

PUBLIC COMMENT

From: Martin Elliott <[REDACTED]>
Sent: Thursday, October 10, 2024 9:23 AM
To: Small Cell Ordinance and Policy Update
Subject: Comments to Proposed Small Cell Policy

Follow Up Flag: Follow up
Flag Status: Flagged

To whom it may concern,

I have the following comments to the City of San Mateo's proposed Policy to address the deployment of small cell devices.

Restricted Site Locations:

Recommendation:

1. This section should be updated to include language that addresses situations where the proposed small cell device is located both within 300 feet of a residential home / building and within 300 feet of an existing or proposed small cell / wireless device. *We should not permit telecom providers to overly concentrate devices in certain neighborhoods and upon individual homes.*
1. 2) All **Restricted Site Location** applications should have much higher initial application fees including an annual renewal fee. They should also be required to validate enhanced **Affirmation of RF Standards Requirements**. *Higher risk locations should pay increased fees to ensure these locations are actually required and truly a last resort. An appropriate economic nudge will keep firms in line. (See Affirmation of RF Standards below.)*
- 3) *Hospitals should be added to the list of Restricted Site Locations.*

Affirmation of Radio Frequency Standards:

1. This section should be enhanced to impose a greater burden of proof on any location proposed within a **Restricted Site Location**. Restricted Location applications should be required to provide device specific testing results signed by third party firms (Approved by the City) validating the device actually being deployed is compliant with FCC requirements. This is different from a generic attestation that all such devices by a given manufacturer are compliant. This requirement could also include device revalidation every 3,5,or 7 years. The use of a generic attestation that is not device specific will not promote long term compliance. Defective devices or devices impaired by the elements over time will pose an ongoing public health risk. Note: This would only be applied to devices located in Restricted Site Locations.

General Comment:

The City should ensure it has the authority to immediately revoke all outstanding applicant permits if the City determines problem devices (unapproved/permit expired) have been deployed and/or energized. Please be retroactive...If an applicant breaks trust with the process all of their applications and permits must be voided.

Sincerely,
Martin Elliott

Theresa Loftin

From: astrauss@encinitaslaw.com
Sent: Monday, October 21, 2024 3:37 PM
To: Sustainability & Infrastructure Commission
Cc: Prasanna Rasiah; Linh Nguyen; 'Tripp May, Esq.'; Matt Fabry; 'Jessica Blome'
Subject: Comments on Small Wireless Facility in PROW Policy Changes for 10/22 Meeting
Attachments: 2024-10-21- No Cell Outs Comment to S-I Comm.pdf; Redline to SWF City Policy.pdf; Redline to SWF City Policy.docx

Good afternoon Chair Rowinski and members of the Sustainability & Infrastructure Committee:

On behalf of No Cell Outs, attached, please find comments on the proposed policy and ordinance governing small wireless facilities in the public right-of-way. We appreciate staff using the Encinitas policy as a starting point, and the many improvements reflected in the draft, especially the new preferred location standards in Section 10. Additional modifications are still necessary to ensure appropriate City authority over the public right-of-way and public participation.

For convenience and clarity, I have made changes directly to the draft Policy. Because track-changes sometimes shows inconsistently on different computers, the edits are provided both in PDF and Word format though the substance of both are identical.

Sincerely,

Ariel Strauss

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GREENFIRE
LAW, PC

October 21, 2024

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By Electronic Mail

Sustainability and Infrastructure Commission Chair Susan Rowinski, Vice Chair Kimiko Narita, Commissioner Edward Kranz, Commission Sigalle Michael and Commissioner Cliff Robbins
(SandICommission@cityofsanmateo.org)

RE: No Cell Outs' Comments on Small Cell Facilities in the Public Right of Way Ordinance & Policy Update

Dear Chair Rowinski, Vice Chair Narita and Commissioners Kranz, Michael and Robbins:

I am writing on behalf of No Cell Outs, a grassroots organization composed of citizens dedicated to the smart planning of telecommunications infrastructure in the City of San Mateo. I previously provided comments for the Commission's December 2023 information session and also on the City Council's May 2024 study session. No Cell Outs greatly appreciates that staff took into consideration many of the previous comments and made significant strides to improve existing policies.

As with any new proposal, however, some corrections and adjustments are still required. The four principal recommendations are detailed below. Attached to this letter is a list of further edits and, for convenience, a redline of the Policy directly implanting the recommended changes.

A. Consultant Review Must be Automatic, Particularly for Sites Proposed in "Restricted" Locations

Section 6(k) of the draft Policy authorizes the Director to hire a consultant to assist in processing applications. However, the Director has to exercise *discretion* on each case and does not clarify situations where consultant review is automatic. Many cities, such Hercules, have simply outsourced review to a consulting expert. This is the best approach because staff lack the technical expertise to review wireless applications and it frees up staff to do other work. It also simplifies ensuring that applicants bear the full cost of permit review—the amount charged by the consultant to the City is passed on to the applicant, which is simpler than estimating the cost

of staff time and overhead. I have heard from many cities that they believe they currently undercharge for permit processing.

More importantly, under the proposed Policy, appropriately, many more applications will undergo searching review compared with existing policy. Going forward, any application in a “restricted” location (i.e., near a residence) will require the applicant to demonstrate that denial of the application would violate federal or state law. Federal law is violated if denial will “have the effect of prohibiting the ability” to provide “telecommunications” or “personal wireless services” to the applicant’s customers. (47 U.S. Code § 332(c)(7).) To determine whether this is the case will require understanding the current level of service customers receive, the nature and significance of the service proposed, the availability of technically feasible alternative means of providing the service and review of technical radiofrequency propagation maps and forecasts prepared by applicant engineers. (*See Sprint PCS Assets v. City of Palos Verdes Estates*, 583 F. 3d 716, 727 (9th Cir. 2009) (discussing many factors).) Plainly, this is a job for a specialist consultant.

The Encinitas Policy, from which the City’s draft is largely based, provides that “Due to the technical nature of issues likely to be raised, independent consultant review will generally be appropriate when considering an exception request.” (Encinitas Reso. 2020-38, § 13(d).) However, San Mateo should simplify the process further and give applicants fair notice that *all applications for sites in restricted locations will require third-party consultant review*. New language has been added to Section 6(k) to include this requirement.

B. Applicants Must Present Pole Alternatives for Consideration by the Public and Staff

Unlike a large macro tower built on private property where it may be difficult to find a willing landlord, for small cells in the public right of way, there are usually multiple poles or sites that will be feasible. The applicant should be required to identify all technically feasible poles within a relevant radius (i.e. 500 feet instead of 300 feet). This way, the community or staff can have some input on which best balances the community’s priorities.

In San Francisco when an applicant wants to put up a new stand-alone small cell in the right of way, it must identify any technically feasible alternative locations, present a ranked preference list of feasible options, hold a community meeting and then allow the City to select the site staff believe is most suitable. This approach makes sense. After all it is the public’s property this is being used and the public’s aesthetic experience that will be affected. (*See SF*

Public Works Code, §§ 2703-06.)¹ San Mateo could use a similar approach. However, even if the City does not adopt this exact method of allowing staff to pick from among all feasible options, it should ensure that applicants identify alternative poles and hold a mandatory meeting to discuss these alternatives. This more limited approach is added to Section 6.

C. The City Must Think Ahead to Prevent Uncontrolled “Modifications” or “Co-Locations”

The proposed Policy includes requirements to reduce the visual impact of wireless facilities (*see* Section 11). However, unless the City is careful, all these conditions can readily be undermined and disregarded after a permit issued. This is because the Policy does not require applicants to make the facilities “stealth.” Under federal law, a “stealth” facility is one that “look[s] like something other than a wireless tower or base station,” such as a “pine tree, flag pole, or chimney.” (2020 FCC Ruling, 35 FCC Rcd. at 5994, 5996.) In addition to the immediate aesthetic value of making facilities “stealth”, there is a more important reason. If the site is not “stealth”, future applicants that wish to add antennas on to (“co-locate”) or “modify” the existing antenna by replacing them with others are granted a federal right to override virtually all San Mateo design and planning standards, and even conditions in the issued permit itself.

FCC regulations dictate that a service provider may add to a non-stealth facility more antennas 10 feet upward and horizontally outward by six feet, as well as install ground cabinets for auxiliary telecommunications equipment. (47 C.F.R. § 1.6100(b)(7).) It does not matter whether it is in a restricted area. It does not matter if the new antennas will now be in front of someone’s window. It does not matter if it blocks views. It does not matter if it exceeds the maximum height of the zone so it is extra conspicuous. It does not matter if it is much larger than the approved design. For any other type of installation, this conduct would be a clear code violation and subject the owner to severe civil and even criminal penalties. But for wireless facilities, basically, the FCC has requisitioned the public street and given it to a wireless carrier.

¹ See https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_publicworks/0-0-0-47228; the Public Works Department Order implementing the Code can be accessed here: <https://www.sfpublicworks.org/sites/default/files/Order206293.docx.pdf>.

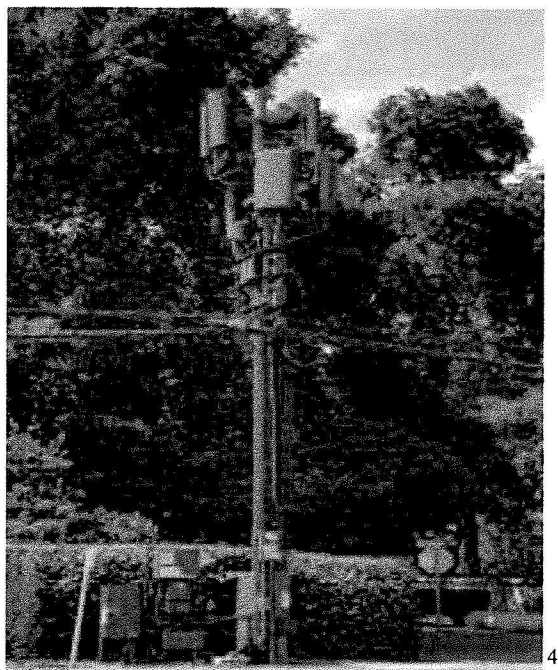
Here are examples of the photo simulations of the two most common approved small cell designs for streetlights and wooden utility poles in San Mateo:



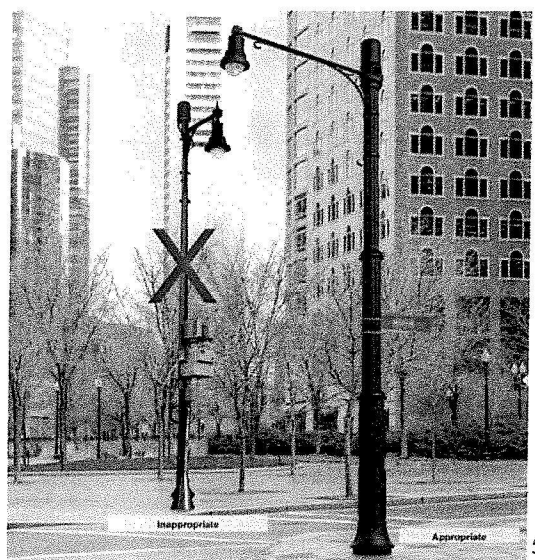
While these installations may appear “small”, they are clearly not *hidden* or appearing as “something other than” a wireless facility. As a result, they are not “stealth” and, if a future applicant insisted, there is virtually nothing that the City could do to stop the pole from looking similar to this example from Los Altos:

² 29 Grant St. (WC-2023-000138).

³ 341 N. Delaware St. (WC-2022-000054).



In contrast, here is a stealth design from the Fort Worth, Texas, design standards:



It is unlikely that applicant would be able to attach additional antennas to a pole like the Fort Worth example without new City review and approval. As a result, the City should add several requirements to prevent hideous and uncontrolled future proliferation.

⁴ <https://www.losaltosca.gov/publicworks/page/small-cell-nodes>

⁵ Fort Worth Tex. Muni. Code, Chap. 30, App'x A, Ex. 9,
https://codelibrary.amlegal.com/codes/ftworth/latest/ftworth_tx/0-0-0-58357.

First, applicants should be required to identify all technically feasible options for co-location on an existing wireless facility to meet the service objective. With foresight, co-location, can be the best option because it allows the City more control over how sites develop and limits the number of new sites over which the City loses control. The applicant should be required to provide photo simulations of a co-location at that alternative site. Co-location can provide an opportunity to update an older site to be more visually appealing and streamlined. If feasible, collocation should be requ(a)ired unless the applicant demonstrates that a new site is visually superior or more compliant with Policy requirements. New language has been added to Section 10(d) and elsewhere to include this requirement.

Second, an applicant should be required to demonstrate that it is technically infeasible to design a facility in a “stealth” manner, such as by fully integrating the antenna into an existing pole. New language has been added to Section 11 as new subsection (q) to include this requirement.

Third, in the event that alternative sites are available, the applicant should be required to provide photo simulations of the maximum potential buildout of the proposed site allowable by federal law so that the City can decide if an alternative offer reduced risk of inappropriate future development. New language has been added to Section 6(b)(5) to include this requirement.

D. The Commission Should Hear Appeals, Not a Hearing Officer

The draft Ordinance (Section 17-10-070(g)) would eliminate appeals to the Commission and instead have appeals heard by a hearing officer. Given that the hearing officer is an individual hired by the Department, this keeps all review largely under the control of the Public Works Director. Since one point of the appeal is to allow a means of disputing the Director’s interpretation, this approach is not likely to address resident concerns. The involvement of elected or appointed officials is important to ensure that the policy is periodically reviewed and applied appropriately.

Many other cities allow appeals of small cell permits in the right of way to appointed or elected boards. For instance, Carmel-by-the-Sea, Encinitas, Malibu, Martinez, Mill Valley, Novato, Orinda, Pinole, San Rafael, Santa Cruz, allow appeals to all the way to the city council. In other cities, appeals are to a commission, such as in Calabasas, Petaluma and San Francisco. Some municipalities have developed approaches to quickly dispense with certain types of appeals so that appeals to the highest level are automatically put on the consent agenda and additional votes

are needed to take them up for discussion.⁶ While it is true that the FCC “shot clocks” put pressure on staff, other cities have found a way to do it and San Mateo should too.

In practice, the 60-90 day shot clocks are extended frequently—often because the applicant itself needs more time to get its own application organized and complete internal engineering or planning related to trenching and fiberoptic backhaul design. Moreover, so long as the City makes a Director-level decision before the shot clock period ends, it will have complied with the FCC regulations. (47 CFR § 1.6003(a).) The impact of the shot clocks expiring after this decision is made will only be to cut off any subsequent right to appeal, if the applicant does not agree to an extension.

Voluntary shot clock tolling also goes both ways. As provided in Policy Section 6(h), if the City is approaching the end of the shot clock and does not have the information needed to approve the application, the City will deny the application to avoid blowing the shot clock. In those instances, the applicant needs the City’s approval to extend the shot clock. As the regulations say, a tolling agreement to stop the shot clock requires “a written agreement between the applicant and the siting authority [i.e, the City].” (47 C.F.R. § 1.6003(d).) Caselaw confirms that denying an incomplete application, without offering the applicant further opportunity to remedy it, is lawful. (*ExteNet Sys. v. City of Cambridge*, 481 F. Supp. 3d 41, 51 (D. Mass. 2020).)

For example, earlier this year, AT&T agreed to extend the shot clock to allow a resident in Santa Cruz County to appeal a macro tower because the county requested this extension so that their process can play out as intended in their ordinance. Similarly, Verizon has informed me that it would agree to a shot clock extension to allow an appeal of a small cell to the San Francisco board of appeals. Applicants want to have a good relationship with the City and typically are confident in the ability of their applications to withstand appeal so prefer to wait a short while longer and have an application approved on its merits. Appeals should continue to be allowed to the Commission, or even expanded to the City Council level. Relevant edits to the draft Ordinance are proposed on the attached page.

E. Additional Changes and Edits

These four changes are considered highest priority. However, others are also important and are briefly detailed in the attached list and shown in redline.

⁶ See, e.g., Palo Alto Code, § 18.77.070(f) (Design review appeals go straight on to the city council consent calendar and require three out of seven votes to take it up for discussion).

No Cell Outs greatly appreciates staff's work to improve the City's policies and the Commission's close attention to this issue. We look forward to providing comments and seeing further progress at the Commission hearing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ariel Strauss', written over a horizontal line.

Ariel Strauss

Attachments:

List of Additional Proposed Changes

Redline Recommended Changes to Draft Policy

CC: Matt Fabry, Director, Public Works (electronic mail only)
Prasanna Rasiah, City Attorney (electronic mail only)
Linh Nguyen, Assistant City Attorney (electronic mail only)
Tripp May, Esq. (electronic mail only)

LIST OF ADDITIONAL PROPOSED CHANGES

Recommended Changes to Draft Ordinance

Section 17.10.050(d): For simplicity and consistency, the ordinance should designate that notice be provided as required by the policy. If the notice requirements remain in the ordinance, the applicant should be required to submit notices within one (1) business day of filing the application.

Section 17.10.070(g):

- Any person affected by the site should have a right to appeal, not just residents within 500 feet.
- Appeals should remain to the Sustainability and Infrastructure Committee, not a hearing officer.
- Fees should be waived or limited for members of the public. Many cities have this policy while others charge thousands of dollars, which creates an unfair barrier for some residents to protect their rights.

17.10.080(b): Appeals should remain to the Sustainability and Infrastructure Committee, not a hearing officer.

Summary of Changes to Draft Policy Shown in Attached Redline

Section 6(a)(3): Require applicant to report feedback from community and confirm that there is a bona fide plan to use the proposed site.

Section 6(a)(5): Require photo simulations of feasible alternatives and potential expansion of proposed site.

Section 6(a)(11): Facilities that support public safety agencies must comply with applicable engineering standards.

Section 6(a)(15): More detailed alternative pole and co-location potential analysis is needed.

Section 6(d): Community meetings must be required, particularly since there are no public hearings prior to approval.

Section 6(k): Consultant review is required for Restriction Locations.

Section 7(a): City will post applications on website.

Section 7(c): Applicant must mail notice faster to ensure sufficient time for feedback and compliance before the lapse of the City's 10-day deadline to identify an application as incomplete.

Section 8(b): Add requirement to make findings identified in Section 13, demonstrate no feasible co-location, that facility cannot be stealth and applicant has actually obtained all required approvals in advance. Also expand comparison radius to 500 feet from 300 feet.

Section 9(a)(1): Reduce permit term from 10 years to 5 years for facilities supporting public safety agencies.

Section 9(a)(11): Require final post-installation review to include redline of specs.

Section 9(a)(21): Require indemnification from facility operator.

Section 9(a)(22)(v): Clarify that pollution liability coverage includes RF.

Section 9(b): Provide that permits can be modified in the event of change in federal law (this is in the Encinitas policy).

Section 10(a): Expand comparison radius from 300 feet to 500 feet.

Section 10(d): Require co-location if feasible and no less visually intrusive.

Section 11(h)(6): Prohibit unsightly on-strand antennas.

Section 11(n)(4): Clarify restriction on using non-functional wooden poles.

Section 11(q): Require facilities to be stealth when technically feasible.

Section 13(a): Add clarification that the objective is maintain maximum local authority.

**SAN MATEO CITY COUNCIL
POLICY NO. [##]
SMALL WIRELESS FACILITIES
IN THE PUBLIC RIGHTS-OF-WAY**

Adopted By: City Council Resolution No: [##]
Effective Date: *[insert date from most recent CC resolution]*
Responsible Department: Public Works

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SECTION 1 RESERVED

SECTION 2 PURPOSE AND INTENT

- (a) This policy is adopted pursuant to San Mateo Municipal Code Chapter 17.10, which authorizes the City Council to adopt procedural and substantive rules for small wireless facilities deployment within the City's jurisdictional and territorial boundaries, and to delegate limited authority to the Director (as defined below) to create, publish and from time-to-time revise certain rules and regulations to implement this policy.
- (b) The City intends this policy to establish reasonable, uniform and comprehensive standards and procedures for authorizing small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's public rights-of-way, consistent with and to the extent permitted under federal and California state law.
- (c) The standards and procedures contained in this policy are intended to, and should be applied, consistent with federal and state law, to protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City's local values, which include without limitation the aesthetic character of the City, its neighborhoods and community.
- (d) This policy is also intended to reflect and promote the community interest by (1) ensuring that an appropriate balance between public and private interests is maintained; (2) protecting the City's unique visual character from potential adverse impacts and/or visual blight created and/or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; (5) protecting and promoting the City's residential neighborhoods and other family-oriented environments, such as parks and trails; and (6) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.
- (e) This policy is intended to establish clear procedures for application intake and completeness review. The City Council finds that chronically incomplete applications: (i) significantly contribute to unreasonable delay and create barriers to infrastructure deployment, (ii) unfairly prejudice other applicants who may be prepared to submit complete applications for infrastructure in the same or substantially the same location, and (iii) unfairly prejudice the City's ability to act on such applications within the "presumptively reasonable" timeframes established by the FCC. The provisions in this policy afford applicants and City staff opportunities for direct, real-time communication about completeness issues

to mitigate incomplete applications prior to submittal. The provisions in this policy also encourage applicants to timely respond to incomplete notices.

- (f) This policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California state law.

SECTION 3 DEFINITIONS

Undefined phrases, terms or words in this section will have the meanings assigned to them in 1 U.S.C. § 1, as may be amended or superseded, and, if not defined therein, will have their ordinary meanings. If any definition assigned to any phrase, term or word in this section conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control. All references to codified statutes, regulations or other rules shall be deemed to refer to such statutes, regulations or other rules as they may be amended or superseded.

- (a) "**accessory equipment**" or "**associated equipment**" means equipment other than antennas used in connection with a small wireless facility. The term includes "transmission equipment" as defined by the FCC in 47 C.F.R. § 1.6100(b)(8).
- (b) "**amateur station**" means the same as defined by the FCC in 47 C.F.R. § 97.3, which defines the term as "a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications." This term includes amateur radio antennas and related facilities used for amateur radio services.
- (c) "**antenna**" means the same as defined by the FCC in 47 C.F.R. § 1.6002(b).
- (d) "**appellate authority**" means the City official, appointed/elected body, or hearing officer responsible to hear, consider and decide appeals from decisions by the approval authority under this policy. The appellate authority for applications in connection with small wireless facilities shall be an independent hearing officer retained by the City.

- (e) **"approval authority"** means the City official or appointed/elected body responsible for application review and vested with authority to approve, conditionally approve or deny such applications as provided in this policy. The approval authority for applications in connection with small wireless facilities shall be the Director of Public Works, or designee. If an application is subject to an appeal, the appellate authority shall be deemed the "approval authority" under this policy.
- (f) **"arterial road"** means both Principal Arterials and Major Arterials as defined in the Circulation Element to the City of San Mateo General Plan.
- (g) **"batched application"** means the same as defined in California Government Code § 65964.3.
- (h) **"City"** means the City of San Mateo, California.
- (i) **"Code"** means the Municipal Code of the City of San Mateo, California.
- (j) **"collocation"** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g).
- (k) **"collector street"** means Major Collectors as defined in the Circulation Element to the City of San Mateo General Plan.
- (l) **"CPUC"** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- (m) **"decorative pole"** means any pole that includes decorative or ornamental features, design elements and/or materials for aesthetic purposes.
- (n) **"Department"** means the Public Works Department for the City.
- (o) **"Director"** means the Director of the Public Works Department for the City or the Director's designee.
- (p) **"eligible facilities request"** means the same as defined in 47 U.S.C. § 1455(a)(2), and as interpreted by the FCC in 47 C.F.R. § 1.6100(b)(3), which defines the term to mean any request for modification of an existing tower or base station that does not substantially change the physical dimension of such tower or base station, involving: (1) collocation of new transmission equipment; (2) removal of transmission equipment; or (3) replacement of transmission equipment.
- (q) **"FCC"** means "Federal Communications Commission", as constituted by the Communications Act of 1934, Pub. L: 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.*, or its duly appointed successor agency.

- (r) **"Fire Safety Authority"** means the San Mateo Consolidated Fire Department or the Fire Safety Authority's designee.
- (s) **"local street"** means Local roads as defined in the Circulation Element to the City of San Mateo General Plan.
- (t) **"non-pole concealment structure"** means a structure within the public rights-of-way, other than a pole, that can be adapted (either in its current form or through a replacement) to conceal antennas and/or accessory equipment for small wireless facilities. Examples may include, without limitation, monuments, kiosks, bus shelters and other street furniture.
- (u) **"OTARD"** means any "over-the-air reception device" subject to 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and certain fixed wireless antennas not greater than one meter in diameter.
- (v) **"personal wireless service facilities"** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii).
- (w) **"personal wireless services"** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(i).
- (x) **"persons entitled to notice"** means (1) all real property owners as shown on the most recent equalized assessment roll within 500 feet from the location where a small wireless facility is proposed; and (2) all legal occupants of properties within 500 feet from the location where a small wireless facility is proposed. Mailed notice will be deemed given to real property owners when sent to the address listed on the most recent equalized assessment roll. Mailed notice will be deemed given to the real property's occupants when sent to the real property's physical address.
- (y) **"prohibited support structure"** means any support structure on which the City prohibits the deployment of wireless facilities, except when specifically authorized by the Director or as a pre-approved design pursuant to this policy..
- (z) **"public right-of-way"** or **"public rights-of-way"** means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.
- (aa) **"RF"** means radio frequency.

- (bb) **"Section 6409"** means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a).
- (cc) **"shot clock"** means the presumptively reasonable time defined by the FCC in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless service facilities. In general, and as applied to small wireless facilities, the shot clock for review of an application are as follows: (1) 60 days to collocate a small wireless facility using an existing structure; and (2) 90 days to deploy a small wireless facility on a new structure.
- (dd) **"small wireless facility" or "small cell"** means the same as defined by the FCC in 47 C.F.R. § 1.6002(f). Among other factors, all small wireless facilities must meet each of the following size limitations: (1) the facilities are (A) mounted on structures 50 feet or less in height including their antennas; or (B) mounted on structures no more than 10 percent taller than other adjacent structures; or (C) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; (2) each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; (3) all other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.
- (ee) **"support structure"** means a "structure" as defined by the FCC in 47 C.F.R. § 1.6002(m).
- (ff) **"technically infeasible"** means a circumstance in which compliance with a specific requirement under this policy is physically impossible and not merely more difficult or more expensive than a noncompliant alternative.
- (gg) **"tower"** means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(9), as may be amended or superseded.
- (hh) **"underground utility district"** means any underground utility district adopted by the City Council.
- (ii) **"Very High Fire Hazard Severity Zone"** means the same as classified and published by the California Department of Forestry and Fire Protection in the "Fire Hazard Severity Zones Maps" as directed by California Public Resources Code §§ 4201–4204; California Code of Regulations Title 14, Section 1280; and California Government Code 51177(i).
- (jj) **"PG&E"** means the Pacific Gas and Electric company or its successors or any subsidiary that may provide electric power service to small wireless facilities.

- (kk) **"substantial"** means an alteration, modification, or other change that deviates from the approved plans in a manner as defined in Section 11(q) or as determined by the Director and is only applicable in the cases not related to eligible facilities requests.
- (ll) **"Toll" or "Tolled"** means to halt or pause the shot clock as agreed upon by both an applicant and the City.
- (mm) **"USPS"** mean the United States Postal Service.
- (nn) **"withdraw or withdrawn"** means a cancellation or termination of a permit application by an applicant.

SECTION 4 APPLICABILITY

- (a) **General.** This policy applies to all requests for the City's regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy small wireless facilities within the public rights-of-way within the City's territorial and jurisdictional boundaries, unless expressly exempted pursuant to this Section 4.
- (b) **Small Wireless Facilities on City Property.** This policy does not govern whether or under what terms and conditions the City, in its proprietary capacity as the property, pole or structure owner, would lease, license or otherwise allow a small wireless facility on such property, poles or structures, whether within or outside the public rights-of-way.
- (c) **Eligible Facilities Requests.** Notwithstanding anything in this policy to the contrary, this policy shall not be applicable to eligible facilities requests and/or other applications submitted for approval pursuant to Section 6409.
- (d) **Other Exemptions.** Notwithstanding anything in this policy to the contrary, this policy shall not be applicable to the following:
 - (1) wireless facilities, towers support structures owned and operated by the City for public purposes;
 - (2) small wireless facilities installed completely indoors and used to extend personal wireless services into a business or the subscriber's private residence, such as a femto cell or indoor distributed antenna system;
 - (3) Over-the-Air Reception Devices (OTARDs), which includes, without limitation, antennas, support structures, towers and related equipment in connection with OTARDs;

- (4) antennas and related transmission equipment used in connection with a duly authorized amateur station;
- (5) wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D; and/or
- (6) any other facility that does not meet the definition of a small cell wireless facility as defined by the FCC in 47 C.F.R. § 1.6002(f).

SECTION 5 REQUIRED PERMITS AND OTHER APPROVALS

- (a) **Small Wireless Facility Permit ("SWF Permit").** A SWF Permit, subject to the Director's review and approval in accordance with this policy, shall be required for all small wireless facilities and located in whole or in part within the public rights-of-way.
- (b) **Encroachment Permit.** An encroachment permit shall be applied for and obtained from the Department of Public Works prior to beginning any work within the public rights-of-way. Applicants are recommended to apply for encroachment permits concurrently with the SWF Permit.
- (c) **Tree Permit.** A tree permit shall be applied for and obtained from the Department of Parks & Recreation prior to beginning any work that may affect a Protected Tree as defined by and pursuant to San Mateo Municipal Code Chapter 13.40.
- (d) **City Pole License Agreement.** A license agreement is required to be executed with the City prior to any SWF Permit application submittals that propose small wireless facility attachment to a City-owned pole.
- (e) **Utility Equipment Agreement.** A utility equipment agreement is required to be executed with the City prior to any SWP Permit application submittals that propose new privately-owned ground mounted equipment and/or freestanding poles to support a small wireless facility within the public right-of-way.
- (f) **Other Permits and Regulatory Approvals.** In addition to an SWF Permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility or other infrastructure deployment must contain a valid SWF Permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such SWF

Permit may be denied without prejudice. Any SWF Permit granted under this policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the SWF Permit requirement under Section 5(f) does not exempt the same wireless facilities or other infrastructure deployments from any other permits or approvals, which includes without limitation any ministerial permits from the City.

SECTION 6 APPLICATION AND REVIEW PROCEDURES

- (a) **Application Required.** The approval authority shall not approve any requests for authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy small wireless facilities except upon a complete and duly filed application consistent with this Section 6 and any other written rules or requirements the City Council or the Director may establish from time to time in any publicly-stated format.
- (b) **Application Content.** In addition to any other publicly stated requirements for a complete application, all SWF Permit applications for small wireless facilities must include the following information and materials:
 - (1) **Application Form.** The applicant shall submit a complete, duly executed ROW administrative design review permit application on the then-current form prepared by the City and posted on the City's website. The applicant shall state which FCC Shot Clock it asserts will apply to the proposed project and explain the basis for its assertion.
 - (2) **Application Fee.** Applicants shall submit the applicable permit application fee adopted by City Council resolution. Single or Batched applications must include an application deposit amount for each small wireless facility, including each small wireless facility in the batch. Should the deposit be inadequate, an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.
 - (3) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed facility qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (A) whether and why the proposed support is a "structure" as defined by the FCC in 47 C.F.R. § 1.6002(m); (B) whether and why the proposed wireless facility meets each required finding for an SWF Permit as provided in Section 8(b); and (C) a

written report that describes the potential fire hazards posed by the facility to surrounding vegetation and/or structures, and any steps taken by the applicant to mitigate such hazards. The project narrative shall also include a statement as to any other planned deployments by the applicant within the City over the 12-month period from the date of submittal. If the applicant is not a wireless carrier, demonstrate a bona fide plan to actually deploy facilities by the applicant for a specific wireless tenant; identification of each proposed lessee or owner of an antenna to be installed on the facility. The narrative shall also describe any feedback received from any voluntary pre-application meetings, or other community engagement, and the applicant's analysis of and response to the feedback.

Commented [A1]: The City has had recent experience with an applicant who is not a wireless carrier obtaining dozens of permits but then not taking action on many of them, suggesting that a service provider may not have already identified a need for the sites.

- (4) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project. The construction drawings must: (A) contain cut sheets for all existing and proposed antennas and accessory equipment; (B) include a site survey prepared, signed, and stamped by a licensed surveyor or engineer qualified to perform surveying work, (C) depict the applicant's preliminary construction plan; and (D) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, fire codes, electric codes, local street standards and specifications, and public utility regulations and orders.
- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility and any associated ground mounted equipment in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. For facilities for which technically feasible alternative sites are identified pursuant to paragraph 15 below, the applicant shall additionally submit (a) equivalent photo simulations for the alternative sites and (b) a photo simulation showing the maximum potential expansion of the requested facility in the event of future eligible facility request(s).
- (6) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies under penalty of perjury that the proposed small wireless facility, both individually and cumulatively with all other emitters that contribute more than 5% to the cumulative emissions in the vicinity (if any), will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by a licensed engineer qualified to perform RF calculations acceptable to the Director. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed

antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site. If the applicant submits a batched application, a separate RF report shall be prepared for each facility associated with the batch.

- (7) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.
- (8) **Pole License Agreement.** For any small wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit an executed Pole License Agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City's Pole License Agreement except as may be indicated on the form itself. Any unpermitted changes to the City's Pole License Agreement shall be deemed a basis to deem the application incomplete. Refusal to accept the terms and conditions in the City's Pole License Agreement shall be an independently sufficient basis to deny the application without prejudice.
- (9) **Property Owner's Authorization.** The applicant must submit a written authorization from the support structure owner(s) that authorizes the applicant to submit and accept an SWF Permit in connection with the subject structure.
- (10) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by a licensed engineer for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.
- (11) **Structural Analysis.** The applicant shall submit a report prepared and certified by a licensed engineer (or other qualified personnel acceptable to the City) that evaluates whether the underlying pole or support structure has the structural integrity to support all the proposed equipment and attachments. At a minimum, the analysis must be consistent with all applicable requirements in CPUC General Order 95 (including, but not limited to, load and pole overturning calculations), the National Electric Safety Code, the standards and practices required for an ANSI/TIA-222 Maintenance and Conditions Assessment (under the most current revision at the time of submittal) and any safety and construction standards required by law and the utility provider. The report shall contain tolerances including but not limited to guy tensions if applicable, plumb, twist, slip splices and take-up devices. Facilities that the applicant states will support public safety agency use shall comply with standards for APCO ANS 2.106.1-2019 (or most current revision at the time of submittal).

- (12) **Environmental Impact Assessment.** The applicant shall submit an environmental impact assessment on the then-current form prepared by the City and available on the City's website to determine whether the proposed project is categorically exempt under Article 19 of the CEQA Guidelines, or whether the proposed project will require a Negative Declaration, Mitigated Negative Declaration or an Environmental Impact Report.
- (13) **Exception Request.** Any application that involves a request for an exception pursuant to Section 13 in this policy shall include a written statement in a separate document that includes all the following information: (A) whether the applicant seeks an exception pursuant to Sections 13(b)(1), 13(b)(2) or both; (B) the specific provision(s) and/or requirement(s) in this policy from which the applicant seeks an exception; (C) the specific provision(s) of federal or state law under which the applicant seeks an exception; (D) the standard of evidence applicable to each specific provision(s) of federal or state law under which the applicant seeks an exception; (E) a statement of the factual evidence that supports the findings for the exception requested; (F) a statement that describes the extent of the exception required and the factual evidence to show the exception would be narrowly tailored in compliance with Section 13(e); and (G) any other information the applicant believes relevant to the issues raised in the exception request. Given the short timeframe in which the City must review the application and the deployment volume anticipated by both the FCC and wireless industry, this written statement must be included with the initial submittal to afford City staff a reasonable time to act on the application. Any request by the applicant to consider an exception after the initial submittal shall be treated as a new application, and the existing application shall be deemed withdrawn.
- (14) **Truth and Accuracy Statement.** Any application submitted pursuant to this policy shall be signed by the applicant, or a person knowledgeable about the proposed facility and authorized to act on the applicant's behalf, attesting, that under penalty of perjury, that all information, representations and disclosures in the application are true, correct and complete.
- (15) **Alternate Sites Analysis.** The Applicant shall submit an Alternate Sites Analysis in a form substantially the same as the template as provided on the City's Website. The Alternate Sites Analysis shall identify (a) all technically feasible support structures in the public right-of-way within 500 feet of the proposed location (regardless of whether such structures are in a more preferred location) and (b) any existing wireless facilities within 500 feet of the proposed facility. The applicant shall (i) demonstrate why the proposed location is the most preferred support structure, (ii) demonstrate whether co-locating with or otherwise modifying an existing wireless facility would substantially meet the applicant's service objectives (regardless of whether changes or additions to the existing

Commented [A2]: This analysis is needed in order to determine whether the proposed site is a most preferred structure under Section 10.

wireless facility would constitute an eligible facilities request) and why such co-location or modification would not be less visually obtrusive or not otherwise further the requirements and objectives of this policy and (iii) demonstrate that the proposed location is in the most preferred location in accordance with Section 10, with a detailed explanation why it is the most preferred location.

- (16) **Public Noticing.** The Applicant shall provide a signed affidavit, receipts from USPS Informed Delivery for Business Mailers, and dated photographs of compliance with the public noticing requirements for application submittal pursuant to Section 7.

(17) **Coverage and Capacity.** The Applicant shall provide documentation demonstrating the coverage and capacity objectives that the proposed small wireless facility will achieve.

(c) **Voluntary Pre-Application Conferences.** The Department shall provide prospective applicants with the opportunity to schedule and attend a pre-application conference with Department staff. The City strongly encourages pre-application conferences for all applications. The pre-application conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing small wireless facility, such as compliance with generally applicable rules for public health and safety; potential stealth or concealment issues or concerns (if applicable); coordination with other City departments and/or divisions responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable.

(d) ~~**Voluntary Community Meetings.**~~ The City also strongly encourages, but does not require, prospective applicants to schedule, notice, arrange, and attend a pre-submittal community meeting with all interested members of the public. This voluntary, pre-submittal public meeting does not cause the shot clock to begin and is intended to give applicants the opportunity to hear from members of the public regarding proposed deployment. Prospective applicants are encouraged (but not required) to bring any draft applications, discussion of alternatives, plans, maps, presentations or other materials to facilitate the public's understanding of the prospective applicant's proposal. The City seeks to encourage dialogue that may allow prospective applicants to address areas of concern and may lessen the likelihood of appeals from the approval authority's decision by any interested person or entity. In the event that a voluntary pre-submittal meeting is not held, the applicant shall include in the notice provided required in Section 7(c) an invitation to a community meeting, which shall be held within five (5) business days of application submittal. The meeting shall include the materials identified above and shall discuss any alternatives identified in paragraph 15 above. Within two (2) business days after the meeting, the applicant shall provide confirmation to the City of holding the meeting and report any feedback received as well as the applicant's analysis of and response to the feedback.

(e) **Application Submittal Procedures.** Unless the Director establishes an alternative submittal procedure published on the City's website, all applications submitted under this policy must be submitted to the City in person at a pre-scheduled staff counter hours with the Department. Applicants may generally submit one application at a time to accommodate other applicants who wish to

submit on the same day, but staff may accept multiple applications whenever feasible and not prejudicial to other applicants. Any application received in a manner not authorized by this policy or alternatives established by the Director, whether delivered in-person, by mail or through any other means, will not be considered duly filed.

- (f) **Public Noticing of Application Submittal.** Applicants shall provide public noticing of application submittals as described in Section 7.
- (g) **Review and resubmittal.** The Department shall review submittals and provide Notice of Incomplete letters (if applicable). Applicants shall resubmit their applications following the same procedure described in Section 6(e) and include a Response Letter that directly responds to each comment from the Notice of Incomplete letter.
- (h) **Incomplete Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed under this policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Department within 60 calendar days after the department deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 60th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.
- (i) **Batched Applications.** Pursuant and subject to California Government Code § 65964.3, applicants may submit up to 50 substantially similar wireless broadband projects under a single application for an SWF permit. Notwithstanding the foregoing: (A) any conditions of approval associated with the SWF Permit shall be applied individually to each wireless broadband project; (B) the applicant shall obtain individual construction, encroachment, excavation, traffic control and other similar ministerial permits for each wireless broadband project approved or deemed-approved in a batch; (C) the applicant shall pay the applicable fees or deposits for a batched application set forth in the then-current fee schedule adopted by the City Council; and (D) the Director will have final authority over whether all wireless broadband projects in a batch are "substantially similar". Where one or more projects within a batch are determined to be not "substantially similar" to the remainder of the batch, those projects shall be reviewed separately.
- (j) **Applicant Withdrawals.** Applicants may withdraw their SWF Permit application at any time prior to the commencement of any work within the public right-of-way. Any withdrawn application terminates the entire SWF Permit and any associated permits, including but not limited to encroachment permits. The Applicant is responsible for all review and permitting costs associated with the withdrawn applications, including costs related to any associated permit. If an applicant intends to withdraw any permit after work within the public right-of-way has commenced, any such withdrawal shall not be effective until the applicant ensures the removal of all associated equipment and full restoration of the public right-of-way is completed.

- (k) **Peer and Independent Consultant Review.** The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (A) permit application completeness and/or accuracy; (B) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (C) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (D) whether and to what extent a proposed project will comply with applicable laws; (E) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and (F) any other issue identified by the Director that requires expert or specialized knowledge. ~~including without limitation any issues related to an~~ Consultant review shall be mandatory for any exception requested by the applicant pursuant to Section 13 in this policy. The Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant. Subject to applicable law, if the Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the City a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Director until the City adopts the initial required deposit by fee schedule. The Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. If the deposit exceeds the total costs for consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Director or his or her designee. If the reasonable costs for the independent consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The City shall not issue any construction or encroachment permit to any applicant with any unpaid deposit requests or invoices.

SECTION 7 PUBLIC NOTICES

- (a) **Preface to Notice Requirements.** The City strongly favors public participation in the development process, which requires effective public notice. However, federal regulations that generally require approvals or denials within a relatively short timeframe interfere with the City's ability to conduct public notice and public hearings in the same manner as the City would for any other commercial development project. To promote the City's and the community's legitimate interest in public participation, while at the same time enabling the City to act on applications within the timeframe prescribed by law, this Section 7 establishes notice requirements designed to give interested parties notices through multiple mediums and at times intended to maximize such parties' ability to exercise their right to be heard. Within two (2) business days of receipt of an application, the City will post applications on the City's website. Such posting shall not be in place of any other required notice and failure to post or update applications shall not affect the validity of any City action or approval.
- (b) **Posted Notice.** Within three (3) calendar days of submitting an application for an SWF Permit, the applicant shall: (1) create a "Posted Notice" letter conforming to the template provided on the City's website, and (2) physically post three notices at the proposed project site and in locations near and visible from the public rights-of-way. Within seven calendar days of submitting an application for an SWF Permit, the applicant shall provide the Department with evidence that such notice has been posted. The applicant is responsible for maintaining and replacing the Posted Notice as necessary during the duration of the application review process until the approval authority acts on the application and after any appeal period has concluded. The physical Posted Notice shall be composed of durable quality, tamper-resistant, and weather-resistant materials that will not deteriorate under normal circumstances. The Posted Notice shall be conspicuously placed at the proposed location and the two nearest street intersections and shall not be placed in any location where it would obstruct travel, visibility or safety for vehicles, bicycles, pedestrians or other users in the public right-of-way. The City encourages applicants to consult with the Department on placement locations to avoid any potential hazards.
- (c) **Mailed Notice.** Within ~~three~~ one (1) business calendar days of submitting an SWF Permit application, the Applicant shall: (1) create a "Postcard" notice conforming to the template provided on the City's website and (2) mail Postcard notices to all persons entitled to notice via USPS Informed Delivery for Business Mailers. ~~Within seven~~ two (2) business calendar days of submitting an SWF Permit application, the applicant shall provide the Department with evidence that such notice has been mailed including, but not limited to, an affidavit, sample notice, and mailing list. The City encourages applicants to voluntarily consult with the Department before application submittal to confirm the mailing list of persons entitled to notice.
- (d) **Notice Content Requirements.** In addition to any other requirements in the

Commented [A3]: The City only has 10 days to reject an incomplete application so allowing notice to the City to be submitted after 7 days does not allow much time for the City to confirm compliance. Insufficient notice is a common problem and thwarts public participation in the expedited review process; it should be a basis to deem an application incomplete.

Code or this policy, all application submittal notices described in Section 7(b)-(c) required under this policy shall include all information as required in the City's "Posted Notice" and "Postcard" templates provide on the City's website.

- (e) **Email Notice List.** Any interested parties or entities may sign up for an email notification list that will provide notification when Director decisions or appeal decisions are issued and posted to the City's website. Instructions on how to sign up for email notification shall be posted on the City's website and included on application submittal notices described in Section 7(b)-(c).
- (f) **Decision Notice.** Within approximately five (5) calendar days after the approval authority acts on an application, the City shall post the written decision notice on the City's website and email notification to all interested parties that have signed up on the notification list. If the approval authority denies the application (with or without prejudice), the written decision notice must contain the reasons for the decision.

SECTION 8 DECISIONS

- (a) **Initial Administrative Decision.** Not more than 30 shot clock days after the application has been deemed complete or within 5 shot clock days after the third review has completed, the approval authority shall approve, conditionally approve or deny complete and duly filed SWF Permit application without a public hearing.
- (b) **Required Findings for Approval.** The approval authority may approve or conditionally approve a complete and duly filed application for an SWF Permit when the approval authority makes all of the following findings:
 - (1) the proposed project qualifies as a "small wireless facility" as defined by the FCC;
 - (2) the proposed project meets all applicable design requirements in the Code and this policy;
 - ~~(2)~~(3) for any application requiring compliance with Section 13, including but limited to facilities in Restricted Site Locations, the findings required by Section 13 have been made;
 - ~~(3)~~(4) the proposed project would be in a "Preferred Location" or, if not in a "Preferred Location", would be in the most preferred location within 5300 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 5300 feet would be technically infeasible;
 - ~~(4)~~(5) the proposed project would be on the most preferred support structure within 5300 feet from the proposed site in any direction or the applicant

Commented [A4]: Many small cell facilities can transmit well over 300 feet. If the applicant determines that the facility only is effective for 300 feet, then it will readily explain that sites beyond 300 feet are not technically feasible.

| has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within ~~300~~500 feet would be technically infeasible;

- (6) the proposed project would not be located on a prohibited support structure;
- (7) the applicant has demonstrated with clear and convincing evidence in the written record that co-location with or modification of an existing wireless facility within 500 feet would be (a) technically infeasible or (b), if technically feasible, more visually obtrusive or noncompliant with this policy compared to the proposed project;
- (8) the applicant has demonstrated with clear and convincing evidence that it is not technically feasible for the proposed project to be stealth;
- ~~(5)~~(9) the applicant has shown that it can obtain any wireline communications and electrical service connections necessary to operate the proposed small wireless facility, and the project plans show the proposed route for all such connections between their source and the proposed small wireless facility;
- (10) the applicant has certified to or demonstrated having completed all actions and having obtained all approvals from any agency, person or entity that will be required for operation and which may be completed prior to start of construction;
- ~~(6)~~(11) the applicant has demonstrated that the proposed small wireless facility will comply with all applicable federal, state and local laws, including but not limited to FCC regulations and guidelines for human exposure to RF emissions and will not, either individually or cumulatively with other transmitters in the vicinity, result in RF exposures that exceed the FCC's maximum permissible exposure level for the general population;
- ~~(7)~~(12) all public notices required for the application have been given; and
- ~~(8)~~(13) the applicant has paid the associated permit fees or deposits as adopted by City Council in the Master Fee Schedule in effect at the time of application submittal or is enrolled in a quarterly billing program with the City.

(c) **Conditional Approvals; Denials Without Prejudice.** Subject to any applicable federal or state laws, nothing in this policy is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any permit application governed under this policy as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the Code, the general plan and any applicable specific plan and/or this policy.

(d) **Appeals.** Applicants or any persons entitled to notice may appeal the decision by the approval authority to the appellate authority; provided, however, that appeals

from an approval shall not be permitted when based solely on the environmental effects from RF emissions that are compliant with applicable FCC regulations and guidelines or when based on subject matter not related to the Director findings for approval listed in Section 8(b). An appeal notice must be filed within 10 calendar days after the date on the approval authority's decision notice. The notice must contain a short and plain statement about the basis for the appeal, which may be supplemented after the notice period has expired but before the appeal hearing. During the next available hearing date, the appellate authority shall hear appeals *de novo* and issue a decision. The City shall post a written notice of the appellate authority's decision on the City's website and send email notification to all interested parties that have signed up on the notification list within 10 calendar days after the appeal hearing. If the appellate authority denies the application on appeal (whether by affirmation or reversal), the written notice shall contain the reasons for the decision.

SECTION 9 CONDITIONS OF APPROVAL

- (a) **Standard Conditions.** Except as may be modified in Section 9(b), all SWF Permits issued under this policy shall be automatically subject to the conditions in this Section 9(a) and these conditions shall be deemed to be incorporated by reference to any SWF Permit approved or deemed approved by law.
- (1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless the facility is in support of emergency services and California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety reasons. A five (5) year term will presumptive apply to facilities in support of emergency services. Any other permits or approvals issued in connection with any collocation, modification or other change to this small wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
- (2) **Permit Renewal.** The permittee may apply for permit renewal not more than one year before this SWF Permit expires. The permittee must demonstrate that the subject small wireless facility complies with all the conditions of approval associated with this SWF Permit and all applicable provisions in the Code and this policy that exist at the time the decision to renew or not renew is rendered. The approval authority may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Code, this policy or other applicable law. Upon renewal, this SWF Permit will automatically expire 10 years and one day from its issuance.
- (3) **City's Standing Reserved.** The City's grant or grant by operation of law of a permit pursuant to this policy does not waive, and shall not be construed to waive, any standing by the City to challenge any (A) FCC rules or regulations that interpret the federal Telecommunications Act, the federal Spectrum Act or (B) any permit issued pursuant to this policy.
- (4) **Compliance with Approved Plans.** Before the permittee submits any applications to the Department required to commence construction in connection with this SWF Permit, the permittee must incorporate this SWF Permit, all conditions associated with this permit and any approved photo simulations into the project plans (the "**Approved Plans**"). The permittee must construct, install and operate the small wireless facility in strict compliance, as determined by the approval authority, with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the small wireless facility, must be submitted in a written request subject to the approval

authority's prior review and approval.

- (5) **CPUC GO-159A Certification.** Within 15 business days after the City issues a SWF permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the Department and City Clerk.
- (6) **Removal Bond.** Before the City issues any permits required to commence construction in connection, installation or other work with this permit, the permittee shall post a bond issued by a surety and in a form acceptable to the City Attorney and the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the small wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. The bond shall be valid for at least 10 years or the term of this permit (whichever is greater). In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility to a standard compliant with applicable laws. The bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject small wireless facility in accordance with this condition.
- (7) **Build-Out Period.** This permit will automatically expire 12 months from the approval date (the "Build-Out Period") unless the permittee (after obtaining all other permits and approvals required which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the small wireless facility and/or its use) completes installation, construction, and final permit inspection. The permittee may request in writing, and the Director may grant in writing, one extension up to six months to the Build-Out Period if the permittee submits, at least 30 calendar days before the automatic expiration date in this condition, substantial and reliable written evidence demonstrating justifiable cause for the six-month extension submitted. If the Build-Out Period (and any extension) finally expires, this permit shall be automatically revoked and the permittee shall remove any installed or partially installed facilities and associated equipment and restore the public right-of-way to pre-existing conditions. In any such case, the permittee may resubmit a complete

application, which includes without limitation all application fees, for the same or substantially similar project.

- (8) **Pre-Installation Requirements.** In addition to obtaining all other permits and approvals required to install, construct and/or operate the approved small wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the small wireless facility or its use, the permittee shall, prior to commencement of any installation or construction, attend a pre-construction meeting with the Department regarding temporary construction best management practices ("BMPs") control systems pertaining to discharges from the construction site. Before the permittee can proceed with installation or construction of the approved small wireless facility, the Department must inspect and approve the permittee's installation of such temporary BMP control systems.
- (9) **Energization and Operation Notification.** Prior to installation of the electric service meter, the permittee shall complete all construction and restoration work, which shall be subject to final permit inspection approval by the Director. Permittee shall not energize or commence wireless service operations without first receiving final permit inspection approval from the Director. Within 15 business days after a site has been energized and commences any operations at the small wireless facility, the permittee shall provide the Director with notification and documentation regarding the date that the small wireless facility became operational. Notwithstanding the foregoing, the permittee may intermittently energize the equipment for testing purposes so long as permittee's personnel are physically present at the site during testing and immediately de-energize the equipment after the testing is completed.
- (10) **Permittee's Contact Information.** Prior to final inspection and at all times relevant to this SWF Permit, the permittee shall keep on file with the Department basic contact and site information. This information shall include, but is not limited to, the following:
 - (A) the name, physical address, notice address (if different from physical address), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) small wireless facility owner, (iii) structure owner, (iv) site operator, (v) equipment owner, (vi) site manager and (vii) agent for service of process;
 - (B) the regulatory authorizations held by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment owner and site manager as may be necessary for the small wireless facility's continued operation;

- (C) the small wireless facility's site identification number and/or name used by the permittee and, to the extent applicable, property owner, structure owner, site operator, equipment owner and site manager; and
 - (D) a toll-free telephone number to the facility's network operations center where a live person with power-down control over the small wireless facility is available 24 hours-per-day, seven days-per-week.
- (11) **Post-Installation Certification.** Within 60 calendar days after the small wireless facility is energized and permittee commences any operations at the small wireless facility, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the small wireless facility has been installed and/or constructed in strict compliance with the Approved Plans. Such documentation shall include, without limitation: a post-installation cover letter, digital as-built drawings, redline showing any deviation from the approved drawings or specifications, GIS data, site photographs, and an RF/EME certification report. In a written notice to the permittee, the Director shall either certify that the wireless facility complies with the Approved Plans or order the permittee to correct any noncompliance. If the applicant fails to comply with this section, the City may deem the application invalid and require the permittee to immediately remove all SWF equipment from the premises and restore the public right-of-way to pre-existing conditions.
- (12) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean, safe and code compliant condition in accordance with the Approved Plans and all conditions in this SWF permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee shall regularly inspect the small wireless facility to determine whether any maintenance is needed. Routine maintenance within residential zones shall be restricted to normal construction work hours specified pursuant to San Mateo Municipal Code Section 23.06.060, unless otherwise authorized by the Department. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the small wireless facility within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred. If the permittee receives three (3) or more written notices of failure to comply with this section, the Director may deem the permittee as non-compliant and require the permittee to immediately remove all SWF equipment from the premises and restore the public right-of-way to existing conditions.

- (13) **Landscape Features.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the Director. The permittee shall, at all times, be responsible for maintaining any replacement landscape features. Notwithstanding anything in this condition to the contrary, the Director may agree in a written agreement signed by the permittee to accept an annual in-lieu fee to perform the maintenance work on the permittee's behalf.
- (14) **Compliance with Applicable Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders, the Code and/or other rules that carry the force of law applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this SWF Permit, which includes without limitation any laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to an encroachment permit). If the Director, at any time, finds good cause to believe that the small wireless facility is not in compliance with any laws applicable to human exposure to RF emissions, the Director may (A) require the permittee to submit a written report certified by a qualified radio frequency engineer familiar with the small wireless facility that certifies its actual compliance with all such laws; or (B) require that a field test to measure the RF exposure levels be conducted by an independent consultant. Any field measurement tests conducted by the City or its independent consultant shall be at random times without prior notice to the site operator. The Director shall require an onsite compliance test in situations where applicable Laws would authorize the City to require an such testing at the permittee's expense. The Director may order the small wireless facility to be immediately powered down if, based on objective evidence, the Director finds that the small wireless facility is in fact not in compliance with any Laws applicable, including, without limitation, laws applicable to RF emissions, until the permittee demonstrates actual compliance with such laws. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Code, this policy, any permit, any permit condition or any applicable laws, shall be deemed to relieve, waive or lessen the permittee's

obligation to comply in all respects with all applicable provisions in the Code, this policy, any permit, any permit condition or any applicable laws.

- (15) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site and/or small wireless facility. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from a small wireless facility or related equipment violates applicable provisions in the Code, the Director, in addition to any other actions or remedies authorized by the permit, the Code or other applicable laws, may require the permittee to commission a noise study by a qualified professional to evaluate the small wireless facility's compliance. The permittee shall, at its sole cost and expense, repair and restore any and all damages to public and private properties that result from any activities performed in connection with the installation or maintenance of a small wireless facility. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. If the permittee fails to complete such repair within the number of days stated on a written notice by the Director may (but shall not have the obligation to) cause such repair to be completed at permittee's sole cost and expense.
- (16) **Affirmation of Radio Frequency Standards Compliance.** On or before January 30th in each calendar year, the permittee acknowledges and agrees that the permittee shall submit to the Department: (A) an affirmation, signed by an RF engineer familiar with the then-current equipment deployed and operated at the small wireless facility under penalty of perjury, that the installation is operated in compliance with all applicable Laws, which includes, without limitation, 47 U.S.C. § 324; (B) an affirmation, signed by an RF engineer familiar with the then-current equipment deployed and operated at the small wireless facility under penalty of perjury, that the installation complies with all applicable FCC rules and regulations for human exposure to RF emissions and will not cause members of the general public to be exposed to RF levels that

exceed the maximum permission exposure levels deemed safe by the FCC; and (C) a copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions transmitted from the small wireless facility. All radio frequency emissions on all frequency bands must be shown on the Appendix A form(s). All radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."

- (17) **Interference with City Communications Systems.** The permittee shall not permit the small wireless facility authorized under this permit to interfere with any City communication systems. If the small wireless facility authorized under this permit is causing interference with any City communication systems, the Director may order the small wireless facility to be shut down and powered off until such time as the immediate interference has been mitigated, after a good faith effort is made to notify the permittee, if feasible. Any mitigations required shall be at the permittee's sole cost and expense.
- (18) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the small wireless facility and related equipment and/or improvements to ensure compliance with this permit and all associated conditions upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff, agents, contractors or other designees while any such inspection or emergency access occurs.
- (19) **Safety Hazard Protocol.** If the Fire Safety Authority finds good cause to believe that the small wireless facility presents an immediate fire risk, electrical hazard or other threat to public health and safety in violation of any applicable law, the Fire Safety Authority may order the small wireless facility to be shut down and powered off until such time as the immediate threat has been mitigated, after a good faith effort is made to notify the permittee, if feasible. Any mitigations required shall be at the permittee's sole cost and expense.
- (20) **Abandonment.** The permittee shall notify the Director when the permittee intends to abandon or decommission the small wireless facility authorized

under this permit. In addition, the small wireless facility authorized under this permit shall be deemed abandoned if the small wireless facility has not operated for any continuous six-month period and the permittee fails to resume operations within 90 calendar days from a written notice from the Director. Within 90 calendar days after a small wireless facility is abandoned or deemed abandoned, the permittee, property owner and/or structure owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable Laws, which includes without limitation the Code and applicable City regulations. The permittee, property owner and/or structure owner may request an extension up to 180 days to complete restoration after a small wireless facility is abandoned or deemed abandoned, which the Director may grant if the permittee, property owner or structure owner presents evidence of good cause for the extension. If neither the permittee, the property owner nor the structure owner complies with the removal and restoration obligations under this condition within the required period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee, property owner and structure owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.

- (21) **Indemnification.** The permittee, facility operator and wireless carrier and, if applicable, the owners of the property upon which the small wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, board members, commissions, commissioners, agents, officers, officials, employees and volunteers (collectively, the "City Indemnitees") from any and all (A) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("Claims") brought against the City or any City Indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this SWF permit, and (B) other Claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this SWF permit or the small wireless facility. If the City becomes aware of any Claims, the City will use best efforts to promptly notify the permittee and the private property owner(s) (if applicable) and shall reasonably cooperate in the defense. The permittee, property owner and structure owner expressly acknowledge and agree 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 permittee, property owner and/or structure owner (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee, property owner and structure owner expressly acknowledge

Commented [A5]: Often the entity that obtained the permit is a special purpose company without assets and the operator (e.g., a major wireless carrier) is not the entity that obtained the permit. The City should obtain an indemnity from the business with significant assets and profits that actually is selling the wireless service to its customers.

and agree that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this SWF, and that such indemnification obligations will survive the expiration, revocation or other termination of this SWF permit.

(22) **Insurance.**

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

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

maintain insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

- (iv) **Professional Liability Insurance.** The permittee shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the permittee's profession, with limits no less than \$2,000,000 per occurrence or claim. This insurance shall be endorsed to include contractual liability applicable to this permit and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the permittee. "Covered Professional Services" as designed in the policy must specifically include work performed under this permit.
- (v) **Pollution Liability Coverage:** Insurance in the amount of \$5,000,000 per claim and in the aggregate covering third party claims for bodily injury, property damage, including from RF exposure, or cleanup costs as required by law, where the pollution is caused during and by permittee's work and for permittee's products and completed operations.

Commented [A6]: Many typical liability insurance policies exclude RF exposure injury but pollution policies frequently do cover this. It is best to include this explicitly since it is foreseeable that claims could be made by linemen, technicians or others that work in close proximity to antennas.

- (B) **Claims-Made Policies.** If the permittee maintains any required insurance under a claims-made form, the permittee shall maintain such coverage continuously throughout the permit term and, without lapse, for at least three years after the permit term expires so that any claims that arise after the expiration in connection with events that occurred during the permit term are covered by such claims-made policies.
- (C) **Umbrella or Excess Liability Policies.** If an umbrella or excess liability insurance policy is used to satisfy the minimum requirements for CGL or automotive insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. permittee shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- (D) **Additional Insured; Separation of Insureds.** The relevant CGL and automotive insurance policies shall name the City, its elected/appointed officials, commission members, officers,

representatives, agents, volunteers and employees as additional insureds. The required insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees.

- (E) **Primary Insurance; Waiver of Subrogation.** The required insurance shall be primary with respect to any insurance programs covering the City, its elected/appointed officials, commission members, officers, representatives, agents, volunteers and employees. All policies for the required CGL, automotive and workers' compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage or harm covered by such policies.
 - (F) **Term; Cancellation Notice.** The permittee shall maintain the required insurance throughout the permit term and shall replace any certificate, policy, or endorsement which will expire prior to that date. The permittee shall use its best efforts to provide 30 calendar days' prior written notice to the City of the cancellation or material modification of any applicable insurance policy; provided, however, that in no event shall the permittee fail to provide written notice to the City within 10 calendar days after the cancellation or material modification of any applicable insurance policy. The permittee shall promptly take action to prevent cancellation or suspension, reinstate cancelled coverage or obtain coverage from a different qualified insurer.
 - (G) **Certificates.** Before the City issues any permit, the permittee shall deliver to the Department insurance certificates and endorsements, in a form satisfactory to the [Director, or designee, that evidence all the coverage required above. In addition, the permittee shall promptly deliver complete copies of all insurance policies and endorsements upon a written request by the Director.
 - (H) **Insurer Rating.** Unless approved in writing by the City, all required insurance shall be placed with insurers authorized to do business in the State of California and with a current A.M. Best rating of at least A-:VIII.
- (23) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the SWF permit application, SWF permit, the Approved Plans and photo simulations incorporated into this

approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the SWF permit (collectively, "**Records**"). If the permittee does not maintain such Records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing Records will be construed against the permittee. The permittee shall protect all Records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep Records in an electronic format; provided, however, that hard copies or electronic Records kept in the City's regular files will control over any conflicts between such City-controlled copies or Records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any Records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (24) **Permit Revocation.** Any SWF Permit granted under this policy or deemed approved by the operation of law may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the small wireless facility may not be in compliance with all applicable Laws, which includes without limitation, any permit in connection with the small wireless facility and any associated conditions with such permit(s) or the applicant has demonstrated unsafe construction practices. An SWF Permit granted under this policy or deemed approved by the operation of law may be revoked only by the Director after a duly issued notice and reasonable opportunity to cure. To revoke a permit granted under this policy or deemed approved by the operation of law, the Director must issue a written notice to the permittee that specifies (A) the small wireless facility; (B) the violation(s) to be corrected; (C) the timeframe in which the permittee must correct such violation(s); and (D) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). The Director may revoke a permit when it finds substantial evidence in the written record to show that the small wireless facility is not in compliance with any applicable Laws, which includes without limitation, any permit in connection with the small wireless facility and any associated conditions with such permit(s). Within five (5) business days after the Director adopts a written decision to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

Within 10 calendar days of issuance of the Director's written decision, a permittee whose permit has been revoked may submit a written appeal to the Director. The hearing appeal fee, pursuant to the City's Adopted Comprehensive Fee Schedule, must be made prior to the scheduling of the appeal hearing. The City Manager, or designee, which may include an independent hearing officer, will hear and decide permit revocation appeals. The appeal hearing will be scheduled for the next available hearing date. Any decision by the City Manager, or designee, shall be final and not subject to any further appeals.

If the SWF Permit is revoked, the permittee shall immediately remove all associated SWF equipment from the premises and restore the public right-of-way to existing conditions. If the permittee fails to remove permittee's SWF equipment within a reasonable time after revocation, the City may (but will not be obligated to) cause the removal to be performed at the permittee's sole cost and expense.

- (25) **Cost Reimbursement.** The permittee acknowledges and agrees that (A) the permittee's request for authorization to construct, install and/or operate the small wireless facility will cause the City to incur costs and expenses; (B) the permittee shall be responsible to reimburse the City for all actual and reasonable costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the small wireless facility; (C) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the City for all such costs within 10 business days after a written demand for reimbursement and reasonable documentation to support such costs; and (D) the City shall have the right to withhold any permits or other approvals in connection with the small wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.
- (26) **Future Undergrounding Programs.** Notwithstanding any term remaining on any SWF Permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must also underground its equipment, except the antennas and any approved electric meter or related electric-service equipment required by the electric service provider to remain above ground, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition; provided, however, that the Director may approve an alternative stealth/concealment plan for such

equipment that complies with the City's then current design regulations. Small wireless facilities and other infrastructure deployments installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on or within a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.

- (27) **Electric Meter Upgrades.** If the small wireless facility includes a separate or ground-mounted electric meter pedestal and the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (28) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (A) change any street grade, width or location; (B) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (C) perform any other work deemed necessary, useful or desirable by the City (collectively, "City Work"). The City reserves the rights to do any and all City Work without any admission on its part that the City would not have such rights without the express reservation in this SWF Permit. If the Director determines that any City Work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the Director determines that City Work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 business days after a written demand for reimbursement and reasonable documentation to support such costs.

- (29) **Underground Service Alert.** The permittee shall maintain and keep current its membership in the Underground Service Alert of Northern California & Nevada ("USA North 811") throughout the term of any small cell permit granted under this policy. Prior to any excavation performed in the streets, the permittee shall observe and perform all notice and other obligations required under applicable laws, which includes, without limitation, California Government Code §§ 4216 *et seq.*, as may be amended or superseded.
- (30) **Successors and Assigns.** The conditions, covenants, promises and terms contained in this permit will bind and inure to the benefit of the City and permittee and their respective successors and assigns.
- (31) **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the SWF Permit or the small wireless facility or other infrastructure approved under the SWF Permit, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
- (32) **Severable Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (A) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (B) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (C) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
- (b) **Modified Conditions.** The City Council authorizes the approval authority to modify, add or remove conditions to any SWF Permit as the approval authority deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in Section 9(a) to the particular facts and circumstances associated with the proposed deployment; and/or (3) memorialize any changes to the proposed deployment need for compliance with the Code, this policy, generally applicable health and safety requirements and/or any other applicable laws. In the event of a change in any state or federal law affecting this policy, including judicial decisions applicable to such laws, all permits issued pursuant to this Policy may be reviewed and modified by the Director to maximally effectuate the objectives of this Policy as determined by the Director

Commented [A7]: This provision is contained in Encinitas' policy (but says "shall be reviewed" in place of "may be reviewed") and is intended to allow flexibility in light of future expansion/restoration of local authority

SECTION 10 LOCATION STANDARDS

- (a) **Location Preferences.** To better assist applicants and decision makers understand and respond to the community's aesthetic preferences and values, this subsection sets out listed preferences for locations to be used in connection with small wireless facilities in an ordered hierarchy. Location preferences shall be based on zones within the public right-of-way as designated as the nearest adjacent land-use as defined in the current General Plan extended up to the street centerline, and in the case of medians at the centerline, shall be the lowest preference on either side of the median. The City prefers small cells in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:
- (1) locations within any zone other than residential or mixed-use on or along arterial streets;
 - (2) locations within any zone other than residential or mixed-use on or along collector streets;
 - (3) locations within any zone other than residential or mixed-use on or along local streets;
 - (4) any location within 300 feet from an existing/proposed small wireless facility.
 - (5) any location within 300 feet from any residential or mixed-use zone;
 - (6) locations within residential or mixed-use zones on or along principal arterial streets;
 - (7) locations within residential or mixed-use zones on or along minor arterial streets;
 - (8) locations within residential or mixed-use zones on or along collector streets;
 - (9) locations within residential or mixed-use zones on or along local streets; and

Applications that involve lesser-preferred locations may be approved so long as the applicant demonstrates by clear and convincing evidence in the written record that: (1) any more preferred locations or structures within ~~300-500~~ feet from the proposed site would be technically infeasible; and (2) if the proposed site or the most-preferred location within ~~300-500~~ feet from the proposed site is within a

Restricted Site Location (as defined below), the applicant qualifies for an exception pursuant to Section 13 in this policy.

(b) **Restricted Site Locations.** The following locations will be deemed "Restricted Site Locations" that require an exception pursuant to Section 13 in this policy.

- (1) any location within a residential or mixed-use zone;
- (2) any location within 300 feet from an existing residential dwelling unit;
- (3) any location within 300 feet from an existing daycare facility or school structure; and
- (4) any location within a Very High Fire Hazard Severity Zone.

(c) **Preferred Site Locations.** Any small wireless facilities proposed to be located (1) at least 300 feet from a residential dwelling unit and (2) within any location identified in Sections 10(a)(1) through 10(a)(3) shall be deemed to be in a "Preferred Location".

(d) **Minimization of New Facilities:** For any small wireless facility proposed within a (i) Preferred Site Location, (ii) non-preferred site location identified in Section 10(a) or (iii) a Restricted Site Location, the City prefers that small wireless facilities be collocated with or modify existing wireless facilities in the same location group (i.e., (i), (ii) or (iii) above). To this end, a facility shall be co-located with or modify an existing wireless facility (regardless of whether changes or additions to the existing wireless facility would constitute an eligible facilities request) within 500 feet of the proposed location, which is in the same location group, provided that such co-location or modification is (1) compliant with the Code and this policy, (2) technically feasible and (3) not shown by clear and convincing evidence in the written evidence to be more visually obtrusive than the proposed facility.

(d)(e) **Encroachments Over Private Property.** No small cell antennas, accessory equipment or other improvements may encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.

(e)(f) **No Interference with Other Users.** Small cells and any associated antennas, accessory equipment or improvements shall not be located in any place or manner that would physically interfere with or impede access to any: (1) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (2) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (3) worker access to above-ground or underground infrastructure owned or

operated by any public or private utility agency; (4) fire hydrant or water valve; (5) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (6) access to any fire escape.

~~(f)~~(g) **Replacement Pole Location.** All replacement poles must: (1) be located as close to the removed pole as possible; (2) be aligned with the other existing poles along the public rights-of-way; and (3) be compliant with all applicable standards and specifications by the identified or required by the Director.

~~(g)~~(h) **Preferred Structure.** The most preferred structure among multiple feasible locations within the same order-tier of location preference is the structure farthest

from a residential dwelling unit, daycare facility, or school structure considering the additional placement requirements can be complied with.

~~(h)~~(i) **Additional Placement Requirements.** In addition to all other requirements in this policy, small wireless facilities, similar infrastructure deployments, and all related equipment and improvements shall comply with the following:

- (1) Is not placed directly in front of any door or window when viewed from the sidewalk at a perpendicular angle to the door or window;
- (2) Is not placed in any location that obstructs view lines for traveling vehicles, bicycles and pedestrian;
- (3) Is not placed in any location that obstructs views of any traffic signs or signals that would require adjustment or relocation of such traffic sign or signal;
- (4) Is not placed in any location that obstructs illumination patterns for existing streetlights;
- (5) Is not placed within 15 feet to any driveway for residential properties; and
- (6) Is not placed within 50 feet to any driveways for police/sheriff's stations, fire stations or other emergency responder facilities.

Any proposed new support structures, ground-mounted equipment, and other similar infrastructure deployments shall, in addition to the above, comply the following placement requirements:

- (7) Is placed within the street amenity zone (between the curb and primary pedestrian sidewalk path) or planter strip where such amenity zone or planter strip exists;
- (8) Is placed an equal distance between existing street trees where possible and provides a minimum 15 feet separation to street trees; and
- (9) Is placed in alignment with existing street trees, utility poles, and/or streetlights.

SECTION 11 DESIGN STANDARDS

- (a) **Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in flat, nonreflective hues that match the underlying support structure or blend with the surrounding environment. All surfaces shall be treated with graffiti-resistant sealant. It is the responsibility of the applicant to identify the existing color and

present a color that matches existing conditions. The City may request color samples from the applicant to verify proposed colors to field conditions. All finishes shall be subject to the Director's prior approval.

- (b) **Noise.** Small cells and all associated antennas, accessory equipment and other improvements must comply with all applicable noise control standards and regulations in the San Mateo Municipal Code Chapter 7.30 and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable zone.
- (c) **Lights.** Small wireless facilities and other infrastructure deployments shall not interfere with or modify the illumination effects of streetlights and streetlight fixtures. All antennas, accessory equipment and other improvements with indicator or status lights must be installed in locations and within enclosures that eliminate illumination impacts visible from publicly accessible areas.
- (d) **Impact on Trees and Landscaping Elements.** Small wireless facilities and other infrastructure deployments shall comply with San Mateo Municipal Code Chapter 13.40 and obtain any required tree permits, if necessary. Small wireless facilities and other infrastructure deployments may not displace any landscape features unless: (1) such landscaping is located and/or based in the public right-of-way, (2) such landscaping is replaced with native and/or drought-resistant trees, plants or other landscape features approved by the Department of Parks & Recreation and; (3) the applicant submits and adheres to a landscape maintenance plan. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (e) **Signs and Advertisements.** All small wireless facilities and other infrastructure deployments that involve RF transmitters must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities and other infrastructure deployments may not bear any other signage or advertisements unless expressly approved by the Director, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
- (f) **Site Security Measures.** Small wireless facilities and other infrastructure deployments may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Director shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials. Cabinets and equipment shroud must be kept secured to prevent unauthorized access.
- (g) **Compliance with Health and Safety Standards.** All small wireless facilities and other infrastructure deployments shall be designed, constructed, operated and

maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*).

(h) **Antennas.** The provisions in this subsection (h) are generally applicable to all antennas.

(1) **Position Preference.** Antennas shall be placed on a support structure in the following order of preference to the maximum extent technically feasible:

- (A) the on or above top of the structure;
- (B) pole-mounted as close as possible to the top of the structure; and
- (C) mounted on side-arm attached to the structure.

(2) **Shrouding.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a single shroud or radome. For pole-top antennas, the shroud shall not exceed 2.5 times the median pole diameter and must taper down to pole. For side-arm antennas, the shroud must cover the cross arm and any cables, jumpers, wires or other connectors between the vertical riser and the antenna.

(3) **Antenna Volume.** Each individual antenna associated with a single small cell shall not exceed three cubic feet. The cumulative volume for all antennas on a single small cell shall not exceed: (A) three cubic feet in residential areas; or (B) six cubic feet in nonresidential areas.

(4) **Overall Height.** No antenna may extend more than five feet or 10-percent in height above the support structure, inclusive of any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations. No antenna may be installed within 18-feet of highest adjacent grade. No antenna may be installed at an elevation equal to existing windows of the nearest adjacent residential dwelling within fifty feet.

(5) **Horizontal Projection.** Side-mounted antennas, where permitted, shall not project: (A) more than the minimum required separation per CPUC General Order 95 from the support structure; (B) over any roadway for vehicular travel with less than 18-feet clearance from the roadway; or (C) over any abutting private property.

(6)

(5) ~~**Strand Mounting.** Antennas shall not be strand-mounted.~~

(i) **Accessory Equipment Volume.** The cumulative volume for all existing and proposed accessory equipment for a single small wireless facility or other infrastructure deployment shall not exceed: (1) seven cubic feet to the extent

Commented [A8]: Many cities ban or presumptively ban strand-mounted antennas (See, e.g., Santa Cruz County 13.10.662(C)(4)(a)(iv); Encinitas Wireless Policy Sec. 3; Berkeley Wireless Policy Sec. 10(a))

feasible, but in no event greater than nine cubic feet in residential areas; or (2) 12

cubic feet in nonresidential areas. The volume limits in this subsection do not apply to any undergrounded accessory equipment.

(j) **Undergrounded Accessory Equipment.**

- (1) **Where Required.** Accessory equipment (other than any electric meter (where permitted) and an emergency disconnect switch) shall be placed underground when proposed in any (A) underground utility district or (B) any location where the Director finds substantial evidence that the additional above-ground accessory equipment would incommode the public's uses in the public rights-of-way. Notwithstanding the preceding sentence, the Director may grant an exception when the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible.
- (2) **Vaults.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover and properly secured to prevent unauthorized access. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Vault lids shall be labeled with the owner's name but shall not exhibit logos or commercial advertisements.

(k) **Pole-Mounted Accessory Equipment.** The provisions in this subsection (k) are applicable to all pole-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.

- (1) **Position Preference.** The City prefers pole-mounted accessory equipment to base-mounted or separate ground mounted equipment.
- (2) **Preferred Concealment Techniques.** Applicants should propose to place any pole-mounted accessory equipment in the least conspicuous position under the circumstances presented by the proposed pole and location. Pole-mounted accessory equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations.
- (3) **Minimum Vertical Clearance.** The lowest point for any pole-mounted accessory equipment and supporting infrastructure such as conduits shall be at least 7 feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than 7 feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.

- (4) **Horizontal Projection.** Pole-mounted accessory equipment shall not project: (A) more than 18 inches from the pole surface; (B) over any roadway for vehicular travel with less than 18-foot clearance from the roadway; or (C) over any abutting private property. All pole-mounted accessory equipment shall be mounted flush to the pole surface. If applicable laws preclude flush-mounted equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for compliance with such laws and concealed by opaque material (such as cabinet "flaps" or "wings").
- (5) **Orientation.** Unless placed behind a street sign or some other concealment that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting properties. If orientation toward the street is not feasible, then the proper orientation will most likely be away from oncoming traffic. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.

(l) **Ground-Mounted or Base-Mounted Accessory Equipment.** The provisions in this subsection (l) are applicable to all ground-mounted and base-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.

- (1) **Position Preference.** The City prefers base-mounted accessory equipment to separated ground-mounted equipment.
- (2) **Base-Mounted Concealment.** Base-mounted accessory equipment shall be concealed within a single shroud or cabinet at the base of the support structure matching the finish and aesthetics of the support structure.
- (3) **Ground-Mounted Concealment.** On collector roads and local roads, the City prefers ground-mounted accessory equipment to be concealed as follows: (A) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; and (B) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks. On arterial roads outside underground utility districts, proposed ground-mounted accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets.

- (4) **Public Safety Visibility.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, no individual ground-mounted accessory equipment cabinet may exceed four feet in height or four feet in width or, when located within the sight-triangle of a street intersection, alley, or driveway as described in San Mateo Municipal Code Section 27.84.010(b), three feet in height or four feet in width. Ground-mounted and base-mounted equipment cabinets shall not have any horizontal flat surfaces greater than 1.5 square inches to prevent litter or other objects left on such surfaces.
- (m) **Utilities.** The provisions in this subsection (m) are applicable to all utilities and other related improvements that serve small wireless facilities and other infrastructure deployments.
- (1) **Overhead Lines.** The Director shall not approve any new overhead utility lines in underground utility districts or areas without existing overhead. In areas with existing overhead lines, new communication lines shall be "overlashed" with existing communication lines unless such a service connection is technically infeasible. No new overhead utility service drops shall be permitted to traverse any roadway used for vehicular transit.
[Newly added text in section]
- (2) **Vertical Cable Risers.** All cables, wires and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, such as with wood utility poles, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying pole.
- (3) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- (4) **Electric Meters.** Small cells and other infrastructure deployments shall install a shrouded smart meter that complies with PG&E requirements. The PG&E smart meter shall be pole-mounted to the extent technically feasible. If PG&E regulations or other constraints render pole-mounting infeasible, then a separate meter pedestal may be used. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet, but the Director shall not approve a separate ground-mounted electric meter pedestal.
- (5) **Existing Conduit or Circuits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing conduits and/or electric circuits whenever available and technically

feasible. Access to any conduit and/or circuits owned by the City shall be subject to the Director's prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the City's infrastructure, prevent interference with the City's municipal functions and public health and safety.

- (n) **Prohibited Support Structures.** Proposed small wireless facilities shall not be located on or affixed to any of the following existing or proposed support structures:
- (1) Any structure less than 18-ft in height;
 - (2) Decorative Poles other than those designated by the Director as acceptable support structures;
 - (3) Cabinets or related structures;
 - (4) New or existing, non-replacement wood poles serving no clearly defined, significant pre-existing purpose; and
 - (5) Any utility pole scheduled for removal within 18-months from the time the approval authority acts on the application for such pole.
- (o) **Freestanding Poles.** Where any of the above design standards do not apply, the provisions in this subsection shall be applicable to all freestanding poles proposed as support structures for a small wireless facility.
- (1) **Pole Type.** The pole shall match the aesthetics of nearby streetlights.
 - (2) **Finishes.** Freestanding poles shall be painted, colored and/or wrapped in flat, nonreflective hues that match nearby streetlights.
 - (3) **Lights.** Freestanding poles shall not include street or pedestrian lighting or luminaires.
 - (4) **Concealment.** All cables, wires, or other connectors shall be housed entirely within the freestanding pole. No vertical risers shall be located on the exterior of the freestanding pole. Base-mounted accessory equipment shall be concealed in a shroud that matches the aesthetics of nearby streetlights.
- (p) **Installation Standards.** All small wireless facilities shall conform to the Installation Standards published on the City's website.
- (q) **Stealth.** Unless demonstrated to be technically infeasible by clear and convincing evidence in the written record, all small wireless facilities and facility compenants shall be "stealth", meaning fully enclosed in support structure

elements so as not to appear as a wireless facility.

~~(q)~~(r) **Substantial Changes.** The City understands that there may be cases that may require alterations, modifications, or other changes to the approved plans that

could arise after all permits are issued and prior to construction. Any such alteration shall require a written request submitted to the City for review and approval. If the City finds that the requested alteration, modification, or other changes constitutes a significant or substantial change from the Approved Plans, then the request will be denied.

The following alterations shall not be considered a substantial deviation from the original approved plans:

- (1) Antenna vertical height alteration less than 6-inches;
- (2) A circular antenna array or cylindrical facility rotating around the same center point;
- (3) A side-arm extension alteration of rotating around the support structure less than 20 degrees;
- (4) A side-arm extension horizontal length alteration of less than 2-inches;
- (5) An alternative shroud that maintains the same or less size volumetrically and/or maintains the same aesthetics and/or color with a different finishing material; and/or
- (6) An alteration of ground mounted equipment location less than 5-ft horizontally from the approved location.

SECTION 12 PREAPPROVED DESIGNS

- (a) **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the City, the City Council authorizes the Director to designate one or more preapproved designs for small wireless facilities and other infrastructure deployments. This Section 12 sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications as they relate to non-residential zones.
- (b) **Adoption.** The Director may, in the Director's discretion, establish a preapproved design when the Director finds that a proposed preapproved design exceeds the design standards in this policy. The Director shall post a public notice posted on the City's website and with the City Clerk, and may post a public notice in a newspaper of general circulation within the City. The notice must generally describe the preapproved design, include a photograph or photo simulation, specify whether the preapproved design would be limited or restricted in any zones and contain a reference to the appeal procedure. The preapproved design shall become effective 15 days from the notice required in this subsection and

shall be posted to the City's website. A decision by the Director not to adopt a proposed preapproved design or the Director's failure to act on a request for a proposed preapproved design is not appealable.

- (c) **Repeal.** The Director may repeal any preapproved design by written notice posted on the City's website. The repeal shall be immediately effective. The Director's repeal, refusal to repeal, or failure to act on a request to repeal a preapproved design is not appealable.
- (d) **Modified Review Process.** In Preferred Locations, applications for a preapproved design shall not be subject to the notice requirements in Section 7(a) or any potential appeals under Section 8(d). In locations other than Preferred Locations, applications for a preapproved design shall remain subject to the notice requirements in Section 7 in this policy and any potential appeals under Section 8(d).
- (e) **Modified Findings.** When an applicant submits a complete application for a preapproved design, the Director shall presume that the findings for approval in Sections 8(b)(1) and 8(b)(5) are satisfied and shall evaluate the application for compliance with the findings for approval in Sections 8(b)(2), 8(b)(3), 8(b)(4), 8(b)(6) and 8(b)(7).
- (f) **Use by Other Applicants.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the Director adopt such preapproved design or not. The Director's decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the preapproved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the preapproved design with like materials, finishes and overall quality shall be acceptable as a preapproved design.

SECTION 13 EXCEPTIONS

- (a) **Preface.** The provisions in this Section 13 establish a procedure by which the City may grant an exception to the standards in this policy but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the Director (or the appellate authority on appeal) shall consider the findings in Section 13(b) in addition to the findings required under Section 8(b). Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance. This Section shall be interpreted set the highest lawful burden of proof on the applicant and to maximally effectuate the authority of the City to strictly implement the standards and requirements of this policy.

- (b) **Findings for an Exception.** The Director (or the appellate authority on appeal) may grant an exception to any provision or requirement in this policy only if the Director (or appellate authority on appeal) finds that:
- (1) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or
 - (2) a provision in this policy, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law.
- (c) **Exception Requests.** An applicant may request an exception only at the time the applicant submits an application. The Director (or appellate authority on appeal) may consider additional information provided by the applicant after submittal to supplement the initial exception request. Any request for an exception after the initial submittal shall be deemed to be a new application.
- (d) **Evidentiary Burden.** The applicant shall have the burden to prove to the Director (or appellate authority on appeal) that an exception should be granted pursuant to Section 13(b). The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.
- (e) **Scope of Exception.** If the Director (or the appellate authority on appeal) finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this policy to least extent necessary for compliance with federal or state law.

~~REDACTED~~

From: Paul Albritton <~~REDACTED~~>
Sent: Monday, October 21, 2024 4:24 PM
To: Sustainability & Infrastructure Commission; Clerk
Cc: Jason Hallare; Matt Fabry; Prasanna Rasiah
Subject: Verizon Wireless Comments on Draft Small Cell Policy [San Mateo]
Attachments: Verizon Wireless Letter 10.21.24.pdf

Clerk: Please circulate to SIC commissioners and confirm receipt of this email.

Dear Commissioners: Attached please find our letter prepared on behalf of Verizon Wireless providing comment on the draft policy regulating small cell wireless facilities in the right-of-way, to be considered at your meeting this Wednesday, October 23, 2024.

Verizon Wireless representatives will attend the meeting to discuss these comments.

Thank you,

Paul

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(415) 288-4000
~~REDACTED~~

MACKENZIE & ALBRITTON LLP

155 SANSOME STREET, SUITE 620
SAN FRANCISCO, CALIFORNIA 94104

October 21, 2024

VIA EMAIL

Chair Susan Rowinski
Vice-Chair Kimiko Narita
Commissioners Sigalle Michael,
Cliff Robbins, and Edward Kranz
Sustainability & Infrastructure Commission
City of San Mateo
330 West 20th Avenue
San Mateo, California 94403

Re: Draft Policy for Small Wireless Facilities in the Public Right-of-Way
Sustainability & Infrastructure Commission Agenda Item 1, October 23, 2024

Dear Chair Rowinski, Vice-Chair Narita, and Commissioners:

We write on behalf of Verizon Wireless to provide comment on the draft policy regulating small cell wireless facilities in the right-of-way (the "Draft Policy"). Verizon Wireless appreciates the invitation to provide comment on the Draft Policy, but is concerned about several potential new regulations. Of note, the restriction of small cells within 300 feet of residences, day cares, and schools would exclude numerous streets in contradiction of state law granting telephone corporations a statewide right to use any right-of-way. The "special exception" process required to use a restricted location contradicts Federal Communications Commission ("FCC") regulations. For small cells on utility poles, height and equipment protrusion limits must be expanded to accommodate strict state safety rules, and to provide space for network equipment that allows a single facility to serve a larger area. We urge the Commission to implement our suggested revisions before recommending approval of the Draft Policy to the City Council.

According to the FCC's 2018 Infrastructure Order, a local government's aesthetic criteria for small cell facilities must be "reasonable," that is, technically feasible and meant to avoid "out-of-character" deployments. *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088, ¶¶ 86-88 (September 27, 2018). The FCC ruled that local standards that "materially inhibit" service improvements constitute an effective prohibition of service under the Telecommunications Act. *Id.*, ¶¶ 35-37; *see also* 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II). The FCC emphasized that "a legal requirement can 'materially inhibit' the provision of services even if it is not an insurmountable barrier." Infrastructure Order, ¶ 35. Federal courts have upheld these

FCC requirements. *See City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, 141 S.Ct. 2855 (Mem) (U.S. June 26, 2021).

Following are our comments on the Draft Policy.

Section 3 – Definitions

(ff). Technically infeasible. This definition references only physical impossibility. However, other factors may pose constraints that render a particular standard to be technically infeasible, notably state safety regulations such as California Public Utilities Commission General Order 95, which controls installations on electric utility poles. PG&E also publishes its own safety rules for wireless facilities on its poles. *This definition should also reference “applicable state safety regulations and PG&E rules.”*

Section 6 – Application and Review Procedures

(b)(3). Project narrative. This requires a statement about an applicant’s planned deployments over a 12-month period after submittal. However, that is not pertinent to any Draft Policy standards or findings, and could lead to unfounded denials. *This section should be deleted.*

(b)(10). Acoustic analysis. Some small cells operate nearly or completely silently, and there is no reason to request a costly engineer’s acoustic analysis for noiseless installations. Many cities allow applicants to submit manufacturer acoustics information in lieu of a formal engineer’s analysis. *This section should allow an applicant to submit manufacturer specifications with any acoustics information for each piece of equipment, instead of an acoustic analysis.*

(b)(13). Exception request. According to this provision, an applicant’s request for an exception after submittal would be treated as a new application, with the existing application deemed withdrawn. However, a unilateral withdrawal by the City would be an effective denial of the application, and the City would lack substantial evidence to deny on the merits as required by the Telecommunications Act. 47 U.S.C. § 332(c)(7)(B)(iii). Further, the FCC’s “Shot Clock” rules contemplate incomplete applications, and allow the City to deem an application incomplete and request missing information within 10 days after submittal of a small cell application, in which case the Shot Clock restarts at day zero upon applicant’s response. 47 C.F.R. § 1.6003(d)(1). An applicant may overlook an exception request that is required in the City’s opinion, particularly when the applicable standard is vague. We discuss the legal problems with the exception scheme in our comments on Section 13 below. *The last sentence of this provision should be deleted.*

(b)(14). Truth and accuracy statement. This requires an applicant to attest that all information is true and correct, under the excessive penalty of perjury standard. However, applicants are generally wireless carriers or their site acquisition consultants, who cannot be held responsible for information prepared by third parties, such as

architectural plans or compliance reports. Those are generally prepared by registered engineers who affix their professional stamp, which serves as a declaration that a proposed design complies with applicable regulations. *This section should be deleted, and references to “penalty of perjury” should be scrubbed from the Draft Policy.*

(b)(17). Coverage and capacity information. This is also irrelevant to required permit findings and standards. *This section should be deleted.*

(h). Deemed withdrawn. The City cannot terminate an application if an applicant does not respond to a notice of incomplete application within 90 days (or any period of time). FCC rules plainly state that the Shot Clock restarts or resumes running on the date an applicant responds to a timely notice. 47 C.F.R. §§ 1.6003(d)(1), (d)(3)(ii). FCC rules do not allow early, unilateral termination. *This provision should be deleted.*

(k). Peer review. The FCC ruled that exorbitant consultant fees are prohibitive. Infrastructure Order, 33 FCC Rcd. at 9116-17, ¶ 56. Outside consultants should not be required for straightforward review of wireless facility applications, and certain tasks listed in this section do not require specialized knowledge, such as review of applications for completeness or compliance with the City’s own policy. If conducted by a consultant, the various listed tasks could lead to runaway costs, in violation of the FCC’s order. *At a minimum, this provision must allow applicants to review and object to a consultant’s proposed scope of work and budget before paying a deposit.*

Section 9 – Conditions of Approval

(a)(16). Radio frequency standards compliance. This requires an annual affirmation by a radio frequency engineer that a permitted small cell complies with the FCC’s exposure limits. However, after an installed wireless facility is shown to comply with those exposure guidelines, a local government cannot require repeat exposure reports thereafter, as that regulation of operational requirements is preempted by federal law. *See* 47 U.S.C. § 332(c)(7)(B)(iv); *see also* *Crown Castle USA Inc. v. City of Calabasas* (Los Angeles Superior Court BS140933, 2014) (“...the regulation of a facility’s planned or ongoing operation constitutes an unlawful supplemental regulation into an area of federal preemption.”).

This condition also requires compliance with 47 U.S.C. Section 324, adopted by Congress in 1934, which requires “radio stations” to “use the minimum amount of power necessary to carry out the communication desired.” However, this is preempted by the later 1996 Telecommunications Act, because the City cannot regulate the radio frequency emissions of a wireless facility that has been shown to comply with the FCC’s exposure limits. 47 U.S.C. § 332(c)(7)(B)(iv). The radio frequency emissions of a facility may vary within and up to those limits. As noted above, penalty of perjury is an excessive requirement. *This condition must be deleted.*

(a)(17). Interference with City communication systems. Federal law preempts the City from holding permittees liable for signal interference, which is exclusively regulated by the

FCC. *See* 47 U.S.C. § 303(f); *see also Freeman v. Burlington Broadcasters*, 204 F.3d 311, 320-21 (2d Cir. 2000) (permit condition preempted because federal law confers exclusive jurisdiction on the FCC to regulate radio frequency interference); *affirmed by New York SMSA Ltd. Partnership v. Town of Clarkstown*, 612 F.3d 97, 105 (2d Cir. 2010). The FCC has established specific rules for identifying and abating interference, which preempt any local process. *See, e.g.*, 47 C.F.R. § 22.972. Accordingly, the City does not have the authority to order that a facility be shut down due to alleged interference. *This condition must be deleted.*

(a)(21). Indemnification. Item (B) regarding indemnity from injury, death or property damage is unnecessary. For small cells on City-owned poles, indemnity from third-party claims of liability should be addressed in the City's master license agreement, not imposed separately via a permit. For other poles (joint utility poles or carrier-owned new poles), the City would not be liable for injury or property damage caused by a small cell. Item (A) gives the City ample protection from any claims related to its approval of the permit, consistent with California Attorney General Opinion No. 01-701, which obliges permittees to defend, indemnify, and hold harmless the City in any action brought by a third party seeking to void the permit. 85 Ops. Cal. Atty. Gen. 21 (Cal.A.G.), 2002. *Item (B) should be deleted.*

Section 10 – Location Standards

The Draft Policy continues the City's current practice of providing clear location preferences and a reasonable search distance for preferred options (300 feet is proposed). However, the Draft Policy introduces prohibitive new requirements that contradict state law.

(b). Restricted site locations. The Draft Policy requires a special exception to site in any residential or mixed-use zone, or within 300 feet of residences, daycares, schools, or very high fire hazard severity zones. Otherwise, small cells would be prohibited, but that directly contradicts California Public Utilities Code Section 7901, which grants telephone corporations such as Verizon Wireless a statewide franchise right to install their equipment along any public right-of-way.

The location restrictions would exclude small cells throughout much of San Mateo from straightforward administrative permit approval, and the requirement for special exceptions would become the rule. As discussed in our comments on Section 13, the exception scheme contradicts federal law.

Small cells pose no particular land use impact to daycares or schools, and imposing additional regulations near those facilities is clearly based on concern over RF emissions, but that is preempted by the Telecommunications Act. 47 U.S.C. § 332(c)(7)(b)(ii). The location preferences of Section (a) provide a reasonable means for the City to steer small cells to preferred sites, if feasible, without the City risking legal challenges due to unfounded denials. *Section (b) should be deleted.*

(h)(1). Not in front of doors or windows. This could exclude numerous pole options in various rights-of-way, prohibiting small cells on both streetlights and utility poles in commercial areas and residential neighborhoods, in conflict with Section 7901. Many buildings are set well back from the right-of-way, with landscaping and/or parking lots in between, particularly in some commercial areas. In many cases, a small cell would not pose a visual impact according to the adjacent property owner, and could be considered an asset for connectivity and public safety communication. *This section should be deleted. Otherwise, we suggest converting this prohibition to a less-preferred location under Section (a).*

(h)(5). Not within 15 feet of residential driveways. 15-foot buffers on either side of 15-foot driveways would create multiple 45-foot exclusion zones along residential or mixed-use streets. This could exclude numerous pole options in various rights-of-way. Small cell equipment elevated on a pole does not pose a view obstruction to motorists entering or exiting their driveway. *We suggest deleting this, or converting it to a less-preferred location under Section (a).*

Section 11 – Design Standards

(h)(1). Position preference. This contemplates that all antennas will be installed at the same location on a pole. However, Verizon Wireless may employ different types of antennas for different frequency bands, which must be separated to avoid interference and optimize performance. For example, a cylindrical antenna may be placed on top of a pole, and small panel antennas mounted to the side. *This list should be revised to allow multiple antenna locations.*

(h)(2). Antenna shrouding. As noted above, Verizon Wireless may place different types of antennas at different locations on a pole. A cylindrical antenna is actually a concealing shroud with multiple small antenna elements inside, so it does not need additional shrouding. Small panel antennas that use higher frequencies such as C-Band cannot be shrouded, as that impedes signal propagation, and a shroud covering multiple small antennas would only add bulk. *This section should be deleted.*

(h)(3). Antenna volume. Limiting antenna volume to only three cubic feet in residential areas would preclude a typical small cell design with a cylindrical antenna plus one or two small panel antennas that use higher frequencies. The volume limit would require these antennas to be distributed on multiple poles, leading to more facilities and permits overall. A slight increase from three to four cubic feet could accommodate this design. *For residential areas, we suggest an antenna volume limit of four cubic feet.*

(h)(4). Overall height. As drafted, this provision would limit the height of an antenna above a utility pole to 5 feet or 10 percent of pole height, “inclusive of any minimum separation between the antenna and other pole attachment required by applicable health and safety regulations.” This language is unclear. A 5-foot extension could not accommodate both an antenna and the 6-foot vertical separation above electric

conductors required by CPUC General Order 95, Rule 94.4(C). *This provision should be revised to replace the phrase “inclusive of” with the word “plus.”*

The prohibition of antennas at the elevation of windows of the nearest residence within 50 feet could be prohibitive along certain rights-of-way. Small cell antennas are generally either cylindrical antennas mounted to the top of a pole or on a side-arm rotated toward the street, or very small panel antennas, none of which pose significant visual impact. *This sentence should be deleted.*

(i). Accessory equipment volume. This provision limits accessory equipment to a maximum of nine cubic feet in residential areas or 12 cubic feet elsewhere. A typical small cell on a utility pole includes radios and network gear concealed in a vertical shroud, plus a PG&E electric meter and disconnect switch underneath, which cannot be covered. The shroud includes multiple radios for different frequency bands, power supply units, and other network gear, plus space for cables, connections, worker access, and air circulation. Typical shrouds for utility poles may be up to 15 cubic feet. Limiting shroud volume would require removal of radios, and therefore elimination of frequency bands, resulting in less service coverage and data capacity. That could in turn require installation of more facilities to serve an area. *We suggest an accessory equipment volume limit of 16 cubic feet for facilities on utility poles anywhere, to accommodate an equipment shroud plus a PG&E electric meter and disconnect switch.*

(j)(1). Undergrounded accessory equipment, where required. This requires that accessory equipment be placed underground in underground districts, or anywhere the Director believes that above-ground equipment would “incommode” the public use. While there is a narrow exception for feasibility, any blanket mandate to underground is unreasonable in two ways. First, undergrounding generally is technically infeasible due to sidewalk space constraints, the large excavation area required, utility lines already routed underground, and undue environmental and operational impacts for required active cooling and dewatering equipment. Second, small radios are not “out-of-character” on the side of streetlight poles that remain in underground districts, so this standard is unreasonable per FCC regulations. *For underground districts, the City should allow up to six cubic feet of associated equipment on a pole before any undergrounding is considered. The provision allowing the Director to require undergrounding anywhere should be deleted.*

(k)(4). Horizontal projection. Item (A) limits protrusion of pole-mounted equipment to only 18 inches from the pole surface. Radios, other network gear, and PG&E electric meters cannot be flush-mounted to a utility pole, and instead must be mounted to a stand-off mounting bracket, which allows utility workers to safely climb the pole. To improve appearance, Verizon Wireless can conceal radios and other network gear in a vertical shroud, the corners of which may protrude up to 28 inches from the pole surface, inclusive of the required pole separation distance. *For small cells on utility poles, the 18-inch limit should be expanded to 28 inches.*

(k)(5). Orientation. For electric utility poles, General Order 95 and PG&E rules impose strict requirements for small cell equipment placement to avoid existing conduit risers and accommodate safe worker climbing space. (Note our comment on Section 3(ff) regarding the definition of “technically infeasible.”) *This provision should acknowledge General Order 95 and PG&E rules with respect to equipment orientation on utility poles.*

(m)(1). Overhead lines. The City cannot regulate the electric and communication lines of other utilities through a small cell permit for a wireless carrier. The FCC regulates overloading, so the City cannot compel other utilities to allow it. *See, e.g., 47 C.F.R. § 1416. The second and third sentences regarding overloading and new service drops must be deleted.*

Section 13 – Exceptions

An exception would always be required to install small cells in many City rights-of-way, such as those within 300 feet of residential or mixed-use zones, residences, daycares, and schools per Draft Policy Section 10(b).

The exception scheme is problematic because of its extra findings, which require applicants to prove that denial would violate federal and/or state law. This would inappropriately place the Director in a quasi-judicial position to make subjective legal determinations best left to the courts. The findings are not based on reasonable aesthetic criteria, and they could lead to repeat unfounded denials. That would “materially inhibit” service improvements, and constitute a prohibition of service in contradiction of FCC rules and the federal Telecommunications Act.

As noted, California Public Utilities Code Section 7901 grants telephone corporations the right to install their equipment in any public right-of-way, and it preempts any local requirements that could be used to deny facilities based solely on their location in the right-of-way.

Further, by granting an exception *after* an application is filed, the City would be correcting an unreasonable or prohibitive standard by consenting to a new standard on a case-by-case basis, violating the FCC’s requirement that small cell standards be “published in advance.”


By relying on “exceptions” that would be required over and over, the City would concede that its standards are prohibitive and preempted. *The City cannot rely on the exception scheme to excuse unreasonable or prohibitive Draft Policy standards. At a minimum, Section 10(b) requiring special exceptions for many right-of-way locations must be deleted.*

(c). Request for exception at time submittal. As explained in our comments on Section 6(b)(13), this contradicts federal law, notably the FCC’s Shot Clock rules.

San Mateo Sustainability & Infrastructure Commission
October 21, 2024
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Verizon Wireless appreciates the opportunity to provide comment on the Draft Policy. We encourage you to incorporate our suggested revisions prior to recommending the Draft Policy to the City Council.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Albritton", with a stylized flourish at the end.

Paul B. Albritton

cc: Prasanna Rasiah, Esq.
Jason Hallare
Matt Fabry