), localities may not (1) explicitly or effectively prohibit personal wireless services; (2) unreasonably discriminate among functionally equivalent personal wireless service providers; or (3) regulate environmental effects from RF emissions to the extent that such emissions conform to all applicable FCC regulations. In addition, localities must act on permit applications within a reasonable time, issue written denials, include reasons for any denial contemporaneously with any written denial and base all denials on substantial evidence in the written record.

1. Effective Prohibitions

A single permit denial can effectively prohibit personal wireless services when the applicant shows that (1) a significant gap exists in the applicant's own services and (2) the applicant proposed the least intrusive means to mitigate that gap.

No "bright line" test exists to define a "significant" gap in services, and although not all gaps amount to a significant one, district courts in the Ninth Circuit and others from outside this Circuit indicate that the standard may be relatively low. In contrast, localities may set the standard for the "least intrusive means" relatively high under current precedent in the Ninth Circuit. The least intrusive means refers to a site location and design that most closely conforms to the local values expressed in the local law that would otherwise support a denial.

Effective prohibition analysis applies only when substantial evidence exists to support a denial. For example, in a situation where an applicant requires a 35-foot-high antenna in a 30-foot zone to close a significant gap, the least intrusive means would be a 35-foot-high antenna and federal law would require approval even though the local code would

authorize a denial for a project over 30 feet high. The least intrusive means might also be multiple lower sites rather than fewer taller sites.

2. *Unreasonable Discrimination among Functionally Equivalent Service Providers*

Federal law prohibits “unreasonable” discrimination among providers with “functionally equivalent services.” This standard permits reasonable discrimination and localities retain “flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning requirements, even if those facilities provide functionally equivalent services.” To prevail on this claim, carriers must show that the local government discriminated between two similar service providers who submitted two similar proposals in two similar contexts.

3. *Radio Frequency (RF) Emissions Compliance Regulations*

The FCC completely occupies the field with respect to RF emissions regulation, and established comprehensive rules for maximum permissible exposure levels (the “**FCC Guidelines**”). State and local governments cannot (1) regulate wireless facilities based on environmental effects from RF emissions when the emissions conform to the applicable *FCC Guidelines* or (2) establish their own RF exposure standards—whether more strict, more lenient or even the same.

However, the FCC permits localities to require planned compliance demonstrations as a prerequisite for permit approval. Federal guidance encourages localities and applicants to cooperatively develop a means for planned compliance demonstrations that balances the legitimate local interest in compliance with the national standards and the applicant’s interest in an efficient and predictable process. In addition, the FCC recommends that localities use the *Local Government Official’s Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance* (the “**Local Official’s Guide**”) as an appropriate tool for compliance demonstrations.

In 2013, the City of Calabasas adopted an ordinance that required carriers to show both planned compliance with FCC Guidelines and continued actual compliance through monitoring. Crown Castle USA, Inc. sued in LA County Superior Court and the court invalidated both the “planned compliance” and the “monitoring” components in the Calabasas ordinance because it found that field preemption left no room for these supplemental regulations to monitor and enforce the FCC Guidelines. The court never mentioned the *RF Procedures Order* or the *Local Official’s Guide*.

4. *Access to the Public Right of Way (PROW) to Provide Telecommunication Services*

Telecom Act section 253(a) prohibits barriers to access that would explicitly or effectively prevent a telecommunications service provider’s ability to offer telecommunications services. However, localities may condition access on compliance with competitively neutral and nondiscriminatory management regulations.

Facial challenges under section 253(a) rarely occur because the Ninth Circuit places a high burden on the challenger. For example, in *Sprint Telephony PCS, LP v. County of San Diego*, the court dismissed Sprint's argument that San Diego's ordinance could potentially prohibit wireless facilities in the ROW because it granted discretion to approve or disapprove an application. The mere chance that discretionary or subjective rules might be applied to prohibit wireless access to the ROW does not meet the high standard in section 253(a).

California state law also grants telephone corporations registered with the California Public Utilities Commission (CPUC) a limited right to use the PROW to the extent necessary to provide services to the public in a manner that does not "incommode" the public uses in the PROW and conforms to all reasonable time, place and manner regulations. Both federal and state courts hold that the Public Utilities Code preserves local authority to regulate against both physical obstructions and aesthetic impacts.

Neither federal nor state law expressly requires localities to treat all utilities in the PROW the same, and localities may regulate different utilities differently to account for genuine differences among them. For example, localities may require all utilities to underground their equipment but will always need to make an exception for wireless antennas, which will not function underground.

B. Collocations and Modifications Covered under Section 6409(a)

Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 generally requires that localities "may not deny, and shall approve" requests to collocate, remove or replace transmission equipment at an existing wireless tower or base station provided that the proposal does not result in a substantial change. FCC regulations to interpret and implement this statute provide (1) detailed and mandatory definitions for statutory terms such as "collocation," "wireless tower or base station," "substantial change" and others; (2) special procedural limitations on the application materials and process; (3) restrictions on certain permit conditions that would frustrate future modification rights; and (4) a "deemed-granted" remedy for when a jurisdiction fails to act within 60 days an applicant duly files request for approval.

C. The "Shot Clock" Rules

Localities must act within a "reasonable time" after it receives a duly filed application for a wireless project. The FCC interprets a reasonable time to mean 90 days for collocations and 150 days for all other applications, after which time the applicant may seek expedited judicial review. In addition, localities must act on projects covered under 47 U.S.C. § 1455(a) within 60 days or else the application is automatically approved.

In California, failure to act within the presumptively reasonable time can result in a deemed-approval for new and substantially changed wireless facilities not covered under § 1455(a). California Government Code § 65964.1 automatically deems approved an application for a new wireless site or substantial modification to an existing wireless site when (1) the city or county fails to approve or disapprove the application within the

applicable shot clock period, (2) the applicant has provided all public notices required for the application and (3) the applicant provides written notice to the city or county that it considers the application deemed approved.

IV. PROPOSED WIRELESS FACILITIES ORDINANCE

The proposed Wireless Facilities Ordinance is designed to enable the City to regulate the placement and aesthetics of wireless communication facilities to the degree permitted under the current state and federal regulatory framework. The draft ordinance doesn't necessarily push the boundaries of local regulation in every case, and includes procedures to grant limited exceptions to the development standards when strict compliance in any specific case might result in a violation of federal law. Where concessions are made, the concessions are recommended by our outside counsel based on their knowledge of existing court decisions and educated assumptions about how pending litigation will be resolved. The goal is to adopt an ordinance that effectively achieves the majority of the City's interests while at the same time avoiding litigation and possibility the need to amend the ordinance shortly after adoption.

A. DEFINITIONS

With respect to definitions, the proposed Wireless Facilities Ordinance is a complete departure from the City's current ordinance. The current ordinance contains no definitions and leaves decision makers struggling to interpret key terms, such as "no visual impacts". The proposed ordinance defines all key terms. Where necessary and appropriate, the proposed ordinance employs definitions taken from federal statutes or regulations in order to ensure consistency of interpretation.

B. APPLICABILITY

The proposed ordinance applies to all wireless facilities with limited exceptions for: (1) amateur radio antennas, (2) City owned or operated facilities, and (3) installations which are specifically exempted from local regulation by state or federal law, such as over the air receiving devices (TV antennas) and facilities owned and operated by state regulated electric companies (power poles). The ordinance applies to installations on public or private property and to installations within the public right of way.

C. PERMITS REQUIRED

The default rule under the proposed ordinance is to require a conditional use permit for any installation; however, the ordinance does make exceptions if an application qualifies for permitting under either of two alternative permitting processes. In effect, this structure creates three categories of permits: (1) Conditional Use Permits, (2) Land Use Permits, and (3) Section 6409(a) permits.

1. Conditional Use Permits

Applications for Conditional Use Permits are reviewed by the Planning Commission. Conditional Use Permits are required for proposed facilities that do not qualify for permitting under the Land Use Permit process or the Section 6409(a) Permit process. Conditional use permits are required for new installations or significant alterations to existing facilities when the proposed facilities do not follow the ordinance's location and design preferences to a sufficient degree to qualify for permitting under the Land Use Permit process. This permitting structure is intended to create incentives for wireless service providers to comply with the City's preferences regarding the location and design of wireless facilities. The location and design preferences are explained in more detail in Section IV.E, Development Standards and Guidelines.

2. Land Use Permits

Applications for Land Use Permits are reviewed by Architectural Board of Review or the Historic Landmarks Commission. The Single Family Design Board does not review Land Use Permits because the location preferences direct installations away from residentially zoned properties. A wireless facility application will qualify for processing under the Land Use Permit process if the proposed facility is high enough on the list of location and design preferences.

3. Section 6409(a) Permits

Applications for Section 6409(a) Permits are processed administratively by the Community Development Director. Section 6409(a) Permits are exempt from design review but must comply with all prior conditions of approval for the tower or base station that are related to concealment or reasonably related to public health or safety. Federal law sharply limits the City's discretion over these projects, and the proposed ordinance has been tailored to the regulatory and practical limitations.

Enacted in 2012, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 states that localities "may not deny, and shall approve" requests to collocate, remove or replace transmission equipment at an existing wireless tower or base station provided that the proposal does not result in a substantial change (*i.e.*, 6409(a) collocations). FCC regulations interpreting and implementing Section 6409(a) provide a mandatory definition of the size and scope of collocations and modifications that do not result in a substantial change. These rules do not apply to new facilities or changes to existing facilities that require replacement of the existing support structure.

The City retains the authority to require an application for Section 6409(a) projects, but the FCC generally limits application requirements to only those disclosures or materials that are reasonably related to determining whether Section 6409(a) requires project approval. FCC regulations also prohibit the City from requiring the applicant to demonstrate a technical need or business case for the collocation or modification because the City's review is essentially limited to whether the proposal will cause a substantial change to an existing site.

D. APPLICATION MATERIALS

The City's current ordinance does not specify what materials applicants must supply with their application. When neighbors and interested parties attend ABR hearings regarding wireless facilities applications, they often request information about the need for the facility, confirmation that the facility will meet FCC radio frequency standards, the amount of noise the facility will generate, alternative locations considered, etc.

Federal regulations require localities to specifically delineate application requirements in a publicly available format. Although federal law does not prohibit localities from requesting additional information, those requests may not be sufficient to toll the shot clock. Accordingly, the City's current ordinance places the City at a procedural disadvantage to the extent that it could obtain more time for a proper review if it specifically articulated its application requirements in advance.

1. List of Application Materials

In order to provide clarity about the City's expectations and consistency in the application of the requirements, the proposed ordinance includes a list of materials that must be supplied with an application for a wireless facility permit. The list includes basic materials generally required for a full review, is consistent with best practices in other jurisdictions that have studied these issues, and has been tailored for compliance with applicable state and federal regulations.

2. Written Waivers

Given that the application requirements must be prospective and generally applicable to all proposed wireless facilities, the list may be over-inclusive or contain potentially unnecessary requirements for certain wireless facilities in any given case. Staff intends to conduct thorough reviews, but does not intend to create needless burdens on either the City or the applicants. Accordingly, the ordinance does allow City staff to provide waivers from some requirements if the applicant meets with staff before filing the application and staff determines that a requirement would amount to an unreasonable burden on the applicant given the nature or scope of the application. Staff would document the waiver in writing with an explanation of the reason for the waiver.

3. Exemptions

As discussed above under the Section IV.C.3, Section 6409(a) Permits, FCC regulations limit the amount of information the City can require when an applicant submits its application with a written request for approval pursuant to Section 6409(a). Therefore, the ordinance exempts Section 6409(a) Permit applications from providing a Statement of Purpose or an Alternatives Sites Analysis. In the event that the City determines that Section 6409(a) is not applicable to the proposed project, the City may require the applicant to submit the Statement of Purpose and Alternative Sites Analysis.

E. DEVELOPMENT STANDARDS AND GUIDELINES

In contrast to the current ordinance's undefined term of "no visual impacts" which is effectively impossible to achieve, the proposed ordinance specifies a set of design and location standards and identifies the City's preferences. By identifying more concrete standards and preferences, the hope is that the ordinance will make the application process more consistent and predictable for applicants and, by informing applicants of the community's preferences, encourage applicants to design and locate their facilities in a manner that is most respectful of the community's values.

1. Design Preferences

Section 28.74.060.A lists design preferences from most preferred to least preferred. The design preferences encourage collocations over the installation of new towers or poles. Because concealment techniques tend to be more effective on buildings, the design preferences encourage the placement of facilities (collocations or new) on buildings before placing facilities on towers or other support structures such as street lights or power poles.

2. Location Preferences

Section 28.74.060.B proposes a list of preferences for the location of new or collocated wireless facilities. Projects proposed in more-preferred locations receive a more streamlined review whereas projects proposed in less-preferred locations receive closer scrutiny.

The first preference is for property that is owned or controlled by the City. This preference encourages applicants to work with the City in locations where the City is not only the land use regulatory body, but the City is also the owner of the property. This combination of regulatory control and proprietary control provides the City the greatest ability to work with applicants to protect the City's aesthetic values while achieving the applicant's need to provide service for their customers.

However, use of City property is not required and is merely preferred. After City owned property, the location preferences favor installations in nonresidential zones that allow relatively intense uses over nonresidential zones that are limited to less intense uses and nonresidential zones over residential zones.

3. Monopoles or Faux Palm Trees

Based on the ABR's prior objections to certain types of applications, City staff have proposed a prohibition on facilities that propose monopoles without antenna concealment and faux palm trees. Staff would appreciate receiving the Planning Commission's comments about whether this prohibition is appropriate or if it unnecessarily precludes consideration of a potential design solution.

4. Undergrounding

In order to improve aesthetics and to avoid conflicts with other uses of the right of way, the design standards require applications for facilities in the public right of way to underground all non-antenna equipment, to the extent feasible. The standard explains that additional expense associated with undergrounding shall not defeat the standard, unless the applicant can demonstrate that the additional expense will effectively prohibit the provision of wireless service.

F. NOTICING

The ordinance proposes the following noticing requirements for wireless facility permit applications:

	CUP/LUP	Section 6409(a)
Mailed Notice	Owners of property w/in 300 feet + interested parties	No
Published Notice	10 days prior in newspaper	No
Postal Notice	Yes	Yes

G. FINDINGS

The proposed ordinance specifies findings for each category of permit which are appropriate to the level of review and are consistent with the scope of City review allowed by the FCC regulations.

The findings for Conditional Use Permits incorporate the findings specified in Chapter 28.94 of the Municipal Code for other conditional uses within the City, but add an additional finding regarding aesthetics and a finding that the applicant has demonstrated that the application is the least intrusive means of achieving the technical objective. As discussed above, the “least intrusive means” refers to the location and design that most closely conforms to the City’s local values expressed in the local law, and staff intends to co-opt that definition in these findings.

The findings for Land Use Permits have the design review body confirm that the application: (1) meets the necessary design and location preferences, (2) conforms with the applicable design standards, and (3) does not require waivers or exemptions from design standards.

In order to comply with the FCC regulations, the findings for Section 6409(a) Permits are limited to a confirmation that the application qualifies under the FCC definitions for a 6409(a) collocation. Basically, Section 6409(a) Permits can only be denied for not qualifying as a Section 6409(a) Permit project.

H. CONDITIONS OF APPROVAL

The draft ordinance proposes a set of standard conditions of approval.

1. Permit Term – 10 years

These conditions include a permit term of 10 years. Currently, state law prohibits local agencies from establishing a wireless facility permit term of less than 10 years. The proposed condition of approval would allow for shorter permit terms if the state law is amended in the future. Staff believes the 10 year term is appropriate given the rapid pace at which the technology is changing. City staff would expect most, if not all, installations to be modified or removed before the end of the 10 year term.

2. RF Compliance

The proposed conditions of approval require compliance with the FCC regulations regarding radio frequency emissions. However, based on the ruling of the Los Angeles Superior Court invalidating the RF testing/monitoring requirement adopted by the City of Calabasas, Staff does not recommend an active monitoring program requirement. If the City has a reason to believe a wireless facility is not in compliance, the City could do its own testing and, if the facility is not in compliance, order the carrier to correct the violation or remove the facility.

3. 6409(a) Collocations

The proposed conditions of approval anticipate future collocations on facilities approved under this ordinance. Therefore, the standard conditions clarify that future collocations will not extend the permit term of the underlying facility. In addition, the conditions of approval advise applicants that if the FCC regulations preempting local review of collocations under Section 6409(a) are invalidated, the applicants will be required to obtain a Conditional Use Permit or Land Use Permit under the ordinance.

I. DECISIONS AND APPEALS

The ordinance requires notice of the decision to be mailed to the applicant within five (5) working days of the final decision. The decision of the applicable approval authority is appealable to the City Council in accordance with current City appeal procedures. Because of the limited timelines under the federal shot clocks, Staff recommends that all appeals go directly to the City Council for a final resolution.

J. INDEPENDENT CONSULTANT REVIEW

The proposed ordinance authorizes the Community Development Director to retain an independent consultant to assist in reviewing the technical portions of wireless facilities applications and, if necessary, to testify at review hearings. The ordinance provides that the applicant must pay for the cost of the independent consultant and establishes a deposit process to cover these costs.

V. PUBLIC WORKSHOP

On February 24, 2016, Assistant City Attorney Scott Vincent and Robert May from the Telecom Law Firm held a public workshop to discuss the proposed Wireless Facilities Ordinance and to receive comment from members of the public. Several representatives from the wireless industry attended the workshop and submitted written comments regarding the ordinance. In addition to the industry representatives, individual members of the public attended the workshop to ask questions about the regulation of wireless communications and to make comments about the ordinance. The comments from the public generally concerned notice of applications and hearings, the scope of the City's regulatory authority over aesthetics and radio frequency emissions, and the City's control over installations on City property.

The industry comments included the following:

A. **Applicability (Section IV.B of Staff Report) – Proposed Exemption for SoCalGas**

Southern California Gas Company (“SoCalGas”) requested a complete exemption from the ordinance, which would allow it to install its SmartMeters and Data Collection Units pursuant to general approval procedures in its franchise agreement. However, staff concludes that neither state law nor the franchise explicitly require the exemption because CPUC General Order 131-D exempts only electric companies and the SoCalGas franchise requires compliance with all City ordinances. Staff requests the Planning Commission's guidance and recommendation on this issue.

B. **Applicability (Section IV.B of Staff Report) – Proposed Exemption for CLECs**

Crown Castle requested a complete exemption from the ordinance on the basis of its competitive local exchange carrier (“CLEC”) status and claims that the City would violate state and federal law by treating its wireless facilities in the ROW differently from other public utilities. Staff recommends against this exemption because federal and state law allows localities to apply different standards to different users based on real differences in how those entities use and impact the ROW. Moreover, all wireless facilities and services providers hold a CPCN and therefore the exemption would render the ordinance a dead letter.

C. **Findings (Section IV.G of Staff Report) – “Least Intrusive Means” Required Finding for Approval**

Wireless industry commenters generally oppose the requirement that applicants propose the “least intrusive means” to achieve their technical objectives on the alleged basis that it converts a federal protection for wireless providers into an unreasonably high burden. However, federal law requires wireless providers to show a denied site constituted the least intrusive means before a court will preempt local law, and this requirement merely codifies the general principle that local governments retain discretion over aesthetic issues that do not compromise technical feasibility. Staff strongly recommends against the request to delete this required finding for approval.

VI. APPLICABLE GENERAL PLAN POLICIES

The City's General Plan has several policies that may inform the Planning Commission's review of the proposed Wireless Communications Facilities Ordinance.

A. LAND USE ELEMENT

The *Plan Santa Barbara* general plan update started with community outreach regarding a number of topics, including what neighborhood qualities should be preserved or enhanced. Among the qualities listed was the preservation of historic and aesthetic character. This goal is incorporated into the following policy:

LG12. Community Character. Strengthen and enhance design and development review standards and process to enhance community character, promote affordable housing, and further community sustainability principles.

The proposed ordinance enhances and clarifies the design review standards and processes relating to wireless facilities.

B. CIRCULATION ELEMENT

The Circulation Element goal for the street network is to provide a comprehensive street network that safely serves all transportation modes. The public right of way is a common location for the placement of wireless facilities. The following Circulation Element policies are relevant to the issues presented by wireless facility installations within the right of way:

COMMUNICATION FACILITIES

16.6.3 Promote implementation of new communication technologies (e.g. fiber-optic lines with higher speed and wider band-width utilization).

MAINTENANCE OF TRANSPORTATION AND UTILITY FACILITIES

16.7 Ensure that utility and transportation facilities are well maintained and located, so as not to impede pedestrians or traffic, and are aesthetically pleasing.

16.7.1 Encourage and work with utility providers and transportation providers to maintain their facilities in a clean and safe manner.

16.7.2 Continue the graffiti removal and enforcement program working closely with transportation and utility providers to ensure graffiti removal from their facilities.

The proposed ordinance is consistent with these general plan policies by attempting to avoid conflicts amongst uses of the right of way in a manner that is aesthetically pleasing. The clarified development standards are expected to provide more consistency in the processing of applications while incorporating the community's values on transparency and aesthetics.

C. **ECONOMY AND FISCAL HEALTH ELEMENT**

A couple of the stated goals of the Economy and Fiscal Health Element include:

- ***Strong, Diverse Economy.*** Ensure a strong economy with a diversity of business sizes and types that provide a stable long-term revenue base necessary to support essential services and community enhancements, as well as diverse job opportunities.
- ***Minimize Impacts and Costs.*** Internalize impacts to the environment of new development and redevelopment, and avoid costs to the community.

These goals are implemented through the following policies:

EF1. **Integral Parts of Economic Development.** Promote energy efficiency, innovation, public health, and arts and culture as integral parts of economic development.

EF2. **Environmental Effects of Commercial Growth.** Manage commercial growth to protect the City's environment and unique qualities.

EF9. **Infrastructure Improvements.** Identify, evaluate and prioritize capital improvements that would assist in business retention or expansion, such as increased public transit, a rail/transit transfer center, city-wide wi-fi, sidewalk improvements, or consolidated customer parking facilities.

The proposed ordinance promotes the dual goals of promoting a strong, modern economy while at the same time having developers internalize the impacts of their development and minimizing costs to the community. The proposed ordinance seeks to strike a balance between the need for modern communications facilities and the community's values of aesthetics and character.

VII. **ENVIRONMENTAL REVIEW**

This ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Sections 15061, 15301, 15302, and 15305 because the ordinance merely establishes a comprehensive permitting scheme. Applications for installation or modification of Wireless Communication Facilities shall be subject to environmental review depending upon the scope and location of the proposed installation.

VIII. **STAFF RECOMMENDATION**

Staff recommends that the Planning Commission review the proposed Wireless Communications Facilities Ordinance, hold a public hearing in order to receive public testimony regarding the draft ordinance, and provide the City Council with a recommendation that the Council adopt the proposed ordinance along with the Planning Commission's comments.

Exhibits:

- A. Proposed Wireless Facilities Ordinance
- B. Public Comment Letters

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA BARBARA
AMENDING TITLE 28 OF THE SANTA BARBARA
MUNICIPAL CODE TO DELETE SECTION 28.94.030.D.D
AND ADD CHAPTER 28.74 REGARDING THE
REGULATION OF WIRELESS COMMUNICATIONS
FACILITIES

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA BARBARA
DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 28.94.030.DD of Title 28 of the Santa Barbara Municipal Code
is deleted in its entirety.

SECTION 2. Title 28 of the Santa Barbara Municipal Code is amended to add
Chapter 28.74 to read as follows:

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28.74.010 – LEGISLATIVE INTENT

- (A) The purpose of this chapter is to reasonably regulate, to the extent permitted by California and federal law, the installation, operation, collocation, modification and removal of wireless facilities in the City of Santa Barbara in a manner that protects and promotes public health, safety and welfare, and balances the benefits that flow from robust wireless services with the unique and historic character, aesthetics and local values of the City.
- (B) This chapter does not intend to, and shall not be interpreted or applied to:
 - (1) prohibit or effectively prohibit personal wireless services; or
 - (2) unreasonably discriminate among providers of functionally equivalent personal wireless services; or
 - (3) regulate the installation, operation, collocation, modification or removal of wireless facilities on the basis of the environmental effects of RF emissions to the extent that such emissions comply with all applicable FCC regulations; or
 - (4) prohibit or effectively prohibit any collocation or modification that the City may not deny under California or federal law;
 - (5) preempt any applicable California or federal law.

28.74.020 – DEFINITIONS

- (A) **“Antenna”** means a device used to transmit and/or receive radio or electromagnetic waves. Examples include, but are not limited to, panel antennas, directional antennas, microwave dishes and whip (omni-directional) antennas.
- (B) **“Approval authority”** means the commission, board or official responsible for review of permit applications and vested with the authority to approve or deny such applications. The approval authority for a project which requires a conditional use permit refers to the Planning Commission. The approval authority for a project which requires a land use permit refers to the Architectural Board of Review. The approval authority for a project which qualifies as a Section 6409(a) Modification refers to the Community Development Director.
- (C) **“Architectural Board of Review”** means the body established in the City of Santa Barbara Municipal Code section 2.08.020.B.
- (D) **“Array”** means one or more antennas mounted at approximately the same level above ground on tower or base station.

- (E) **“Base station”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended, which defines that term as follows:

A structure or equipment at a fixed location that enables [FCC]-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in [47 C.F.R. § 1.40001(b)(9)] or any equipment associated with a tower.

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

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

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

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

Note: As an illustration and not a limitation, the FCC’s definition refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles and transmission towers, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

- (F) **“City”** means the City of Santa Barbara, California.
- (G) **“City Council”** the City Council of the City of Santa Barbara, California.
- (H) **“Code”** the City of Santa Barbara Municipal Code, as may be amended.
- (I) **“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as “[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” As an illustration and not a limitation, the FCC’s definition effectively means “to add” new equipment to an

existing facility and does not necessarily refer to more than one wireless facility installed at a single site.

- (J) **“Community Development Director”** means the Community Development Director of the City of Santa Barbara or his or her designee.
- (K) **“CPUC”** means the California Public Utilities Commission or its successor agency.
- (L) **“Distributed antenna system”** or **“DAS”** means a network of one or more Antennas and related fiber optic nodes typically mounted to or located at streetlight poles, utility poles, sporting venues, arenas or convention centers which provide access and signal transfer for wireless service providers. A distributed antenna system also includes the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with one or more wireless service provider’s facilities to provide the signal transfer services.
- (M) **“Eligible facilities request”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as “[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) [c]ollocation of new transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment.”
- (N) **“Eligible support structure”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as “[a]ny tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.”
- (O) **“Existing”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that “[a] constructed tower or base station is existing for purposes of [the FCC’s Section 6409(a) regulations] if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.”
- (P) **“Facility”** means an installation used to transmit signals over the air from facility to facility or from facility to user equipment for any wireless service and includes, but is not limited to, personal wireless services facilities.
- (Q) **“FAA”** means the Federal Aviation Administration or its successor agency.
- (R) **“FCC”** means the Federal Communications Commission or its successor agency.
- (S) **“Historic Landmarks Commission”** means the body established pursuant to Section 817 of the Santa Barbara City Charter.
- (T) **“Monopole”** means a single freestanding non-lattice, tubular tower that that is not camouflaged and that is used to act as or support an antenna or antenna arrays.

- (U) **"OTARD antenna"** means antennas covered by the "Over-the-Air Reception Devices" rule in 47 C.F.R. §§ 1.4000 *et seq.*, as may be amended.
- (V) **"Personal wireless services"** has the same meaning as provided in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as "commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services."
- (W) **"Personal wireless service facilities"** has the same meaning as provided in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended, which defines the term as "facilities for the provision of personal wireless services."
- (X) **"Public rights-of-way"** has the same meaning as ascribed to the term "street, public" in section 28.04.655 of this Code.
- (Y) **"Public Works Director"** means the Public Works Director of the City of Santa Barbara or his or her designee.
- (Z) **"RF"** means radio frequency.
- (AA) **"Section 6409(a)"** 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.
- (BB) **"Section 6409(a) Modification"** means any eligible facilities request that does not cause a substantial change and submitted for approval pursuant to Section 6409(a) and the FCC's regulations at 47 C.F.R. § 1.40001 *et seq.*
- (CC) **"Single Family Design Board"** means the body established in the City of Santa Barbara Municipal Code chapter 22.69.
- (DD) **"Site"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that "[f]or towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground."
- (EE) **"Substantial change"** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular facility type and location. For clarity, the definition in this chapter organizes the FCC's criteria and thresholds for a substantial change according to the facility type and location.
 - (1) For towers outside the public rights-of-way, a substantial change occurs when:
 - (a) the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or

- (b) the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
 - (c) the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
 - (d) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
- (2) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
- (a) the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
 - (b) the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or
 - (c) the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
 - (d) the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
 - (e) the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- (3) In addition, for all towers and base stations wherever located, a substantial change occurs when:
- (a) the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the Community Development Director; or
 - (b) the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

Note: The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless

equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012—the date that Congress passed Section 6409(a).

- (FF) **“Tower”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended, which defines that term as “[a]ny structure built for the sole or primary purpose of supporting any [FCC]-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.” Examples include, but are not limited to, monopoles, mono-trees and lattice towers.
- (GG) **“Transmission equipment”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended, which defines that term as “[e]quipment that facilitates transmission for any [FCC]-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.”
- (HH) **“Wireless”** means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

28.74.030 – APPLICABILITY

- (A) **Applicable Facilities.** This chapter applies to all new facilities and all modifications to existing facilities proposed after the effective date of this chapter, unless the facility qualifies for an exemption.
- (B) **Exempted Facilities.** This chapter does not apply to the following:
 - (1) Amateur radio facilities;
 - (2) OTARD antennas;
 - (3) Facilities owned and operated by the City for its use;
 - (4) Facilities owned and operated by CPUC-regulated electric companies, including without limitation Southern California Edison, for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D.

28.74.040 – PERMITS REQUIRED; APPROVAL AUTHORITY

- (A) **Conditional Use Permit by the Planning Commission.** All new facilities and modifications or collocations to existing facilities are subject to the Planning Commission’s approval of a conditional use permit pursuant to chapter 28.94 of this Code, unless the project may

be approved pursuant to either a land use permit under section 28.74.040(B) or a Section 6409(a) Permit under section 28.74.040(C).

- (1) **Design Review.** Before the Planning Commission may act on an application for a conditional use permit for a wireless facility, the applicant must submit the application to the appropriate design review body for comments and recommendations to the Planning Commission.

- (a) The appropriate design review body shall be determined as follows:

- (i) The Historic Landmarks Commission shall review all projects proposed on (I) a lot on which a City Landmark or City Structure of Merit is located; (II) a property on the City's Potential Historic Resources List; or (III) any property or street right of way located within El Pueblo Viejo Landmark District or another landmark district.

- (ii) The Single Family Design Board shall review all projects proposed on (I) a lot within the Mission Area Special Design District; (II) a lot within the Lower Riviera Survey Area – Bungalow District; (III) a lot within the Hillside District; or (IV) any lot located within any single family zone listed in Code chapter 28.15, unless the lot is subject to review by the Historic Landmarks Commission pursuant to -040(A)(1)(a)(i).

- (iii) The Architectural Board of Review shall review all other projects not subject to either review by the Historic Landmarks Commission or the Single Family Design Board.

- (b) The design review body shall review the proposal at a noticed public hearing for compliance with the provisions in this chapter, including without limitation the applicable findings for approval in section 28.74.080(A), recommended or desirable changes and any proposed conditions of approval.

- (c) Any action by a design review body shall not be an approval or denial and shall be subject to Planning Commission approval.

- (B) **Land Use Permit.** New facilities and collocations or modifications to existing facilities are subject to the Architectural Board of Review's or Historic Landmarks Commission's approval of a land use permit, and are not subject to a conditional use permit, when all the following criteria are met:

- (1) the proposed project qualifies as a design listed in section 28.74.060(A)(1) through 28.74.060(A)(4) of this chapter; and

- (2) the proposed project is in a location listed in section 28.74.060(B)(1) through 28.74.060(B)(3) of this chapter; and

- (3) the proposed project will not require any limited exemption pursuant to section 28.74.150 of this chapter.

- (C) **Section 6409(a) Permit.** All Section 6409(a) Modifications are subject to review and approval or denial of a Section 6409(a) Permit by the Community Development Director in accordance with this chapter. Section 6409(a) Modifications do not require a land use permit and are exempt from Architectural Review Board and Historic Landmarks Commission review; provided, however that Section 6409(a) Modifications must comply with all prior conditions of approval related to concealment or reasonably related to public health and safety.

28.74.050 – PERMIT APPLICATIONS; APPLICATION SUBMITTAL PROCEDURES

(A) **Applications.**

- (1) **Application Required.** All permits granted under this chapter shall require an application.
- (2) **Application Content.** Unless an exemption or waiver applies, all applications submitted for approval under this chapter must contain the following:
 - (a) **Application Fee.** The applicable wireless facility application fee established by City Council resolution.
 - (b) **Master Application.** A fully completed and executed master application form as required under section 28.92.030 of this Code, as may be amended or updated from time-to-time. If the proposed facility is to be located on a City-owned building or structure, the master application must be signed by an authorized representative of the City. The master application must state what approval is being sought (*i.e.*, conditional use permit, land use permit, or Section 6409(a) permit).
 - (c) **Required Licenses or Approvals.** Evidence that the applicant has all current licenses and registrations from the FCC, the CPUC, and any other applicable regulatory bodies where such license(s) or registration(s) are necessary to provide wireless communication services utilizing the proposed wireless communication facility.
 - (d) **Site Development Plans.** A fully dimensioned site plan and elevation drawings prepared and sealed by a California-licensed engineer or architect showing any existing wireless facilities with all existing transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements.
 - (e) **Photo Simulations.** Photo simulations that show the proposed facility in context of the site from reasonable line-of-sight locations from public streets or other adjacent public viewpoints, together with a map that shows the photo location of each view angle.

- (f) **RF Exposure Compliance Report.** A radio frequency (RF) report acceptable to the City prepared and certified by an RF engineer that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (g) **Statement of Purpose.** A written statement that includes: (a) a description of the technical objectives to be achieved; (b) an annotated topographical map that identifies the targeted service area to be benefitted; (c) the estimated number of potentially affected users in the targeted service area; and (d) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites.
- (h) **Alternative Sites Analysis.** The applicant must provide a list of all existing structures considered as alternatives to the proposed location, together with a general description of the site design considered at each location. The applicant must also provide a written explanation for why the alternatives considered were unacceptable or infeasible, unavailable or not as consistent with the development standards in this chapter as the proposed location. This explanation must include a meaningful comparative analysis and such technical information and other factual justification as are necessary to document the reasons why each alternative is unacceptable, infeasible, unavailable or not as consistent with the development standards in this chapter as the proposed location. If an existing facility is listed among the alternatives, the applicant must specifically address why the modification of such wireless communication facility is not a viable option. When an applicant proposes a site in the public right-of-way, the initial alternative sites analysis required for a complete application may evaluate other potential locations and designs in the right-of-way.
- (i) **Noise Study.** A noise study prepared and certified by an engineer for the proposed 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 noise study 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.

- (j) **Deposit.** A cash or other sufficient deposit tendered by the applicant to the City for any third party peer review determined by the Director to be necessary to ensure compliance with the requirements of this chapter.
 - (3) **Future Application Developments and Modifications.** The City Council authorizes and directs the Community Development Director to develop and make publicly available permit applications and other materials specific for wireless facilities, and to from time-to-time update and amend such publicly available permit applications and materials as the Community Development Director deems appropriate.
 - (4) **Content Exemptions for Section 6409(a) Approval Applications.** Notwithstanding subsection (A)(2), above, applications for a Section 6409(a) Permit are exempt from the requirements in subsections (A)(2)(g) and (A)(2)(h).
 - (5) **Administrative Waivers for Specific Application Materials.** The planner assigned to an application may waive a specific application requirement for a specific project only when (i) the applicant attends a pre-submittal consultation meeting for the project, (ii) the planner finds that compliance with the specific application requirement would create an unnecessary or unreasonable burden on the applicant, and (iii) the planner memorializes the waiver and grounds therefor in a writing.
- (B) **Submittal and Resubmittal Procedures.**
- (1) **Pre-submittal Consultation Meeting Appointment.** Before application submittal, applicants must schedule and attend a pre-submittal consultation meeting with City staff for all facilities on poles in the public rights-of-way, vacant properties, residential zones or the coastal zone. For all other projects, pre-submittal consultation meetings are strongly encouraged but not required. City staff will endeavor to provide applicants with an appointment between approximately five and 15 working days after a written request for an appointment is received. The Community Development Director, in its sole discretion, may waive in writing the required appointments in sections 28.74.050(B)(2) and (3) for an applicant that participates in a pre-submittal consultation meeting.
 - (2) **Application Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment. Applicants may submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible for the City. City staff will endeavor to provide applicants with an appointment within approximately five working days after a request.
 - (3) **Application Resubmittal Appointment.** All resubmittals of applications must be submitted to the City at a pre-scheduled appointment. Applicants may resubmit one application per appointment but may schedule successive appointments for multiple applications whenever feasible for the City. City staff will endeavor to provide

applicants with an appointment within approximately five working days after a request.

28.74.060 – DEVELOPMENT STANDARDS AND GUIDELINES

- (A) **Preferred Designs.** All applicants should, to the extent feasible, propose new facilities and substantial changes to existing facilities with designs according to the following preferences, ordered from most preferred to least preferred:
- (1) collocations on existing base stations outside the rights-of-way; then
 - (2) collocations on eligible support structures in the rights-of-way; then
 - (3) collocations on towers outside the rights-of-way; then
 - (4) new building-mounted facilities outside the rights-of-way; then
 - (5) new eligible support structures in the rights-of-way; then
 - (6) new towers outside the rights-of-way.
- (B) **Preferred Locations.** All applicants should, to the extent feasible, propose new facilities and substantial changes to existing facilities in locations according to the following preferences, ordered from most preferred to least preferred:
- (1) City owned or controlled parcels outside residential zones; then
 - (2) parcels in industrial zones; then
 - (3) parcels in commercial zones; then
 - (4) City owned or controlled parcels in residential zones; then
 - (5) parcels in residential zones.
- (C) **General Design and Aesthetic Standards.** All facilities must conform to the standards as follows:
- (1) **Concealment.** All new facilities and substantial changes to existing facilities must incorporate concealment measures and/or techniques appropriate for the proposed location and design.
 - (2) **Height.** All new facilities and substantial changes to existing facilities must not exceed the applicable zone height limit; provided, however, that the approval authority may approve height extension not-to-exceed eight feet above the applicable zone height limit when the proposed site is (1) mounted on the rooftop of an existing building; (2) completely concealed; and (3) architecturally integrated into the underlying building. This exception does not apply to any freestanding structures or utility poles.
 - (3) **Setbacks.** All facilities must comply with all applicable setback requirements.
 - (4) **Collocation.** Applicants shall design their facilities to accommodate future collocated facilities to the extent feasible.

- (5) **Fences.** Except in extraordinary circumstances, the City may not approve any barbed wire, razor wire or electrified fences associated with a proposed facility.
 - (6) **Backup or Standby Power Sources and Generators.** The City may not approve any fossil fuel-powered backup power sources or generators unless the applicant demonstrates that the facility cannot feasibly achieve its power needs with batteries, fuel cells or other similarly non-polluting, low noise-level means.
 - (7) **Lights.** Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need. All aircraft warning lighting must use lighting enclosures that avoid illumination impacts to properties in the City to the maximum extent feasible.
 - (8) **Noise.** All transmission equipment and other equipment (including without limitation air conditioners and sump pumps) associated with the facility must not emit sound that exceeds the applicable limit established in chapter 9.16 of this Code.
 - (9) **Signage; Advertising.** No facility may display any signage or advertisements unless expressly allowed by the City in a written approval, recommended under FCC regulations or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.
 - (10) **Code Compliance.** Applicant shall design and maintain all facilities in compliance with all applicable federal, state and local laws, codes, regulations, ordinances or other rules.
- (D) **Tower-mounted Facilities.**
- (1) **General Design Preferences.** All applicants should, to the extent feasible and appropriate for the proposed location, design new towers according to the following preferences, ordered from most preferred to least preferred:
 - (a) faux architectural features (examples include, but are not limited to, bell towers, clock towers, lighthouses, obelisks and water tanks); then
 - (b) monoecalyptus trees; then
 - (c) monopine or monocyprus trees.
 - (2) **Most Disfavored Designs.** The City may not approve any monopalms (faux-palm trees) or monopoles that do not conceal the antennas within a radome or other concealment device without a limited exemption pursuant to section 28.74.150 of this chapter.

- (3) **Tower-mounted Equipment.** All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its visual profile. Applicants should mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors, and utility demarcation boxes) directly behind the antennas to the maximum extent feasible.
- (4) **Ground-mounted Equipment.** Applicants must conceal ground-mounted equipment with opaque fences or other opaque enclosures. The Planning Commission may require, as a condition of approval, design and/or landscape features in addition to other concealment when necessary to blend the equipment or enclosure into the surrounding environment.
- (5) **Concealment Standards for Faux Trees.** All permits for faux tree facilities approved under this chapter are subject to the following required conditions of approval:
 - (a) the canopy must completely envelop all tower-mounted equipment and extend beyond the tower-mounted equipment at least 18 inches;
 - (b) the canopy must be naturally tapered to mimic the particular tree species;
 - (c) all tower-mounted equipment, including all antennas, equipment cabinets, cables, mounts and brackets, must be painted flat natural colors to mimic the particular tree species;
 - (d) all antennas and other tower-mounted equipment cabinets must be covered with broadleaf or pine needle “socks” to blend in with the faux foliage; and
 - (e) the entire vertical structure must be covered with permanently-affixed three-dimensional faux bark cladding to mimic the particular tree species.
- (E) **Building- or Facade-mounted Facilities.**
 - (1) **General Design Preferences.** All applicants should, to the extent feasible, propose new non-tower facilities according to the following preferences, ordered from most preferred to least preferred:
 - (a) completely concealed and architecturally integrated facade or rooftop mounted base stations 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); then
 - (b) completely concealed new structures or appurtenances designed to mimic the support structure’s original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks).
 - (2) **Facade-mounted Equipment.** Applicants must conceal all façade-mounted transmission equipment behind screen walls as flush to the facade as practicable. The Planning Commission may not approve any “pop-out” screen boxes unless such design is architecturally consistent with the original support structure. The City may not

approve any exposed façade-mounted antennas, which includes exposed antennas painted to match the façade.

(3) **Rooftop-mounted Equipment.** The City may approve unscreened rooftop transmission equipment only when it expressly includes a condition of approval that such equipment is effectively concealed due to its low height and setback from the roofline.

(4) **Ground-mounted Equipment.** Outdoor ground-mounted equipment associated with base stations must be avoided whenever feasible. In locations visible or accessible to the public, applicants must conceal outdoor ground-mounted equipment with opaque fences or landscape features that mimic the adjacent structure(s) (including, but not limited to, dumpster corrals and other accessory structures).

(F) **Rights-of-Way Facilities.**

(1) **Concealment.** All facilities in the rights-of-way must be concealed to the extent feasible with design elements and techniques that blend with the underlying support structure, surrounding environment and adjacent uses.

(2) **Undergrounded Equipment.** To conceal the non-antenna equipment, applicants shall install all non-antenna equipment underground to the extent feasible. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services.

(3) **Ground-mounted Equipment.** Applicants must install ground-mounted equipment in the location so that it does not obstruct pedestrian or vehicular traffic. The Planning Commission may require landscaping as a condition of approval to conceal ground-mounted equipment.

(4) **Pole-mounted Equipment.** All pole-mounted equipment must be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile, painted flat and non-reflective colors to match the underlying pole, placed behind existing signs, and oriented away from prominent views. All required or permitted signage in the rights-of-way must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures. All conduits, conduit attachments, cables, wires and other connectors must be concealed from public view to the extent feasible.

(5) **Non-reflective Finishes.** All above-ground or pole-mounted equipment in the rights-of-way must not be finished with reflective materials as approved by the Approval Authority.

28.74.070 – PUBLIC NOTICE AND HEARING REQUIREMENTS

- (A) **Conditional Use Permits and Land Use Permits.** Before any conditional use permit or land use permit may be granted under this chapter, the approval authority shall conduct a noticed public hearing.
- (1) **Required Notice Methods.** Notice of the hearing shall be given in each of the following methods:
 - (a) Notice of the hearing shall be sent by first class United States mail at least 10 calendar days before the hearing to the owner of the subject real property or his or her duly authorized agent and to the applicant to the addresses listed on the master application; and
 - (b) Notice of the hearing shall be sent by first class United States mail at least 10 calendar days before the hearing to the owners of real property as shown on the most recent equalized assessment roll within 300 feet of the real property that is the subject of the hearing. If the number of owners to whom notice would be mailed pursuant to this subsection exceeds 1,000, the City, in lieu of mailed notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the City at least 10 calendar days before to the hearing; and
 - (c) Notice of the hearing shall be published once in a newspaper of general circulation within the City at least 10 calendar days before the hearing.
 - (2) **Additional Notice Methods.** In addition to the required methods of notice specified in subsection (a) above, the City may also require notice of the hearing in any other manner it deems necessary or desirable, including, but not limited to, posted notice on the project site. However, the failure of any person or entity to receive notice given pursuant to these additional noticing methods shall not constitute grounds for any court to invalidate the actions of the City for which the notice was given.
 - (3) **Notice Content.** The notice of the hearing shall include all of the following information:
 - (a) the date, time, and place of the public hearing;
 - (b) the identity of the hearing body or officer;
 - (c) a general explanation of the matter to be considered; and
 - (d) a general description, in text or by diagram, of the location of the real property that is the subject of the hearing.
 - (4) **Requests for Notice.** The notice of the hearing shall also be mailed at least 10 calendar days before the hearing to any person who has filed a written request for notice with either the City Clerk or with any other person designated to receive such requests. The City may charge a fee for providing this service as set by resolution of the City Council. Any request to receive such notice will automatically lapse one year from the

date the request is properly received. The Planning Commission members shall receive notice of all public hearings scheduled before the Staff Hearing Officer.

- (5) **Continuances.** Any public hearing noticed pursuant to this Section may be continued to a time certain without further notice.
 - (6) **Deemed-Approval Notice.** No more than 30 days before the applicable timeframe for review expires, the applicant must provide written notice to all persons entitled to notice in accordance with 28.74.070(A)(1)(b) and (c), as modified in this section.
 - (a) The notice must contain the following statement: "Pursuant to California Government Code section 65964.1, state law may deem the application approved in 30 days unless the City approves or denies the application, or the City and applicant reach a mutual tolling agreement."
 - (b) In addition to all persons entitled to notice in accordance with 28.74.070(A)(1)(b) and (c), the applicant must deliver written notice to the approval authority, which contains the same statement required in subsection (A)(6)(a), above. The applicant may tender such notice in person or certified United States mail.
 - (c) The notice required under this subsection (A)(6) shall be automatically deemed "provided" on the 30th day after the approval authority receives the notice required in this subsection.
- (B) **Section 6409(a) Modification Permits.** Before the Community Development Director may approve any application for a Section 6409(a) Modification, notice of the application shall be provided in accordance with this subsection (B).
- (1) **Required Notice Method.** Notice shall be posted on the project site.
 - (2) **Notice Content.** The notice shall include all of the following information:
 - (a) a general explanation of the proposed modification or collocation;
 - (b) the following statement: "Federal law may require approval for this application. Further, Federal Communications Commission regulations may deem this application granted by the operation of law unless the City approves or denies the application, or the City and applicant reach a mutual tolling agreement."; and
 - (c) a general description, in text or by diagram, of the location of the real property that is the subject of the application.

28.74.080 – REQUIRED FINDINGS FOR APPROVAL

- (A) **Conditional Use Permit.** The Planning Commission may grant a conditional use permit for a new wireless facility or a substantial change to an existing wireless facility when the Planning Commission finds that:
- (1) the applicant obtained written comments and/or recommendations from the appropriate design review body as required in section 28.74.040(A)(1);

- (2) the proposed use is deemed essential or desirable to the public convenience or welfare and is in harmony with the various elements or objectives of the Comprehensive General Plan;
 - (3) the proposed use will not be materially detrimental to the public peace, health, safety, comfort and general welfare and will not materially affect property values in the particular neighborhood involved;
 - (4) the total area of the site and the setbacks of all facilities from property and street lines are of sufficient magnitude in view of the character of the land and of the proposed development that significant detrimental impact on surrounding properties is avoided;
 - (5) the appearance of the developed site in terms of the arrangement, height, scale and architectural style of the buildings, location of parking areas, landscaping and other features is compatible with the character of the area; and
 - (6) the applicant demonstrated that it proposed the least intrusive means to achieve its technical objectives.
- (B) **Land Use Permit.** The Architectural Board of Review or Historic Landmarks Commission, as applicable, may grant a land use permit for a new wireless facility or a substantial change to an existing wireless facility when the Architectural Board of Review or Historic Landmarks Commission finds that:
- (1) the proposal qualifies as a design listed in section 28.74.060(A)(1) through (A)(4) of this chapter; and
 - (2) the proposal qualifies as a location listed in section 28.74.060(B)(1) through (B)(3) of this chapter; and
 - (3) the proposal conforms to all applicable design standards under section 28.74.060 of this chapter; and
 - (4) the proposed project will not require any special exemption or variance pursuant to section 28.74.150 of this chapter.
- (C) **Section 6409(a) Permit.**
- (1) **Findings for Approval.** The Community Development Director may approve a Section 6409(a) Modification when the Community Development Director finds that the proposed collocation or modification qualifies as an eligible facilities request and does not cause a substantial change.
 - (2) **Grounds for Denial.** In addition to any other alternative recourse permitted under federal law, the Community Development Director may deny a Section 6409(a) Permit when the Community Development Director finds that the proposed collocation or modification:

- (a) violates any legally enforceable standard or permit condition reasonably related to public health and safety; or
 - (b) involves a structure constructed or modified without all regulatory approvals required at the time of the construction or modification; or
 - (c) involves the replacement of the entire support structure; or
 - (d) does not qualify for mandatory approval under Section 6409(a) for any lawful reason.
- (3) **All Section 6409(a) Permit Denials Are Without Prejudice.** Any denial of a Section 6409(a) Permit application shall be without prejudice to the applicant, the real property owner or the project. Subject to the application and submittal requirements in this chapter, the applicant may immediately resubmit a permit application for either a conditional use permit, land use permit or Section 6409(a) Permit as appropriate.

28.74.090 – STANDARD CONDITIONS OF APPROVAL

- (A) **Permit Term.** Any validly issued conditional use permit or land use permit for a wireless facility will automatically expire at 12:01 a.m. local time exactly ten (10) years and one (1) day from the issuance date, except when California Government Code section 65964(b), as may be amended, authorizes the City to issue a permit with a shorter term.
- (B) **Code Compliance.** The permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules.
- (C) **Inspections; Emergencies.** The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- (D) **Contact Information for Responsible Parties.** The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Community Development Director upon permittee's receipt of the Community Development Director's written request, except in an emergency determined by the City when all such contact information for responsibility parties shall be immediately provided to the Community Development Director upon that person's verbal request.
- (E) **Indemnities.** The permittee and, if applicable, the non-government owner of the private property upon which the tower/and or base station is installed shall defend, indemnify and hold harmless the City of Santa Barbara, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs of mandamus and other actions or proceedings

brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, law suits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. The permittee shall be responsible for costs of determining the source of the interference, all costs associated with eliminating the interference, and all costs arising from third party claims against the City attributable to the interference. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed 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 reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

- (F) **Interference with Public Safety Radio Services.** In the event that the City finds reason to believe that permittee's radio communications operations are causing interference with the City's radio communications operations, then the permittee shall, at its cost, immediately cooperate with the City to either rule-out permittee as the interference source or eliminate the interference. Cooperation with the City may include, but shall not be limited to, temporarily switching the transmission equipment on and off for intermittent testing.
- (G) **Adverse Impacts on Adjacent Properties.** Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
- (H) **General Maintenance.** The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
- (I) **Graffiti Removal.** All graffiti on facilities must be removed at the sole expense of the permittee within 48 hours after notification from the City.
- (J) **RF Exposure Compliance.** All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.
- (K) **Optional Build-out Period.** As a condition of approval, the approval authority may establish a reasonable build-out period for the approved facility.
- (L) **Section 6409(a) Modifications.** In addition to all applicable standard conditions of approval required under section 28.74.090(A), any Section 6409(a) permit granted by the

Community Development Director or deemed-granted by the operation of law must include the conditions of approval as follows:

- (1) **No Permit Term Extension.** The City's grant or grant by operation of law of a Section 6409(a) permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. The City's grant or grant by operation of law of a Section 6409(a) permit will not extend the permit term for any conditional use permit, land use permit or other underlying regulatory approval and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
- (2) **Accelerated Permit Terms Due to Invalidation.** In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any Section 6409(a) Modification, the permit or permits issued in connection with such 6409(a) Modification(s) shall automatically expire one year from the effective date of the judicial order. A permittee shall not be required to remove its improvements approved under the invalidated Section 6409(a) permit when it has submitted an application for either a conditional use permit or land use permit for those improvements before the one-year period ends. The Community Development Director may extend the expiration date on the accelerated permit upon a written request from the permittee that shows good cause for an extension.
- (3) **No Waiver of Standing.** The City's grant or grant by operation of law of a Section 6409(a) Modification does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or any Section 6409(a) Modification.

28.74.100 – NOTICE OF DECISION; APPEALS

- (A) **Notice of the Decision.** Within five working days after final decision by the approval authority on an application submitted for approval pursuant to this chapter, notice of the decision shall be mailed to the applicant at the address shown on the master application and to all other persons who have filed a written request for notice of the decision with the Community Development Department. The City shall provide the reasons for any denial either in the written decision or in some other written record available at the same time as the denial.
- (B) **Conditional Use Permits.** Any person or entity may appeal a final decision by the Planning Commission in accordance with section 28.94.080(B)–(D) of this Code. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The appellant must pay a fee established by a resolution of the City Council at the time the appeal is filed. The City Council shall review the decision of the Planning Commission solely on the specific issues raised by the appellant(s). The City Council shall review the decision of the Planning Commission de novo for compliance with the criteria set out in section 28.74.080(A).

- (C) **Land Use Permits.** Any person or entity may appeal a final decision by the Architectural Board of Review in accordance with section 22.68.100 of this Code. Any person or entity may appeal a final decision by the Historic Landmarks Commission in accordance with section 22.22.170 of this Code. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The appellant must pay a fee established by a resolution of the City Council at the time the appeal is filed. The City Council shall review the decision of the Architectural Board of Review or Historic Landmarks Commission solely on the specific issues raised by the appellant(s). The City Council shall review the decision of the Architectural Board of Review or Historic Landmarks Commission de novo for compliance with the criteria set out in section 28.74.080(B).
- (D) **Section 6409(a) Permits.** Subject to applicable federal timeframes for local review, any person or entity may file a written appeal to the City Council to reverse the Community Development Director's final decision to approve or deny without prejudice a Section 6409(a) Permit application. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The appellant must pay a fee established by a resolution of the City Council at the time the appeal is filed. The City Council shall review the decision of the Community Development Director de novo for compliance with the criteria set out in section 28.74.080(C).

28.74.110 – PERMIT RENEWAL

Any application to renew any conditional use permit or land use permit granted under this chapter must be tendered to the City between 365 days and 180 days prior to the expiration of the current permit, and shall be accompanied by all required application materials, fees and deposits for a new application as then in effect. The City shall review an application for permit renewal in accordance with the standards for new facilities as then in effect. The Community Development Director may, but is not obligated to, grant a written temporary extension on the permit term to allow sufficient time to review a timely submitted permit renewal application.

28.74.120 – PERMIT REVOCATION

- (A) **Grounds for Revocation.** A permit granted under this chapter may be revoked for noncompliance with any enforceable permit, permit condition or law provision applicable to the facility.
- (B) **Revocation Procedures.**
 - (1) When the Community Development Director finds reason to believe that grounds for permit revocation exist, the Community Development Director shall send written notice by Certified U.S. Mail, Return Receipt Requested, to the permittee at the permittee's last known address that states the nature of the noncompliance as grounds for permit revocation. The permittee shall have a reasonable time from the date of the notice to cure the noncompliance or show that no noncompliance ever occurred.

- (2) If after notice and opportunity to show that no noncompliance ever occurred or to cure the noncompliance, the permittee fails to cure the noncompliance, the City Council shall conduct a noticed public hearing to determine whether to revoke the permit for the uncured noncompliance. The permittee shall be afforded an opportunity to be heard and may speak and submit written materials to the City Council. After the noticed public hearing, the City Council may deny the revocation or revoke the permit when it finds that the permittee had notice of the noncompliance and a reasonable opportunity to cure the noncompliance, but failed to comply with any enforceable permit, permit condition or law applicable to the facility. Written notice of the City Council's determination and the reasons therefore shall be dispatched by Certified U.S. Mail, Return Receipt Requested, to the permittee's last known address.
- (3) Upon revocation, the City Council may take any legally permissible action or combination of actions necessary to protect public health, safety and welfare.

28.74.130 – FACILITY ABANDONMENT OR DISCONTINUATION; RELOCATION; REMOVAL

(A) Procedures for Abandoned or Discontinued Facilities.

- (1) To promote the public health, safety and welfare, the Community Development Director may declare a facility abandoned or discontinued when:
 - (a) The permittee notifies the Community Development Director that it abandoned or discontinued the use of a facility for a continuous period of 90 days; or
 - (b) The permittee fails to respond within 30 days to a written notice sent by Certified U.S. Mail, Return Receipt Requested, from the Community Development Director that states the basis for the Community Development Director's belief that the facility has been abandoned or discontinued for a continuous period of 90 days; or
 - (c) The permit expires in the case where the permittee has failed to file a timely application for renewal.
- (2) After the Community Development Director declares a facility abandoned or discontinued, the permittee shall have 90 days from the date of the declaration (or longer time as the Community Development Director may approve in writing as reasonably necessary) to:
 - (a) reactivate the use of the abandoned or discontinued facility subject to the provisions of this chapter and all conditions of approval;
 - (b) transfer its rights to use the facility, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences use of the abandoned or discontinued facility; or
 - (c) remove the facility and all improvements installed solely in connection with the facility, and restore the site to a condition compliant with all applicable codes consistent with the then-existing surrounding area.

- (3) If the permittee fails to act as required in section 28.74.130(A)(2) within the prescribed time period, the City Council may deem the facility abandoned at a noticed public meeting. The Community Development Director shall send written notice by Certified U.S. Mail, Return Receipt Requested, to the last-known permittee or real property owner that provides 30 days (or longer time as the Community Development Director may approve in writing as reasonably necessary) from the notice date to:
 - (a) reactivate the use of the abandoned or discontinued facility subject to the provisions of this chapter and all conditions of approval;
 - (b) transfer its rights to use the facility, subject to the provisions of this chapter and all conditions of approval, to another person or entity that immediately commences use of the abandoned or discontinued facility; or
 - (c) remove the facility and all improvements installed solely in connection with the facility, and restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area.
 - (4) If the permittee fails to act as required in section 28.74.130(A)(3) within the prescribed time period, the City may remove the abandoned facility, restore the site to a condition compliant with all applicable codes and consistent with the then-existing surrounding area, and repair any and all damages that occurred in connection with such removal and restoration work. The City may, but shall not be obligated to, store the removed facility or any part thereof, and may use, sell or otherwise dispose of it in any manner the City deems appropriate. The last-known permittee or its successor-in-interest and, if on private property, the real property owner shall be jointly liable for all costs incurred by the City in connection with its removal, restoration, repair and storage, and shall promptly reimburse the City upon receipt of a written demand, include any interest on the balance owing at the maximum lawful rate. The City may, but shall not be obligated to, use any financial security required in connection with the granting of the facility permit to recover its costs and interest. Until the costs are paid in full, a lien shall be placed on the facility, all related personal property in connection with the facility and, if applicable, the real private property on which the facility was located for the full amount of all costs for removal, restoration, repair and storage. The City Clerk shall cause the lien to be recorded with the County of Santa Barbara Recorder's Office. Within 60 days after the lien amount is fully satisfied including costs and interest, the City Clerk shall cause the lien to be released with the County of Santa Barbara Recorder's Office.
- (B) **Relocation Procedures for Facilities in the Rights-of-Way.** After adequate written notice to the permittee, the Public Works Director may require a permittee, at the permittee's sole expense and in accordance with the standards in this chapter applicable to such facility, to relocate a facility in the rights-of-way as the City deems necessary to maintain or reconfigure the rights-of-way for other public projects or take any actions necessary to protect public health, safety and welfare.

- (C) **Failures to Comply.** After a permittee fails to comply with any provision in this section 28.74.130, the City Council may elect to treat the facility as a nuisance to be abated as provided in section 1.28.030 of this Code.

28.74.140 – TRANSFERS INVOLVING A WIRELESS FACILITY OR PERMIT

Within 30 days after a permittee transfers any interest in the facility or permit(s) in connection with the facility, the permittee shall deliver written notice to the City. The written notice required in this section must include: (1) the transferee’s legal name; (2) the transferee’s full contact information, including a primary contact person, mailing address, telephone number and email address; and (3) a statement signed by the transferee that the transferee shall accept of all permit terms and conditions. Failure to submit the notice required herein shall be a cause for the City to revoke the applicable permits pursuant to and following the procedure set out in section 28.74.120.

28.74.150 – LIMITED EXEMPTION FROM STANDARDS

All exemptions granted under this section are subject to review and reconsideration by the City Council. The applicant always bears the burden to demonstrate why an exemption should be granted. An applicant seeking an exemption under this section for personal wireless services facilities on the basis that a permit denial would effectively prohibit personal wireless services must demonstrate with clear and convincing evidence all the following:

- (A) a significant gap in the applicants service coverage exists; and
- (B) all alternative sites identified in the application review process are either technically infeasible or not potentially available.

28.74.160 – INDEPENDENT CONSULTANT REVIEW

- (A) **Authorization.** The City Council authorizes the Community Development Director to, in his or her discretion, select and retain an independent consultant with expertise in telecommunications satisfactory to the Community Development Director in connection with any permit application.
- (B) **Scope.** The Community Development Director may request independent consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Such issues may include, but are not limited to:
 - (1) permit application completeness or accuracy;
 - (2) planned compliance with applicable RF exposure standards;
 - (3) whether and where a significant gap exists or may exist, and whether such a gap relates to service coverage or service capacity;
 - (4) whether technically feasible and potentially available alternative locations and designs exist;

- (5) the applicability, reliability and/or sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and
 - (6) any other issue that requires expert or specialized knowledge identified by the Community Development Director.
- (C) **Deposit.** The applicant must pay for the cost of such review and for the technical consultant's testimony in any hearing as requested by the Community Development Director and must provide a reasonable advance deposit of the estimated cost of such review with the City prior to the commencement of any work by the technical consultant. The applicant must provide an additional advance deposit to cover the consultant's testimony and expenses at any meeting where that testimony is requested by the Community Development Director. Where the advance deposit(s) are insufficient to pay for the cost of such review and/or testimony, the Community Development Director shall invoice the applicant who shall pay the invoice in full within 10 calendar days after receipt of the invoice. No permit shall issue to an applicant where that applicant has not timely paid a required fee, provided any required deposit or paid any invoice as required in the Code.

28.74.170 – OBLIGATION TO COMPLY WITH THIS CHAPTER

An applicant or permittee shall not be relieved of its obligation to comply with every provision of the Code, this chapter, any permit issued hereunder or any applicable law or regulation by reason of any failure of the City to notice, enforce or prompt compliance by the applicant or permittee.

28.74.180 – CONFLICTS WITH PRIOR ORDINANCES

In the event that any City ordinance or regulation, in whole or in part, adopted prior to the effective date of this chapter, conflicts with any provisions in this chapter, the provisions of this section will control.

28.74.190 – SEVERABILITY

In the event that a court of competent jurisdiction holds any section, subsection, paragraph, sentence, clause or phrase in this section unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this section and shall not affect the validity of the remaining portions of this section. The City hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause or phrase in this section irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases in this section might be declared unconstitutional, preempted or otherwise invalid.



Crown Castle
695 River Oaks Parkway
San Jose, CA 95134

February 23, 2016

Attention: Jaime Limón, Senior Planner II
Design Review and Historic Preservation Section Supervisor
City of Santa Barbara
Community Development Department, Planning Division
PO Box 1990
Santa Barbara, CA 93102

Via email only

RE: City of Santa Barbara - Proposed Wireless Communication Facilities Ordinance (the “Ordinance”) and Workshop

Dear Mr. Limón,

Crown Castle NG West LLC (“Crown Castle”) hereby submits the following comments regarding the above-referenced Ordinance being considered by the City of Santa Barbara (the “City”):

Crown Castle’s Regulatory Status in the ROW

Crown Castle provides telecommunications services. Specifically, it carries voice and data traffic handed off to it by wireless providers (such as cellular and PCS). It carries such traffic through Crown Castle’s fiber optic lines from antennas located on utility poles to a central location, commonly referred to as a “hub”, and from there, either back to another remote location or out to the public switched telephone network or Internet.

Crown Castle has received a Certificate of Public Convenience and Necessity from the California Public Utilities Commission (“CPUC”) (Utility Number U-6745-C). As such, California law grants Crown Castle a state-wide franchise to install and operate its facilities in public rights of way (the “ROW”) throughout the State. Specifically, California Pub. Util. Code § 7901 grants a state-wide franchise to telecommunications companies certificated by the CPUC to construct and operate a telecommunications network. Accordingly, a municipality cannot deny Crown Castle access to public rights of way.

Crown Castle’s telecommunications networks in the ROW are implemented through a specific technology known as a Distributed Antenna System (“DAS”) and other specific technologies which, together with DAS, are more generically termed “small cells.”

The Foundation for a Wireless World.
CrownCastle.com

EXHIBIT B

Compliance issues with Federal and State Law

At the outset, Crown Castle objects to the City imposing a discretionary review process on the permitting of small cells in the ROW. When operating as a public utility in the ROW, Crown Castle's proposed telecommunications equipment must be subject to the same permitting and fee requirements as other similarly situated utilities, primarily the Incumbent Local Exchange carrier (the "ILEC"). (See 47 USC §253(c)) Further, state law provides that the City must exercise its control over the ROW as "applied to all entities in an equivalent manner." (See Pub. Util. Code § 7901.1) The City has not demonstrated that ILEC and other public utilities are subject to the same process for approval of their telecommunications equipment and therefore the City may not impose a discretionary process on Crown Castle. In fact, the Ordinance specifically exempts the installations of electric utilities from the application of the Ordinance (See Ordinance §__.030(b)(4)). A non-discretionary, ministerial permit issued by the Public Works Department would be a more appropriate approval process for small cells in the ROW and consistent with the City's obligations under state and federal law. The Ordinance should be revised to add an exemption to Ordinance §__.030(B) for all installations by CLECs in the ROW.

The Ordinance purports to leave in place a process for a "Land Use Permit" which would not require a more involved and discretionary "Conditional Use Permit" for some locations on existing infrastructure in the public rights-of-way. However, the criteria that qualify an application for the Land Use Permit are too narrow. Primarily, the Land Use Permit process excludes applications for the installation of new utility poles and for those applications in "residential zones." This is the exception that swallows the rule. Ordinance §__.030(B) should be modified so that all applications made by public utilities to deploy telecommunications infrastructure in the ROW are subject to a Land Use Permit and not a CUP.

Compliance with California AB 57

Crown Castle raises the additional issue that the Ordinance, as currently drafted, does not address compliance with California AB 57. As the State Legislature made clear in its recent enactment of AB 57 (Gov. Code §65964.1): "the permitting of a wireless telecommunications facility has a significant economic impact in California and **is not a municipal affair** as that term is used in Section 5 of Article XI of the California Constitution, **but is a matter of statewide concern.**" (emphasis added)

AB 57 provides that applications for a "collocation or siting application for a wireless telecommunications facility, as defined in Section 65850.6" that have not been acted on by a local government within the time set forth in the FCC's Shot Clock Order (currently 90 days for collocations not subject to Section 6409(a) and 150 days for new builds, see WT Docket No. 08-165, FCC 09-99, November 18, 2009) will be deemed granted, provided that: (1) "the applicant has provided all public notices regarding the application that the applicant is required to provide under applicable laws consistent with the public notice requirements for the application", and (2) "the applicant has provided notice to the local government that the reasonable time period has lapsed and that the application is deemed granted."

Crown Castle has serious doubts about whether either the CUP process or the Land Use Permit process proposed in the Ordinance may be reasonably accomplished in FCC Shot-Clock timeframes. Therefore, the Ordinance will likely result in many applications relying on the “deemed granted” remedy provided in AB 57. Due to the statewide importance of this matter and the clear intent of the State Legislature, the Ordinance should be redrafted to comply with AB 57 and clearly provide remedy for an Applicant to proceed with construction immediately upon expiration of the FCC Shot-Clock. This remedy may be run in parallel with the finalizing of the Ordinance processes and issuance of City permits.

Further, Crown Castle recommends that the Ordinance be revised so that the process may be reasonably expected to be processed within the FCC Shot-Clock timeframes. Eliminating unnecessary elements of the applications, discretionary review elements and different agencies of the City that play a role in the approval will greatly serve to accomplish this objective. We have made several suggestions to this end in the following section:

Santa Barbara’s proposed Ordinance - Specifics

Crown Castle notes specific items which should be addressed for better compliance with state and local laws and to facilitate the rapid deployment of broadband technology:

- **Noise Study** (Ordinance §__.050(A)(i)) – a noise study should not be required as part of an application. The City’s generally applicable noise ordinance is the standard for compliance on an ongoing basis – and as later provided for in subsection (C)(8). A demonstration of pre-compliance by the applicant serves no compelling interest, is an unnecessary expense and serves only to delay and hinder deployment.
- **Pre-submittal Consultation Meeting** (Ordinance §__.050(B)) – The requirement of a preapplication meeting is unnecessary and is a potential end-run around the FCC’s and the CA state legislature’s clear mandate to expedite processing. If a preapplication meeting occurs, it must therefore be explicitly included in the applicable Shot Clock timeframe, which would then commence upon applicant’s request for the meeting. Further, if the Ordinance clearly states Application requirements in writing, then such meeting is unnecessary. Crown Castle recommends this requirement be deleted.
- **Undergrounding of Equipment** (Ordinance §__.050(F)(2)) – undergrounding of equipment should not be the default installation configuration nor should a “clear and convincing” case be required to install above-grade equipment. This requirement is not being applied to all telecommunications providers in the ROW on a competitively neutral manner, and therefore, is not in compliance with state or federal law. Equipment should be permitted to be pole- or ground- mounted by default and only required to be undergrounded if specific circumstances arise.

- **CUP Least Intrusive Means Finding** (Ordinance §__.80(A)(6)) – The Ordinance requires that an applicant somehow bears the “burden” of establishing that the application will present the least intrusive means. In fact the Ordinance has it backwards; the concept of “least intrusive means” derives from section 332(c)(7)(B)(ii) of the Telecom Act. (47 U.S.C. § 332(c)(7)(B)(ii); see *T-Mobile v. City of Anacortes* (9th Cir. 2009) 572 F.3d 987.) Congress intended section 332(c)(7)(B)(ii) to protect applicants from governmental actions (i.e., permit denials) that have the effect of precluding an applicant from providing telecommunications services. (*Ibid.*) Accordingly, an applicant’s burden to prove least intrusive means arises only in the context of establishing a section 332(c)(7)(B)(iii) challenge to an agency’s **denial** of a permit application. That the Application somehow must bear the “burden” of establishing least intrusive means to obtain a project approval turns section 332(c)(7)(B)(ii) on its head. This section should be deleted.
- **6409(a) Permit Denial Grounds – replacement of entire support structure** (Ordinance §__.080(C)(2)(c)) – If a support structure requires in-kind replacement for structural or other reasons and such replacement “does not substantially change the physical dimensions” of the tower or base station, then the request remains an Eligible Facilities Request pursuant to section 6409(a) of the Spectrum Act and the City “may not deny and shall approve” such request. This ground for the City’s denial be deleted in its entirety or amended to include exception for utility infrastructure in the ROW.

We thank the City for this opportunity to comment and we hope that the City revises its Ordinance to better comply with federal and state mandates regarding these matters.

Sincerely,
CROWN CASTLE NG WEST LLC



Joshua S. Trauner
Government Relations Counsel

cc: (via email)
Scott Vincent, Esq., Assistant City Attorney, City of Santa Barbara
Robert C. May III, Telecom Law Firm, PC
Robert Millar, Esq., Associate General Counsel, Crown Castle
Dan Schweizer, Director of Government Relations, Crown Castle
Jon Dohm, Zoning Manager, West Area, Crown Castle
Sharon James, Manager of Government Relations, Crown Castle



A Sempra Energy utility

Timothy J. Mahoney
Public Affairs Manager

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February 23, 2016

Mr. Jaime Limón, Senior Planner II
Design Review and Historic Preservation Section Supervisor
Community Development Department, Planning Division
City of Santa Barbara
P.O. Box 1990
Santa Barbara, California 93102

Re: Installation of Southern California Gas Company's Advanced Metering Infrastructure Data Collector Units

Dear Mr. Limón:

I am writing concerning Southern California Gas Company's planned installation of Data Collector Units ("DCU") in the City of Santa Barbara necessary to complete the company's Advanced Metering Infrastructure ("AMI") program.

SoCalGas has appreciated working with City staff over the past several months on these issues and we look forward to continuing to work with the City to implement this important CPUC-approved safety and efficiency program. We write today to offer suggested revisions to the City's draft Wireless Facilities Ordinance ("Ordinance") to avoid confusion regarding the Ordinance's application to this program and to ensure efficient and expeditious installation of the DCUs so that the City's residents can benefit from the safety and efficiency benefits that the program brings.

The installation of AMI technology is a critical component of California's and the California Public Utilities Commission's long term goals to develop more efficient delivery of electricity and gas and improved customer-side management that will enable greater conservation and efficiency. In 2003, the CPUC directed investor-owned utilities, like SoCalGas, to design and implement a pilot program for deploying advanced metering and demand response technologies. SoCalGas' AMI program is one of those programs.

SoCalGas' AMI program will automatically read and securely transmit hourly gas usage information to SoCalGas. This information may then be accessed by customers to better manage energy use and costs. The DCUs will also be used to monitor the operations and safety of the natural gas pipeline system and to quickly determine if a leak or loss of pressure occurs. For example, this monitoring will allow SoCalGas and customers to identify sudden usage spikes that could indicate a leak or other unusual gas consumption.

To collect and transmit this information, the AMI program requires the installation of: (1) gas meters with communication modules, and (2) DCUs. Installation of AMI facilities in SoCalGas service territory began in October 2012. These DCUs may be attached to existing light poles or be freestanding units. Attached is a photograph showing a unit as installed and a diagram illustrating how the AMI system works.

We understand that there may be disagreement over whether the Ordinance applies to these DCUs. It is SoCalGas' position that the Ordinance does not apply to the DCUs and that no discretionary permits are required for the installation of the DCUs because of the CPUC's exclusive jurisdiction over utility systems.

In light of these considerations, we suggest the following amendments to the Ordinance to clearly exempt the DCUs from it. We are concerned that the Ordinance, as applied, could hinder SoCalGas' ability to install and maintain the necessary DCUs. DCUs are not traditional telecommunications facilities, which it appears the Ordinance was intended to regulate, but are key components of the existing natural gas distribution system that the CPUC has directed SoCalGas to install. Given their purpose, method of operation, and limited numbers, DCUs operate as merely an extension of SoCalGas' existing infrastructure.

Confirming that DCUs are clearly exempt from the Ordinance will ensure that SoCalGas will be able to install the units quickly and efficiently and in compliance with the CPUC's direction. We propose the following modification to Section "Exempted Facilities" .030(B) of the Ordinance:

(B) Exempted Facilities. This chapter does not apply to the following:

- (1) Amateur radio facilities;
- (2) OTARD antennas;
- (3) Facilities owned and operated by the City for its use;
- (4) Facilities owned and operated by CPUC-regulated electric and gas utility companies, including without limitation Southern California Edison and Southern California Gas Company, for use in connection with electrical power generation, transmission and distribution facilities subject to CPUC General Order 131-D or natural gas distribution facilities and appurtenances.

Notwithstanding the CPUC's exclusive jurisdiction, SoCalGas appreciates the City's interest in the time, manner, and place of installation for SoCalGas' DCUs. SoCalGas will, of course, secure all applicable ministerial permits and abide by the City's reasonable time, manner, and place requirements for installing DCUs.

Thank you for your assistance in this matter. We look forward to speaking with you soon about this proposal.

Sincerely,

A handwritten signature in cursive script that reads "Timothy J. Mahoney". The signature is written in black ink and is positioned above the printed name and title.

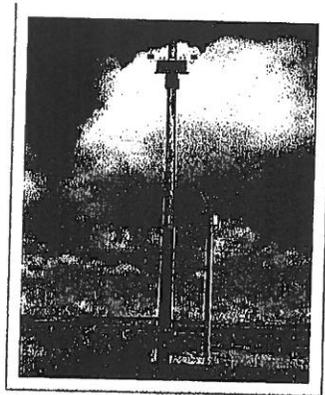
Timothy J. Mahoney
Public Affairs Manager, SoCalGas

cc: Robert C. May, Esq.
Albert Garcia, Esq., SoCalGas

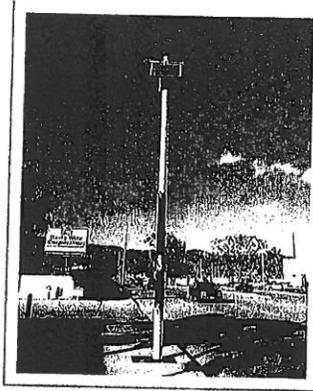


Pole & Installation Types

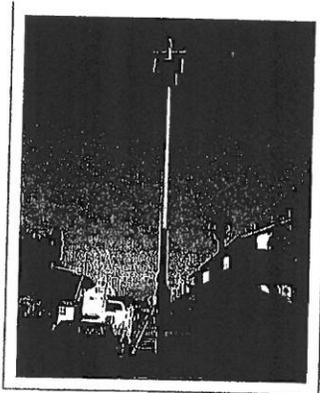
Wood



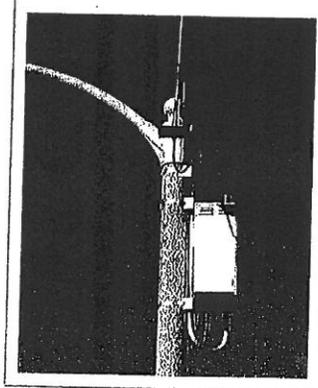
Concrete



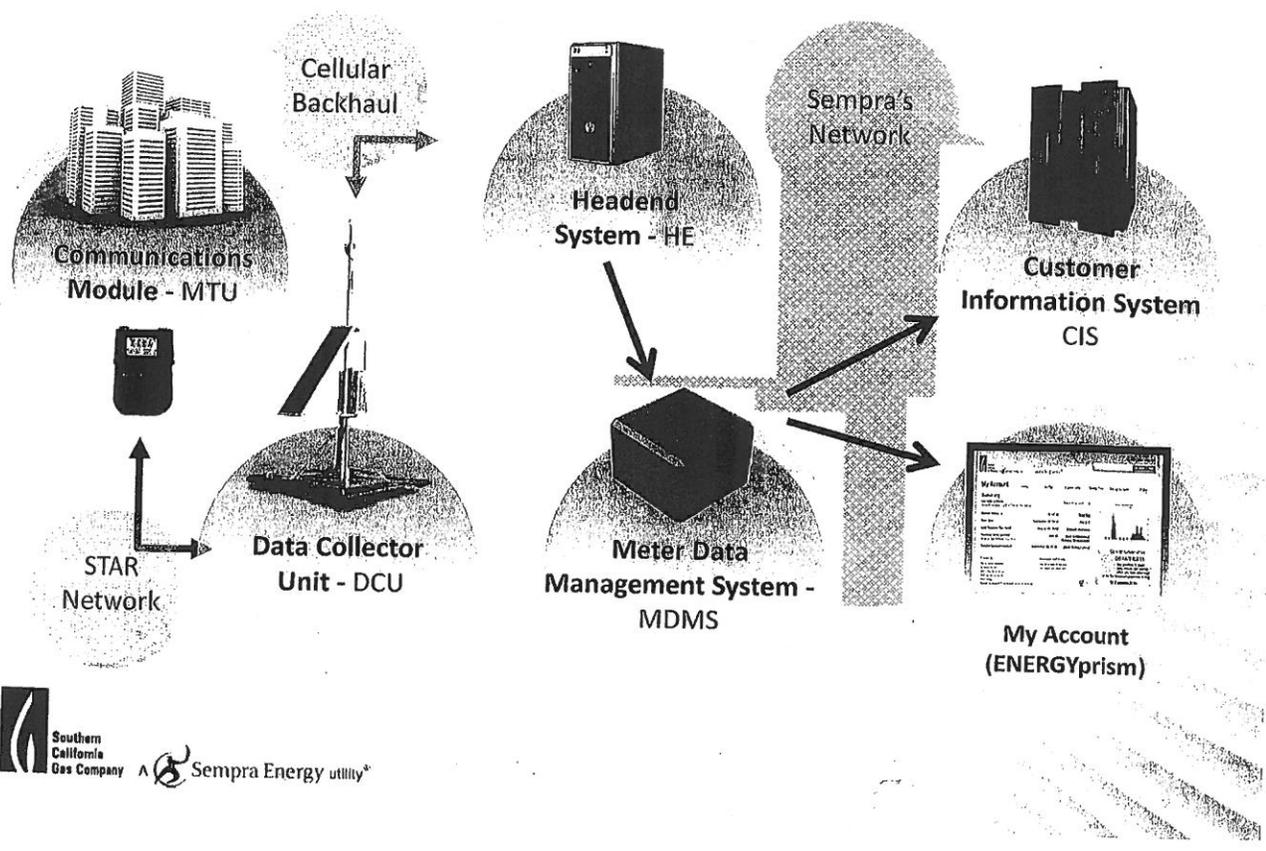
Steel



Attachment



Advanced Meter Infrastructure



MACKENZIE & ALBRITTON LLP

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TELEPHONE 415/288-4000
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February 23, 2016

VIA EMAIL

Jaime Limón, Senior Planner II
Design Review and Historic Preservation Section Supervisor
Planning Division
City of Santa Barbara
P.O. Box 1990
Santa Barbara, California 93102

Re: Draft Wireless Facilities Ordinance
Public Workshop, February 24, 2016

Dear Jaime:

We write to you on behalf of our client Verizon Wireless regarding the draft wireless facilities ordinance (the “Draft Ordinance”) to be considered by the City of Santa Barbara (the “City”) at a public workshop on February 24, 2016. Verizon Wireless appreciates that the City is preparing new wireless regulations based on specific standards, however, there are several problematic provisions in the Draft Ordinance that conflict with state and federal law, particularly with respect to permitting of right-of-way wireless facilities. Certain development standards are vague or overly restrictive, and we propose revisions to help wireless carriers design facilities that provide network improvements while posing minimal visual impacts.

Verizon Wireless encourages the City to consider administrative approval of small wireless facilities used by carriers to improve network capacity in targeted areas (small cells). We note that several jurisdictions have revised their wireless ordinances to favor small facilities. In Ventura County, small cells in the right-of-way are defined not exceeding specified volumes for antennas and equipment. Similar legislation is pending before the City of Los Angeles. In San Francisco, certain micro facility designs approved by the Zoning Administrator can be installed upon approval a building permit reviewed by Planning Department staff for conformance. In a recent ruling, the Federal Communications Commission (the “FCC”) described a small cell deployment as three cubic feet per antenna enclosure and 17 cubic feet for related equipment.¹ The City of

¹ See *In Re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Etc.*, FCC 14-153 (FCC October 17, 2014), ¶ 92.

Jaime Limón, Senior Planner II
City of Santa Barbara

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Santa Barbara should consider pre-approval of small facility designs for both zoned areas and the public right-of-way which can be installed with a building permit or encroachment permit.

Verizon Wireless will have a representative in attendance at the public workshop and looks forward to working with the City and industry representatives to address issues in the Draft Ordinance.

Our specific comments on the Draft Ordinance are as follows:

§ __.040 – Permits Required; Approval Authority

As Verizon Wireless's use of the right-of-way is authorized by California Public Utilities Code §7901, the City cannot require a use permit for wireless facilities in the right-of-way and should permit such facilities with an encroachment permit. Further, while the Draft Ordinance requires review by the Planning Commission or a design review board, wireless facilities in the public right-of-way should be reviewed by the Public Works Department as is the case with other public utility installations in the right-of-way.

Under both state and federal law, local regulations must be applied equally to *all* users of the County right-of-way. Under state law, local regulation, "to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner."² Federal law recognizes the authority of States and local governments to "manage the public rights of way" on a "competitively neutral and nondiscriminatory basis."³ The FCC has stated that local governments may impose conditions only if they are applied "equally to *all* users of the rights-of-way"⁴ and may not impose conditions on one user, such as a telecommunications company, in a different manner than imposed on other users. This body of federal and state law requires that a Verizon Wireless application for a facility within the public right of way should be treated as any other public utility application. On a local level, in the vast majority of cases, such an installation requires only an encroachment permit, and does not entail discretionary review. Similarly, appeal rights for such permits are limited.

As the Draft Ordinance currently stands, required Planning Commission or design review board approval of wireless facility installations in the right-of-way constitutes unequal treatment of wireless carriers barred under state and federal law. We suggest that the Public Works Department process such applications through the encroachment permit process. The Public Works department may consider referring certain right-of-way applications to Planning Department staff for evaluation of aesthetic impacts under

² Cal. Pub. Util. Code § 7901.1(b).

³ 47 U.S.C. § 253(c).

⁴ *Second Report and Order*, CS Docket 96-46, §209, FCC 96-249, adopted May 31, 1996.

reasonable Draft Ordinance criteria. This is the practice in jurisdictions such as San Francisco.

§__.050 – Permit Applications; Application Submittal Procedures

(A) Applications

(2) Application Content

(f) RF Exposure Compliance Report

The City may only require the carrier to provide the calculations identified in *A Local Government Official's Guide to Transmitting Antenna RF Emission Safety* issued by the FCC. Draft Ordinance requirements to show location and orientation of all antennas as well as the areas exceeding FCC exposure limits exceed the City's authority under federal regulation.

(g) Statement of Purpose, Propagation Maps

This provision requires applicants to submit information and maps to demonstrate the need for a facility, but there is no relation to the required findings of approval under Draft Ordinance §__.080. For right-of-way facility applications, Verizon Wireless's use of the right-of-way is authorized under California Public Utilities Code §7901, and it cannot be obligated to prove that a facility is needed. These requirements should be stricken.

(h) Alternatives Site Analysis

The City should not require an alternatives analysis for facilities that meet the most-preferred design and location standards under Draft Ordinance §§__.060(A) and __.060(B). In particular, the City should not require an alternatives analysis for collocations or facilities that create no visual impacts.

For right-of-way applications, Verizon Wireless does not need to establish its right to use the right-of-way over any other location outside the right-of-way. The City may not, under state law, require Verizon Wireless to evaluate alternatives to be used in lieu of the right-of-way. This requirement should clarify that carriers need only to evaluate alternatives within the public right-of-way and only in those circumstances where the proposed facility will create impacts that impede public use of the right-of-way.

(i) *Noise Study*

Certain new wireless equipment boxes emit no noise, in particular those used for right-of-way facilities. For noiseless installations, applicants should be allowed to submit manufacturer specification sheets indicating that equipment is silent instead of a noise study prepared by an engineer.

(B) Submittal and Resubmittal Procedures

- (1) Pre-Submittal Consultation Meeting Appointment
- (2) Application Submittal Appointment
- (3) Application Resubmittal Appointment

Federal law requires timely processing of wireless facility applications, but by requiring pre-submittal consultation for many types of applications and appointments for all submittals and resubmittals, the City could cause delays of up to 20 days from an applicant's initial request. By delaying filing of an application or resubmittal that otherwise could be filed on a walk-in basis, the City may initiate a conflict with federal "Shot Clock" deadlines that require local jurisdictions to review and act on wireless facility applications within specified time periods. *See In Re: Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review, Etc.*, FCC 09-99 (FCC November 18, 2009); *see also In Re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Etc.*, FCC 14-153 (FCC October 17, 2014), ¶ 258 ("...we note that under the 2009 Declaratory Ruling, the presumptively reasonable timeframe begins to run when an application is first submitted...") We suggest that all submittal appointments be optional.

§ .060 – Development Standards and Guidelines

(A) Preferred Designs

With respect to right-of-way facilities, this list includes only collocations and new eligible support structures, but it omits the placement of a wireless facility on an existing pole that does not already support a wireless facility. We note that by referring to 47 C.F.R. §1.40001(b)(2), the Draft Ordinance definition of collocation captures only existing structures that currently support wireless equipment. Verizon Wireless's use of the right-of-way is authorized under state law, and its use of certain poles is by agreement with the pole owner, generally a joint pole authority. The City should specify a preference for wireless facilities on existing poles in the right-of-way, especially for low-profile small cells that meet certain volumetric limitations. As discussed above, Verizon Wireless believes that right-of-way facilities should be permitted through an encroachment permit issued by the Public Works department.

(B) Preferred Locations

- (1) City-Owned or Controlled Parcels outside Residential Zones
- (4) City-Owned or Controlled Parcels in Residential Zones

While the City can offer its own parcels to interested carriers, this provision favoring City-owned parcels over all other locations violates California Government Code 65964(c) which bars the City from limiting wireless facilities to sites owned by particular parties. The list of preferred locations should include only zoning districts.

(C) General Design and Aesthetic Standards

- (2) Height

As mounting a wireless facility on a building is the top design preference for new facilities, the City should encourage such installations by allowing a modest increase in height over zone height limits. An increase of eight feet would allow roof-mounted antennas to be set back farther from the edge of a roof, further reducing visibility.

- (6) Backup or Standby Power Sources and Generators

The discouragement of diesel backup generators typically used for wireless facilities is unfounded and should be stricken. Backup generators are used as a reliable power source only in case of emergencies and during testing 15 to 20 minutes on a weekday. With such low usage, emissions and noise from industry standard generators are limited. The City may encourage use of alternative power sources, but should allow installation of diesel generators.

(F) Right-of-Way Facilities

- (1) Concealment

The concealment requirements of this provision are vague. To assist carriers in designing right-of-way facilities with minimal visual impacts, the City should adopt reasonable design standards for pole-mounted equipment such as painting to match pole color, rotation of equipment boxes away from view and placement of equipment boxes behind pole-mounted signs when possible.

- (2) Undergrounded Equipment

The requirement to place equipment underground violates both state and federal law, which, as discussed above, state that local regulations must be applied equally to all users of the rights-of-way. Verizon Wireless cannot be obligated to underground equipment that is similar in size and appearance to facilities mounted placed in the right-

of-way by other public utilities. Many new right-of-way wireless facilities include only a few small equipment boxes, and undergrounding is unwarranted. Draft Ordinance Section __.060(F)(4) clearly contemplates pole-mounted equipment, and that provision should be expanded to include the reasonable design standards for pole-mounted equipment proposed in our previous comment.

§__.070 – Public Notice and Hearing Requirements

(A) Conditional Use Permits and Land Use Permits

(6) Deemed-Approval Notice

This requirement appears to modify and potentially circumvent newly-enacted state law requirements for timely processing of wireless facility applications, however, the City cannot impose requirements that conflict with the provisions of Government Code §65964.1. The effect of the notice is unclear as drafted, and while Verizon Wireless may not oppose such a notice outright, the notice procedures and result must be clarified. At a minimum, we suggest that the applicant be required to provide notices no less than 10 days before the applicable timeframe for review expires, consistent with similar hearing notice requirements under state law. We also suggest that the notice language required under Draft Ordinance §__.070(A)(6)(a) refer to the anticipated date for deemed approval. Draft Ordinance §__.070(A)(6)(c) contains a reference to a non-existent section (A)(2)(a) and we recommend striking this provision as it is unclear and will likely lead to conflicts with state law.

§__.080 – Required Findings for Approval

(A) Conditional Use Permit

(6) Least Intrusive Means

By basing this finding on the “least intrusive means” standard set forth in federal case law, the Draft Ordinance attempts to create a new hurdle out of the federal protection afforded wireless carriers under 47 U.S.C. §332(c)(7)(B)(i)(II), which provides, in relevant part, that the City’s regulation of wireless facilities “shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” Federal courts have interpreted this law to mandate approval of wireless facilities where a federal court has determined that the applicant has identified a “significant gap” and the facility represents the “least intrusive means” to fill that gap, even where the local jurisdiction has identified substantial evidence that would otherwise warrant denial of the application under local codes. *See, e.g., MetroPCS v. City and County of San Francisco*, 400 F.3d 715 (9th Cir. 2005). This finding must be stricken because it would place the City in a position to circumvent the judgment of federal courts and the protections afforded Verizon Wireless under federal law. With respect to right-of-way facilities, as

discussed above, the City may not, under state law, require Verizon Wireless to evaluate alternatives outside the right-of-way.

(C) Section 6409(a) Permit

We recommend that this permit simply be called an “eligible facilities request” to be consistent with federal law, specifically 47 U.S.C. §1455(a).

(2) Grounds for Denial

Under 47 U.S.C. §1455, the City must approve eligible facilities requests that do not substantially change the physical dimensions of a wireless tower or base station, but grounds for denial in the Draft Ordinance introduce factors for consideration that exceed the City’s authority under federal law. Though the City cannot deny eligible facilities requests based on health and safety standards, it can place conditions of approval on an approved request if they are reasonably related to codified health and safety standards. We recommend striking the grounds for denial and inserting language in Draft Ordinance §__.080(C)(1) allowing such conditions to be placed on approved eligible facilities requests.

§__.090 – Standard Conditions of Approval

(E) Indemnities

The FCC regulates radio frequencies and is the public agency responsible for resolving interference concerns. The City cannot impose its own separate requirements on wireless carriers with respect to potential interference and cannot hold carriers “strictly” liable for potential interference. The provisions regarding interference must be stricken.

(K) Section 6409(a) Modifications

(1) No Permit Term Extension

As site modifications present an opportunity for the City to review compliance of an existing facility, the City should allow wireless carriers to apply for administrative renewal of underlying permits concurrently with filing eligible facilities requests.

(2) Accelerated Permit Terms Due to Invalidation

Early termination of a permit issued pursuant to an eligible facilities request would violate the vested rights of wireless carriers who have obtained a building permit and constructed their improvements. A federal circuit court has upheld the FCC’s

Jaime Limón, Senior Planner II
City of Santa Barbara

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regulations of eligible facilities requests codified as 47 U.S.C. §1455. This provision should be stricken.

§ __.100 – Notice of Decision; Appeals

(D) Section 6409(a) Permits

Eligible facilities requests must be reviewed under the clear criteria of 47 C.F.R. §1.40001, and this provision allowing appeals to the City Council introduces discretionary review to a process that should otherwise be administrative. At a minimum, language allowing the City Council to review “specific issues raised by appellant(s)” should be stricken as those issues may be irrelevant to the process for reviewing eligible facilities requests provided in federal regulations.

§ __.110 – Permit Renewal

By treating renewals as new applications, this provision appears to require a public hearing for renewal applications, an excessive requirement considering that the Director can determine compliance with prior planning permits. We suggest that the Director review renewal applications administratively. Any requirement to bring existing facilities into compliance with Codes in effect at the time of renewal may violate a wireless carrier’s vested rights, and we suggest that a facility due for renewal should be evaluated as a legal non-conforming use, if applicable.

§ __.160 – Independent Consultant Review

Any third-party consultants evaluating certain technical aspects of an application for the City should be engineers registered in the State of California. We note that Verizon Wireless does not need to demonstrate a significant gap in service as that is not related to findings for approval, and, with respect to right-of-way facilities, Verizon Wireless’s use of the right-of-way is authorized by state law. Any consultant analysis of alternative locations for right-of-way facilities must be limited to right-of-way locations and only when a facility may create impacts that impede public use of the right-of-way. Technical information will only be relevant if Verizon Wireless seeks to show why a particular alternative will not provide required service.

Conclusion

Verizon Wireless appreciates the opportunity to provide input on the Draft Ordinance prior to consideration at the public workshop. The City must eliminate conflicts with state law and should consider revisions to development standards that allow for needed network improvements while minimizing visual impacts. In addition, the City should consider administrative approval of small facilities as well as procedures that allow specific carrier-proposed stealth designs to be placed in identified zoning

Rodriguez, Julie

From: Limon, Jaime
Sent: Monday, February 29, 2016 8:18 AM
To: Vincent, Scott
Cc: Ewasiuk, John
Subject: FW: Wireless Facilities Ordinance
Attachments: Oil Derrick (11-013) Final A1.jpg; 67' Oil Derrick (med res) 1a.jpg

FYI

Jaime Limón, Senior Planner

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Note: Our offices are closed every other Friday. Please reference the calendar link below:
http://www.santabarbaraca.gov/Government/City_Calendar

Most City administrative offices are closed for national holidays. For more details, visit the City's website at: <http://www.santabarbaraca.gov/gov/cityhall/holidays.asp>

Have you seen our new, draft, Major Issues Checklist? It's intended to be used prior to starting a new project. Here's a link to it: [Santa Barbara - 2015 Major Issues Project Compliance Checklist](#). Please try it out, and give us feedback on it. What's missing, or what could be more helpful?

From: Rienk Ayers [mailto:rienk@chameleonengineering.com]
Sent: Wednesday, February 24, 2016 5:00 PM
To: Limon, Jaime
Subject: Wireless Facilities Ordinance

Hi Jaime,

This is Rienk Ayers with Chameleon. In reviewing your proposed ordinance, I have a few suggestions:

Make the CUP for 5 years instead of 10 for concealment sites. Almost every site needs major work in less than 5 years, and the JX needs the leverage to make the tower owners repair or improve the site. If you can't do that, some JX's are requiring annual or biannual inspections by third parties (we've done this in the past, and are making a proposal to the County to do similar).

Require a full 3D model of each concealment site, instead of a simple photo-simulation. Especially on trees, this should be critical to getting a good looking tower, and allows for knowledgeable conversation when comparing branch locations, quantity, lengths and even amount of foliage per branch (each of which is an area that some manufacturers like to skimp on to save money). This is also applicable with specialty and rooftop sites – I have attached an example.

Require a 5-year warranty on all products. Faux trees will obviously lose foliage just like real trees – but they can't grow it back. It is important to use products that will last as long as possible, so the JX doesn't have to deal with aesthetic complaints from the community; more importantly, you don't want to allow products that can be safety hazards, with large amounts of foliage falling onto people or property – and especially to avoid the liability of entire pieces of branches doing so.

