



Second Supplemental Council Agenda Report

Special Meeting
12-09-20

**Item
1.A.**

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Richard Mollica, Acting Planning Director
Adrian Fernandez, Principal Planner
Gail Karish & Andrew McCardle of BB&K
Christi Hogin, City Attorney
Trevor Rusin, Assistant City Attorney

Date prepared: December 9, 2020 Meeting date: December 9, 2020

Subject: Consider Urgency Ordinance, and Introduction of Ordinance, Regulating the Permitting of Wireless Facilities in Public Rights-of-Way and Finding the Same Exempt from the California Environmental Quality Act; and Adoption of Resolution Establishing Design and Development Standards and Standard Permit Conditions for Wireless Facilities in Public Rights-of-Way

This supplements Attachment 2 and Attachment 3 published with the original staff report on Friday, December 4, 2020.

ATTACHMENTS:

1. Attachment 2 – REDLINED
2. Attachment 3 – REDLINED

ORDINANCE NO. 477U

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU TO AMEND MALIBU MUNICIPAL CODE TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) TO ADD CHAPTER 12.02, "WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY"; AMENDING CHAPTER 1.10 (ADMINISTRATIVE CITATIONS AND PENALTIES); DECLARING THE URGENCY THEREOF; AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does ordain as follows:

SECTION 1. Findings

A. The City's public rights-of-way are a valuable resource, and the regulation of wireless installations in the public rights-of-way is necessary to protect and preserve aesthetics in the community;

B. Wireless carriers have submitted applications to install wireless facilities to be located within the public rights-of-way, but more recently carriers have begun to submit much larger numbers of such applications;

C. The City of Malibu is designated as a Very High Fire Hazard Severity Zone. The City was devastated by major fires in 2007 and 2018 due to power pole failures. In each instance the utility structures supported wireless facilities that either initiated or significantly contributed to the ignition. The 2018 Woolsey Fire, which affected Malibu and other parts of Los Angeles County, consumed over 96,000 acres, destroyed at least 1,643 structures, killed three people, and prompted the evacuation of more than 295,000 people. It was one of several fires in California that ignited on the same day. Malibu has still not recovered. The 2007 fire burned 3,836 acres, 36 vehicles and 14 structures, including Castle Kashan and the Malibu Presbyterian Church, and damaged 19 other structures. It is essential that wireless facilities be engineered to prevent fire and withstand fire events as much as possible, and at least in a manner comparable to other commercial facilities with extensive, complicated electronics and wiring and flammable, sometimes hazardous and toxic, materials on site;

D. Cities retain the authority to over decisions regarding the placement, construction, and modification of personal wireless service facilities, subject to those matters where that authority has been limited or removed by state or federal law;

E. The unrestricted installation of personal wireless service facilities is contrary to the City's efforts to stabilize economic and social aspects of neighborhood environments, to satisfy health, safety and aesthetic objectives, to maintain property values by not degrading the visual and economic value of adjoining properties, especially in residential areas, and to promote family environments and a rural residential community character within the City to the maximum extent allowed by law. The City intends to exercise its powers to protect its citizens,

its right to exercise all available power and right over its own property and regulate the use and occupation of that property, and to regulate public right-of-way use to the maximum extent allowed by law, while nonetheless respecting and adhering to the law as it may be and may change as the result of judicial review, potential state or federal statutory changes or valid rule amendments by the FCC.

FC. To protect the public safety and welfare, it is necessary and appropriate to provide for certain standards and regulations relating to the location, placement, engineering, design, construction and maintenance of wireless facilities~~telecommunications towers, antennas and other structures~~ within the City's public rights-of-way, and providing for the enforcement of these standards and regulations, consistent with federal and state law limitations on that authority;

GD. Applications for wireless facilities to be located within the City's public right-of-way have been processed under the provisions of Chapter 17 (Zoning) of the City's Municipal Code but those provisions were adopted at a time most wireless facilities were being installed on macro sites on land, not in public rights-of-way, ~~and s~~Since the City Council last amended the portions of its Municipal Code related to wireless communication facility installations, significant changes in federal laws that affect local authority over wireless communication facilities deployments in public rights-of-way have occurred, including, but not limited to, the following recent developments:

- On August 2, 2018, the Federal Communications Commission ("FCC") adopted a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, 33 FCC Rcd. 7705 (rel. Aug. 3, 2018) (the "August Order"), that, among other things, contained a declaratory ruling prohibiting express and de facto moratoria for all personal wireless services, telecommunications services and their related facilities under 47 U.S.C. § 253(a) and directed the Wireless Telecommunications Bureau and Wireline Competition Bureau to hear and resolve all complaints on an expedited basis. The declaratory ruling in the August Order was made effective upon release of the August Order which occurred on August 3, 2018; and
- On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, 33 FCC Rcd. 9088 (rel. Sep. 27, 2018) (the "September Order"), which, among many other things, created new shorter "shot clocks" for small wireless facilities (as defined in the September Order), shortened existing "shot clock" regulations to require local public agencies to do more in less time, established a national standard for an effective prohibition related to small wireless facilities ~~that replaced the existing "significant gap" test adopted by the United States Court of Appeals for the Ninth Circuit~~ and provided that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition. The September Order went into effect in part on January 14, 2019, and in part on April 15, 2019;

- On August 12, 2020, a three-judge panel of the Ninth Circuit Court of Appeals upheld the August Order and significant portions of the September Order, including the shorter shot clocks and remedies for failing to meet a shot clock;
- On October 22, 2020, the Ninth Circuit Court of Appeals denied a petition for *en banc* review of the above-referenced panel’s decision;
- On June 9 and October 27, 2020, the FCC adopted Declaratory Orders and Reports and Orders providing clarifications and/or rule changes relating to ~~its rules establishing~~ the short shot clock, deemed granted remedy and qualifying criteria for “eligible facilities requests” which are applications for modifications to existing wireless facilities which must be approved by local authorities according to federal law;

HE. In light of the FCC Orders and related court decisions, the City deems it to be necessary and appropriate to enact additional standards and regulations, consistent with federal and state law limitations on that authority;

IF. Considering that the FCC Orders are already in effect or will go into effect in early January 2021, if the City does not immediately amend the Municipal Code, there is a risk that the City may not be able to enforce provisions of its Municipal Code or comply with the new federal regulations;

JG. If not adequately regulated, the installation of wireless facilities within the public rights-of-way can pose a threat to the public health, safety, and welfare, including disturbance to the public rights-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; public right-of-way and use conflicts and incompatibilities including excessive height or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of wireless facilities, including the associated pedestals, meters, equipment and power generators; reduce property values and/or frustrate Malibu’s longstanding efforts to have a rustic, residential and welcoming look and feel and a comfortable, safe community, all of which may negatively impact the City and its citizens; and

KH. The City deems it necessary and appropriate to enact regulations for wireless telecommunications facilities in the public rights-of-way by urgency ordinance under Government Code Section 36937(b) because the matters herein concern the immediate preservation of the public peace, health or safety of the City’s citizens.

SECTION 2. Amendments

A. Title 12 of the Malibu Municipal Code is hereby amended to add a new Chapter 12.02, entitled “Wireless Facilities in Public Rights-of-Way” as follows:

CHAPTER 12.02
WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Section 12.02.010. Purpose.

The purpose of this Chapter is to establish a process for managing, and uniform standards for acting upon, requests for the placement of wireless facilities within the public rights-of-way of the City consistent with the City’s obligation to promote the public health, safety, and welfare, to manage the public rights-of-way, and to ensure that the public is not incomed by the use of the public rights-of-way for the placement of wireless facilities. The City recognizes the role of personal wireless facilities to provide personal wireless service to the residents and businesses within the City. No provision of this Ordinance shall be interpreted in a manner that violates state or federal law.

Section 12.02.020. Definitions.

The abbreviations, phrases, terms and words used in this Chapter will have the following meanings assigned to them unless context indicates otherwise. Undefined phrases, terms or words in this policy will have their ordinary meanings.

The definitions in this policy shall control over conflicting definitions for the same or similar abbreviations, phrases, terms or words as may be defined in the Malibu Municipal Code Chapter 17.02 and Section 17.46.040.

“Application” A formal request, including all required and requested documentation and information, submitted by an applicant to the City for a wireless ROW permit.

“Applicant” A person filing an application for placement or modification of a wireless facility in the public right-of-way.

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

“FCC” The Federal Communications Commission or its lawful successor.

“Municipal Infrastructure” City-owned or controlled property structures, objects, and equipment in the ROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the ROW.

“Permittee” any person or entity granted a wireless ROW permit pursuant to this Chapter.

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

“Personal Wireless Services Facility” means a wireless facility used for the provision of personal wireless services.

“Professional Engineer” (PE) is as defined by Business and Professions Code Section 6701, and shall be interpreted to refer to the specific appropriate engineering branch in issue as defined in Sections 6702 through 6703 and “supervision of the construction of engineering structures” as defined in Section 6703.1.

“Public Right-of-Way, or ROW” means any public street, public way or public place within the City limits, either owned by the City or dedicated to the public for the purpose of travel and which the City has the responsibility to maintain or manage. The term includes all or any part of the entire width of right-of-way, and above and below the same, whether or not such entire area is actually used for travel purposes.

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

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

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

“Underground areas” Those areas where there are no electrical facilities or facilities of a local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted

from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

“Utility Pole” A structure in the ROW designed to support electric, telephone and similar utility lines. For the avoidance of doubt, any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities is not a utility pole.

“Wireless ROW Permit or WRP” A permit issued pursuant to this Chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the ROW; and the modification of any existing support structure to which the wireless facility is proposed to be attached.

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

“Wireless Infrastructure Provider” A person that owns, controls, operates or manages a wireless facility or portion thereof within the ROW.

“Wireless Regulations” Those regulations adopted pursuant to Section 12.02.050 and implementing the provisions of this Chapter.

“Wireless Service Provider” An entity that provides personal wireless services to end users.

Section 12.02.030. Scope.

A. **In general.** There shall be a type of permit entitled a “Wireless ROW Permit (WRP),” which shall be subject to all of the requirements of this Chapter. Unless exempted, every person who desires to place a wireless facility in the public rights-of-way or modify an existing wireless facility in the public rights-of-way must obtain a wireless ROW permit authorizing the placement or modification in accordance with this Chapter. Except for small cell facilities, facilities qualifying as eligible facilities requests, or any other type of wireless facility expressly allowed in the public right-of-way by state or federal law, no other wireless facilities shall be permitted pursuant to this Chapter.

B. **Exemptions.** This Chapter does not apply to:

- (1) The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.
- (2) Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing functional facilities.

C. **Other applicable requirements.** In addition to the WRP required herein, the placement and operation of a wireless facility in the public rights-of-way requires the persons who will own or control those facilities to obtain all permits required by Chapter 12.04 (Highway Permits) and other applicable law, and to comply with applicable law, including, but not limited to, applicable law governing radio frequency (RF) emissions and the Americans with Disabilities Act (ADA) and electrical and fire codes. If an applicant meets the requirements of this Chapter and obtains a wireless ROW permit, then the applicant does not need to obtain a site plan review permit or conditional use permit pursuant to Malibu Municipal Code Sections 17.46.020 and 17.46.030.

D. **Pre-existing Facilities in the ROW.** Any permitted wireless facility already existing in the ROW as of the date of this Chapter's adoption shall remain subject to the standards and conditions of the City Code in effect prior to this Chapter, unless and until a renewal of such facility's then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the City Code under which it was previously reviewed.

E. **Public use.** Except as otherwise provided by California law, any use of the public right-of-way authorized pursuant to this Chapter will be subordinate to the City's use and use by the public.

Section 12.02.040. Administration.

A. **Reviewing Authority.** The Planning Director or his/her designee ("Director") is responsible for administering this Chapter. As part of the administration of this Chapter, the Director is responsible for the following:

- (1) Implement standards governing the placement and modification of wireless facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
- (2) Implement acceptable **engineering designs** and development standards for wireless facilities in the public rights-of-way, taking into account the zoning districts adjacent to the public rights-of-way;
- (3) Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this Chapter;
- (4) Collect, as a condition of the completeness of any application, any fee established by this Chapter;
- (5) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
- (6) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;

- (7) Require, as part of, and as a condition of completeness of any application, timely notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
- (8) Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
- (9) Take such other steps as may be required to timely act upon applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

B. Appeals.

- (1) Any person adversely affected by a decision of the Director pursuant to this Chapter may request an administrative hearing to appeal the Director's decision. In order to request a hearing, the person shall submit to the City Clerk in the manner directed in the Director's decision notice a fully completed request for administrative hearing form along with a full amount of the appeal fee (by way of check or money order). The request for administrative hearing shall be incomplete if it does not include the deposit in the full amount of the appeal fee. The deposit will be retained in a noninterest bearing account until the matter is resolved. The appeal fee shall be refunded to the appellant if their appeal is granted.
- (2) Appeals must be filed within five (5) business days of the mailing of decision notice of the Director, unless a different time period is specified by the Director in such notice. The Director may extend the time period for filing an appeal for due cause but an extension may not be granted where such extension would result in approval of the application by operation of law.
- (3) If a timely and complete request for hearing is not submitted, the Director's decision shall be deemed final.
- (4) If a timely and complete request for hearing is submitted, the City Manager shall appoint to an administrative hearing officer ("Hearing Officer") to conduct the administrative hearing. The Hearing Officer may decide the issues *de novo*. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. The appellant and the applicant shall have the opportunity to present evidence in support of their case.
- (5) Any administrative hearing shall be conducted so that a timely written decision may be issued in accordance with applicable law.
- (6) The hearing officer's decision shall be in writing, shall explain the basis for the decision, and shall be served upon the applicant, and upon the appellant (if different) by first class mail, to the address stated on the request for hearing form. and the written decision of the Hearing Officer will be the final decision of the City effective on the date of mailing.

Commented [U1]: Scott McCollough proposed an alternative appeals process.

Section 12.02.050. General Standards for Wireless Facilities in the Public Rights-of-Way.

A. **Generally.** Wireless facilities in the ROW shall meet the minimum requirements set forth in this Ordinance and the wireless regulations, in addition to the requirements of any other applicable law.

B. **Regulations.** The wireless regulations and decisions on applications for placement of wireless facilities in the ROW shall, at a minimum, ensure that the requirements of this section are satisfied, unless a waiver is granted by the Director or Hearing Officer~~approving authority~~ pursuant to Section 12.02.050(E).

C. **Minimum Standards.** Wireless facilities shall be installed and modified in a manner that does not incommode the public use of the ROW, in that it minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way, makes facilities stealthy by using concealment elements, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights of way; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public or cause personal or economic harm, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the rights of way.

D. **Engineering Design and Location Standards.** All applicants shall engineer, design and locate the wireless facilities in accordance with the standards and wireless regulations set forth separately through the resolution adopted by the City Council.

E. **Waivers.** Requests for waivers from any requirement of this Chapter shall be made in writing to the Director. The Director or Hearing Officer may grant a request for waiver only if it is demonstrated through clear and convincing ~~with substantial~~ evidence that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored so that the requirements of this Chapter are waived only to the minimum extent required to avoid the prohibition or violation.

Section 12.02.060. Applications.

A. **Submission.** Unless the wireless regulations provide otherwise, applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to an application, or responses to requests for information regarding an application to the Planning Department.

B. **Pre-application meeting.** Prior to filing an application for a WRP, applicant is encouraged to schedule a voluntary pre-application meeting with the Director to discuss the

proposed facility, the requirements of this Chapter, and any potential impacts of the proposed facility. Conducting a voluntary pre-application meeting shall not initiate any applicable “shot clock.”

C. Public Notice.

- (1) Within seven (7) calendar days after an application is submitted to the City, the applicant shall: (1) post notice at the proposed project site in a location near to and visible from the ROW and (2) provide the City with evidence that such notice has been posted. The applicant shall maintain and replace the posted notice as necessary during the entire application review process until the Director acts on the application and all appeals have been exhausted. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for at least 180 calendar days. The posted notice shall be at minimum 17 inches wide by 11 inches tall. The posted notice shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, pedestrians or other users in the ROW. The City encourages applicants to consult with the Planning Department on placement locations to avoid any potential hazards.
- (2) Within ~~fiveten (5+0) business~~ calendar days from the date on which an application is determined to be complete, the Director shall notify in writing of the filing of the application property owners and residents of all property within a ~~one thousand five hundred (\$1,000)~~ foot radius of the proposed project, but in no event fewer than the owners and occupants of ten (10) developed properties. The purpose of the notice is to inform the surrounding property owners and residents of the filing of the application and provide an opportunity for comment on the application prior to the Director’s decision. The notice shall describe the request, provide a map showing the specific location of the proposed project, describe the review process and timeframes, indicate how to contact the applicant and case planner assigned to the application, and the City-assigned application identifier.

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

E. **Fees.** Application fee(s) shall be required to be submitted with any application for a wireless ROW permit and with any request for appeal of a Director's decision. At the time of this Ordinance's adoption, the application and appeal fees are set forth in the Planning Department Fees in the City's Fiscal Year 2020-2021 Citywide Fee Schedule, which may be amended from time to time. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WRP unless paid as a refundable deposit. Simultaneously with an appeal request, an affected resident may submit a request for waiver of appeal fees based on a showing of undue financial burden. If the request for waiver is granted, no fee shall apply. If the request for waiver is denied, the affected resident shall submit payment of the fee within three (3) days after notice of the waiver request has been denied. Failure to timely submit the fee will result in dismissal of the appeal.

F. **Incompleteness.** Applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If an application is incomplete, the Director may notify the applicant in writing, and specifying the material omitted from the application. A failure to notify the applicant of any defect or omission does not relieve the applicant of its burden of proof on the merits and the City reserves the right to deny the application if all necessary information was not provided by the applicant.

G. **Denials Without Prejudice/Extensions.** To promote efficient review and timely decisions, if the applicant fails to tender a substantive response to the Director within 90 calendar days after the Director deems the application incomplete in a written notice to the applicant, the Director may, in the Director's discretion, deny the application without prejudice. However, if the applicant submits a written request to the Director prior to the 90th day that shows good cause to grant an extension, the Director may instead grant a written extension for up to an additional 30 calendar days for the applicant to tender a substantive response.

Section 12.02.070. Findings; Decisions; Consultants.

A. Findings Required for Approval.

- (1) Except for eligible facilities requests, the Director or Hearing Officer, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - (i) The facility is not detrimental to the public health, safety, and welfare;
 - (ii) The facility complies with this Chapter and all applicable design and development standards;
 - (iii) The facility meets applicable requirements and standards of state and federal law;
 - (iv) The application is complete and provides all information required by this Chapter; and
 - (iii)(v) The applicant has satisfied the burden of proving full compliance with all procedural and substantive requirements in this Chapter.
- (2) For eligible facilities requests, the Director or Hearing Officer, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

- (i) That the application qualifies as an eligible facilities request in that:
- a. The proposed colocation or modification meets each and every one of the applicable criteria for an eligible facilities request stated in 47 C.F.R. 1.6100(b)(3)-(9), after application of the definitions in 47 C.F.R. 1.6100(b). The director shall make an express finding for each criterion that applies and for any criterion found not to apply the director shall make independent findings justifying the determination that a criterion does not apply;
 - ~~a.~~b. The existing facility complies with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in 47 C.F.R. 1.6100(b)(7)(i) through (iv); and
- (ii) That the proposed facility will comply with all generally-applicable laws.

B. **Decisions.** Decisions on an application by the Director or Hearing Officer shall be in writing and include the reasons for the decision.

C. **Independent Consultants.** The Director or Hearing Officer, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise and appropriate credentials in telecommunications and/or electrical and fire safety in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, ~~structural~~ engineering analysis, or compliance with FCC radio frequency emissions limitsstandards.

Section 12.02.080. Conditions of Approval.

A. **Generally.** In addition to any supplemental conditions imposed by the Director or Hearing Officer, as the case may be, all permits under this Chapter shall be subject to the conditions in the design standards and standard conditions of approval resolution adopted by the City Council, unless modified by the Director or Hearing Officer approving authority.

Section 12.02.090. Breach; Termination of Permit.

A. **For breach.** A WRP may be revoked for failure to comply with the conditions of the permit or applicable law or if the permittee becomes ineligible for franchise rights under state law or if the permittee's FCC authorization to operate wireless facilities and/or provide wireless service is terminated for any reason. Upon revocation, the wireless facility must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.

B. For installation without a permit. A wireless facility or its modification installed after the effective date of this Ordinance without a WRP (except for those exempted from, or not subject to, this Chapter) must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with enforcement of this provision and removal shall be paid by entities who own or control any part of the wireless facility.

C. Violations. In addition to any criminal, civil or other legal remedy established by law that may be pursued to address violations of the Municipal Code, violations of any provision of this chapter or the regulations adopted by this Chapter are subject to the administrative penalty provisions of Chapter 1.10.

Section 12.02.100. Nondiscrimination. In establishing the rights, obligations and conditions set forth in this Chapter, it is the intent of the City to treat each applicant or public right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the ROW.

B. Subsection A of Section 1.10.040 of Chapter 1.10 (Administrative Citations and Penalties) of Title 1 (General Provisions) of the Malibu Municipal Code is hereby amended to read as follows:

- A. In addition to any criminal, civil or other legal remedy established by this code or other law that may be pursued to address violations of the municipal code or the City's Local Coastal Program Local Implementation Plan, violation of the City's Local Coastal Program Local Implementation Plan (or any condition of any permit or license approved pursuant to any provision of the City's Local Coastal Program Local Implementation Plan) to the extent allowed by law, and the violations described in the municipal code titles, chapters and sections listed below are subject to the administrative penalty procedures and other provisions of this chapter:
1. Chapter 5.04: Business Licenses Generally;
 2. Chapter 5.20: Motion Pictures, Television and Photographic Productions;
 3. Chapter 5.46: Prohibition of Price Gouging;
 4. Chapter 8.04: Health Code Adopted;
 5. ~~Chapter 8.12: Fire Code Adopted;~~
 - ~~65.~~ Chapter 8.24: Noise;
 - ~~76.~~ Chapter 8.32: Solid Waste and Recyclable Materials;
 - ~~87.~~ Chapter 9.08: Offenses Against Property;
 - ~~98.~~ Chapter 9.20: Water Conservation;
 - ~~109.~~ Chapter 9.24: Ban on Expanded Polystyrene Food Packaging;
 - ~~119.~~ Chapter 9.28: Ban on Plastic Shopping Bags;

- ~~124.~~ Chapter 9.33: Share On-Demand Personal Mobility Devices;
- ~~132.~~ Chapter 9.38: Valet Attendant Safety Requirements;
- ~~143.~~ Chapter 9.40: Ban of On-Site Self-Regenerating Water Softeners and Regulating Previously Installed Self-Regenerating Water Softeners
- ~~154.~~ Chapter 10.18: Oversize Vehicles;
- ~~165.~~ Chapter 12.02: Wireless Facilities in Public Right of Way
- ~~176.~~ Chapter 13.04: Storm Water Management and Discharge Control
- ~~187.~~ Chapter 13.60: Recycled Water Requirements;
- ~~198.~~ Chapter 15.04: Building Code Adopted;
- ~~2019.~~ Chapter 15.08: Electrical Code Adopted;
- ~~210.~~ Chapter 15.12: Plumbing Code Adopted;
- ~~224.~~ Chapter 15.16: Mechanical Code Adopted;
- ~~232.~~ Title 17: Zoning.

SECTION 3. Environmental Review.

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

SECTION 4. Urgency Declaration; Effective Date

The City Council finds and declares that the adoption and implementation of this ordinance is necessary for the immediate preservation and protection of the public peace, health and safety as detailed above and as the City and public would suffer potentially irreversible impacts if this

ordinance is not immediately implemented. The Council therefore finds and determines that the immediate preservation of the public peace, health and safety requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

SECTION 5. Pending Applications All applications for wireless facilities in the public rights-of-way or for modifications to existing wireless facilities in the public rights-of-way which were not subject to final action by City prior to the effective date of this Ordinance shall be subject to and comply with all provisions of this Chapter, and any design and placement standards adopted by the City Council by resolution, to the fullest extent permitted by applicable law.

SECTION 6. Severability If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 7. The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this ____ day of _____ 2020.

MIKKE PIERSON, Mayor

ATTEST:

HEATHER GLASER, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

CHRISTI HOGIN, City Attorney

RESOLUTION NO. 20-65

A RESOLUTION OF THE CITY OF MALIBU ADOPTING ENGINEERING, DESIGN AND LOCATION STANDARDS AND CONDITIONS OF APPROVAL FOR WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does hereby find, resolve and order as follows:

SECTION 1. Recitals

A. Chapter 12.02 of the Malibu Municipal Code governs the permitting, installation, and regulation of personal wireless services facilities in the City’s public right-of-way (ROW);

B. Section 12.025.050(D) provides that “[a]ll applicants shall engineer, design and locate the wireless facilities in accordance with the standards and wireless regulations set forth separately though the resolution adopted by the City Council;”

C. The City’s public rights-of-way are a uniquely valuable public resource, closely linked with the City’s character, making the regulation of wireless installations in the public rights-of-way necessary to protect and preserve the aesthetics in the community;

D. Being authorized to do so, the City wishes to establish engineering, design and development standards applicable to wireless installations in the public rights-of-way;

E. The City also wishes to set standard conditions of approval applicable to wireless ROW permits; and

F. On December 9, 2020 the City Council conducted a duly noticed public hearing and received testimony from City staff and all interested parties regarding the engineering, design and development standards.

SECTION 2. Purpose The purpose of this document is to (1) establish design and location standards (Standards) for wireless facilities in the public right-of-way (ROW) within the City; and (2) set standard conditions of approval for Wireless ROW Permits (WRPs).

SECTION 3. Definitions For the purposes of these Standards, the definitions set forth in Malibu Municipal Code (MMC) Section 12.02.020 are incorporated by reference into this Resolution and in addition the following definitions apply:

- A. “Pole-mounted facility” means a wireless facility that is, or is proposed to be, attached to or contained in a pole.
- B. “Stealth facility” (or “stealth facilities”) means a wireless facility designed to look like something other than a wireless tower or base station.

Commented [A1]: Scott McCollough proposed including application content requirements in the Resolution. Staff recommends further evaluation of these requirements so that they can be considered for inclusion in an amended resolution considered by the Planning Commission in January.

SECTION 4. General Standards for all Facilities The following standards shall apply to all wireless facilities in the ROW:

- A. All wireless facilities shall be engineered and designed to minimize the visual impact by means of placement, screening, camouflaging, painting and texturing and to be compatible with existing architectural elements, building materials and other site characteristics. The applicant shall use the smallest and least visible antenna possible to accomplish the facility's objectives. All antennas and support structures shall be painted and/or textured to achieve architectural compatibility with the structures for which they are attached and/or located.
- B. Prohibition of Generators. Permanent generators are prohibited.
- C. General Orders. All installations shall comply with applicable California Public Utilities Commission ("CPUC") General Orders, including, but not limited to General Order 95, and, if stricter, the pole owner's safety standards. None of the engineering or design standards are meant to conflict with or cause a violation of CPUC General Orders. Accordingly, the Standards can be adjusted on a case-by-case basis if it is demonstrated that adjustment is necessary to ensure compliance with CPUC rules on safety.
- D. Electric Service. The permittee shall request that the permittee's electric service provider apply flat-rate billing for any proposed electric service, wireless smart metering or other alternative metering option that would obviate the need for an above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded "smart meter" that shall not exceed the width of the pole; provided, however that such smart meter shall be placed at least ten (10) feet above ground level. 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 unless (1) the separate ground-mounted meter pedestal would be placed off the sidewalk and (2) the applicant demonstrates with clear and convincing evidence that all other alternatives for the electric meter are not available. All support equipment located within cabinets, shelters, or similar structures shall be screened from public view to the maximum extent feasible. Undergrounding of support equipment is required wherever practicable.
- E. Security. All equipment and facilities shall be installed in a manner to avoid being an attractive nuisance and to prevent unauthorized access, climbing, and graffiti.

F. Safety. All wireless facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the public use of the ROW; impede the flow of vehicular or pedestrian traffic; impair the primary use and purpose of poles/signs/traffic signals or other infrastructure; interfere with outdoor dining areas or emergency facilities; or otherwise obstruct the accessibility of the ROW. Further, all wireless facilities and associated equipment shall comply with Americans with Disabilities Act (ADA) requirements.

G. Fire and Electrical Safety Standards. All wireless facilities shall contain:

1. A power shut off readily accessible to fire service personnel for emergencies;
2. Surge protection for lightning discharge or other significant electrical disturbances;
3. Signage as required by the permit conditions, the National Electric Code or the Los Angeles County Fire Department Chief or his or her designee; and
4. Instructions for first responders to de-energize the equipment.

G.H. Noise. Wireless facilities and equipment must comply with the City's noise ordinance in MMC 8.24, or any successor provisions, and be designed to prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.

H.I. Lighting. Lighting of antenna structures and their electrical support equipment is prohibited, except as required by any order or regulation of the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA) and except for manually operated emergency lights for use when official operating personnel are on site.

I.J. Signs. No facility may display any signage or advertisement unless it is expressly allowed by this paragraph or required by law or a permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the owner's unique site number and a local or toll-free telephone number to contact the facility owner's operations center.

J.K. Landscaping. Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. In addition to any landscaping used for concealment or screening purposes, the applicant

shall replace any existing landscaping displaced during construction or installation of the applicant's facility. The applicant's landscaping plan shall be subject to the City's review and approval but shall, at a minimum, match the existing landscaping and foliage surrounding the installation site consistent with MMC Section 17.53.090.

SECTION 5. Location Standards for All Facilities The location standards for all wireless facilities, other than those that qualify as eligible facilities requests, in the ROW are as follows:

- A. Spacing. Wireless facilities located adjacent to any residential zone district, except for those facilities placed on utility poles located along Pacific Coast Highway or other major arterial roadways as depicted in Figure CI-1 of the City's General Plan, shall not be located within six hundred (600) feet of any other wireless facility, unless a finding is made, based on technical evidence acceptable to the Planning Director, as appropriate, showing a clear need for the facility and that no technically feasible alternative site exists. This provision does not apply to wireless facilities located adjacent to any commercial zone district.
- B. Location preference for wireless facilities should be given to the following:
 - 1. Installations along major arterial roadways as depicted in Figure CI-1 of the City's General Plan.
 - 2. Facilities attached to existing utility poles or street lights, or sited adjacent to existing structures not used for human habitation or school grounds or to playgrounds or parks. Whenever possible, facilities shall be located on and/or inside existing structures.
 - 3. Sites that are not highly visible from adjacent roadways and do not obstruct views of impressive scenes off the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines.
 - 4. Unless otherwise indicated in this title, no wireless facility shall be installed on an exposed ridgeline unless the facility blends with the surrounding existing natural and man-made environment and a finding is made that no other location is technically feasible.
- C. Discouraged Locations/Zones.
 - 1. Wireless facilities that are within 250 feet from the property line of an open space or recreational area.
 - 2. Wireless facilities that are less than five hundred (500) feet from school grounds, playgrounds or parks.

Commented [A2]: Scott McCollough proposed that this distance be 1,500 feet.

Commented [A3]: Scott McCollough proposed that these locations be prohibited and that these distances be 1,500 feet.

3. Wireless facilities that are less than four hundred fifty (450) feet from any other existing wireless facility within or adjacent to any residential zone district, except for those facilities placed on utility poles located along Pacific Coast Highway or other major arterial roadways as depicted in Figure CI-1 of the City's General Plan.

SECTION 6. Undergrounding Standards for All Facilities With regard to undergrounding wireless facilities, the following standards apply:

- A. Equipment, including remote radio units (RRUs) that cannot be placed with the antenna in the shroud, must be placed underground, subject to Section 7(B) below. Vaults and pull boxes shall be installed flush to grade.
- B. Ground-mounted equipment is prohibited unless required for technical reasons.
 1. If required, ground-mounted wireless facilities shall be located near existing structures or trees at similar heights for screening purposes. The equipment shall be enclosed in cabinets, sized only for the necessary equipment. Further, if ground mounted, the antennas, equipment, cabinet and support structure shall be painted, textured, landscaped or otherwise camouflaged as much as possible to integrate the structure into the environment. Colors and materials for facilities shall be non-reflective and chosen to minimize visibility. As such, ground-mounted equipment shall be stealth.
 2. The ground-mounted equipment must not obstruct ocean views.
 3. Not more than one ground-mounted antenna shall be permitted on each site.

SECTION 7. Design Standards for all Facilities The general design standards for wireless facilities in the ROW are as follows:

- A. Materials. The materials used shall be non-reflective and non-flammable.
- B. Cabinet doors must be design to stay securely closed, and openings in all facilities shall be shielded or made the smallest size feasible to protect against fire and wind-blown embers.
- C. The pole, or other support structure, and all equipment shall be designed to withstand forces from seismic events.
- D. All connections between various components of the facility, power lines, and conduit shall be designed in a manner to protect against damage by a

natural disaster, a vehicular accident, an act of vandalism or similar external forces.

~~B.E.~~ Stealth. The wireless facility shall be stealth. Stealth elements and techniques should be used to blend the facility with surrounding materials and colors of the support structure and make the facility appear to be something other than a wireless facility. Stealth elements include, but are not limited to, the following:

1. Radio frequency (RF) transparent screening or shrouds;
2. Matching the color of the existing support structure by painting, coating, or otherwise coloring the wireless facility, equipment, mounting brackets, and cabling;
3. Placing cables and wires inside the pole or beneath conduit of the smallest size possible;
4. Minimizing the size of the site;
5. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site; and
6. Using paint of durable quality.

~~C.F.~~ Curb Setback Requirements. New or replacement poles shall be a minimum of 18 inches from the face of the curb.

~~D.G.~~ Collocation. The City has a preference for the use of existing infrastructure. Wireless facilities shall be collocated on existing poles or other facilities when possible. No permittee shall restrict access to an existing antenna location if required to collocate by the City and if possible to do so.

~~E.H.~~ Minimum Height. All antennas shall be located such that: (1) any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half feet below the transmitting surface; and (2) no person at ground level will be exposed to an exposure level that is higher than allowed by the FCC's general population exposure rules.

~~F.I.~~ Strand-mounted Facilities. Strand-mounted facilities are encouraged. The facilities must be stealth and of the smallest size that is technically feasible to reduce aesthetic impacts.

Commented [A4]: Scott McCollough proposed alternative standards for strand-mounted facilities.

SECTION 8. Engineering and Design Standards for Pole-Mounted Facilities In addition to the generally applicable standards set forth above, the design standards for pole-mounted facilities in the ROW are as follows:

A. Facilities on Streetlight Poles.

1. Stealth. The facility shall be engineered, designed, painted, coated, and otherwise made to maintain the look of a streetlight pole rather than a wireless facility, tower, or base station.
2. Antennas and RRUs. Antennas shall be top-mounted in a shroud, and RRUs and other equipment shall be placed underground. If RRUs and equipment cannot be underground, then they shall be placed within the shroud with the antenna. RRUs attached to the side of the pole or ground-mounted are discouraged, but if they are required due to technical reasons, they should use the smallest RRU volume possible and be stacked vertically and close together with minimal distance from the pole.
3. Dimensions. Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume. Pole-top wireless facilities, including shroud, shall be no more than 60 inches in height and 14.5 inches in diameter.
4. Cables and Wiring. All cables and wiring must be within the pole.

B. Facilities on Wood Utility Poles.

1. Stealth. The facility shall be engineered, designed, painted, coated, and otherwise made to maintain the look of a utility pole rather than a wireless facility, tower, or base station.
2. Antennas. The preferred mounting type for wireless facilities on wood utility poles is side-mounting.
 - a. Side-mounted Facilities. Antennas and RRUs shall be mid-pole mounted (i.e., mid-pole mounted) in a shroud. If RRUs are attached to the side of the pole, the facility should use the smallest RRU volume possible, and the RRUs should be stacked vertically and close together with minimal distance from the pole.
 - (1) Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume.

1. Waiver Required. New poles are prohibited, unless a waiver is approved by the City to prevent a prohibition of service.
2. Design. New poles (including antenna) shall have a maximum height of 28 feet and a maximum diameter of 14 inches, and any base enclosure shall not exceed 24 inches in width or height. If existing poles are present in the surrounding area, then the new pole shall be designed to resemble the existing poles in appearance, color, materials, and distribution pattern/spacing.
3. New wooden poles are prohibited, unless required to match existing poles in the area surrounding the proposed installation site.
4. Cables and Wiring. All cables and wiring on non-wood poles must be within the pole. All cables and wiring on wood poles must be within the conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.
5. Antennas and RRUs. Antennas and RRUs shall be contained within the pole and its base or underground.
6. Stealth. The facility must be stealth, as defined above in Section 4(B).

SECTION 9. Exceptions to These ~~Design~~ Standards

- A. An exception may be granted to one or more of these Standards in the following circumstances:

1. Pursuant to MMC Section 12.02.050(E), if an applicant demonstrates to the Director or Hearing Officer in writing with clear and convincing evidence that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. All waivers approved pursuant to MMC Section 12.02.050(E) shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored so that the requirements of these Standards are waived only to the minimum extent required to avoid the prohibition or violation.
- ~~1.2.~~ If an applicant demonstrates to the Director or Hearing Officer with clear and convincing~~substantial, objective, fact-based~~ evidence set forth in a feasibility study that compliance with a requirement of the policy would be technically infeasible and the proposed wireless facility complies with the requirements of this

policy to the greatest extent technically feasible. For example, an exception to a requirement to conceal antennas in a shroud may be granted if shrouding is shown to be technically infeasible and an alternative concealment such as a colored film wrap is proposed. As another example, an exception to the volume limitation for antennas in a single shroud may be granted if the applicant can demonstrate that a greater volume is technically required, and that it is using the smallest, technically feasible engineering and design for providing personal wireless services, taking into account the other requirements of these Standards; or

2.3. If an applicant demonstrates to the Director or Hearing Officer in writing and based on clear and convincing~~substantial~~ evidence that the particular engineering design or location proposed involves only minor non-compliance with a requirement of these Standards but such non-compliance either results in no increase in visual harms to the community or provides other benefits. For example, an exception to the antenna or equipment size or volume limitations may be granted when the applicant can demonstrate that because of the proposed location of the wireless facility away from viewsheds of residences or shielded by vegetation or existing infrastructure (such as barriers) in the public ROW, any additional visual and physical impacts of the larger wireless facility would be insignificant. As another example, an exception to the wireless facility location limitations may be granted when the applicant can demonstrate that the placement is less visible from viewsheds of residences or shielded by vegetation or existing infrastructure (such as barriers) in the public right-of-way, or is less physically intrusive (for example, less impactful to tree roots or reduces noise), or the applicant can demonstrate that in a multi-site deployment, the placement would reduce the overall number of sites needed and be no more visible or physically intrusive than placement in accordance with the wireless location criteria. Among other factors, in deciding whether or not to grant an exception, the Director may consider the impact of expansions to the facility that the applicant would be entitled to make as of right if granted.

- B. Factors to be addressed in a feasibility study requesting an exception to undergrounding requirements based on feasibility shall include but are not limited to construction impacts (including duration and extent of excavation and soil disturbance); traffic and pedestrian impacts (including impediments to access during construction and maintenance, or permanent impediments due to the nature of particular equipment); operational challenge (such as water, heat, or maintenance complications affecting network reliability); noise impacts (such as venting and pumping which

may be required in some instances); cost impacts; aesthetic considerations; and permanent impacts to the integrity and future capacity of public ROW.

- C. Exceptions must be requested at the time an application is initially submitted for a WRP. The request must include both the specific provision(s) from which exception is sought and the basis of the request, including all supporting evidence on which the applicant relies. Any request for exception after the Director has deemed an application complete constitutes a material change to the proposed wireless facility and shall be considered a new application. A request for exception from one or more requirements does not relieve the applicant from compliance with all other applicable provisions of law or of these Standards.

SECTION 10. Standard Conditions of Approval for Permits Under MMC Chapter 12.02

- A. **Generally.** In addition to any supplemental conditions imposed by the Director of Planning or the Hearing Officer, as the case may be, all permits under MMC Chapter 12.02 shall be subject to the following conditions, unless modified by the approving authority:
1. The permittee, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project or seeks to hold the City liable in whole or in part as a result of the engineering, design, construction or operation of the facility. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
 2. Subsequent submittals for this project shall be in substantial compliance with the plans date-stamped received by the Planning Department on _____. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the agenda report for this project. In the event the project plans conflict with any condition of approval, the condition shall take precedence and revised plans shall be submitted and approved by the Planning Director prior to the Environmental Sustainability Department for plan check.
 3. The permit and rights conferred in this approval shall not be effective until the ~~permittee~~property owner signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the

conditions set forth herein. The applicant shall file this form with the Planning Department within 30 days of this decision or prior to issuance of any wireless ROW, building, electrical or encroachment permit.

4. The applicant shall digitally submit a complete set of plans, including the items required in Condition No. 5 to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.
5. This Notice of Decision (including the signed and notarized Acceptance of Conditions Affidavit) shall be copied in its entirety and placed directly onto a separate plan sheet(s) to be included in the development plans prior to submitting any development permits from the City of Malibu Environmental Sustainability Department and encroachment permit.
6. A WRP shall be valid for a period of ten (10) years from issuance, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such wireless ROW permit shall automatically expire, unless an extension or renewal has been granted. A person holding a WRP must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.
7. The installation and construction authorized by a WRP shall be completed within three (3) years after its approval, or it will expire without further action by the City unless prior to the three (3) years the applicant submit an extension request and the City, in its sole discretion, grants a time extension for due cause. The installation and construction authorized by a wireless ROW permit shall conclude, including any necessary post-installation repairs and/or restoration to the ROW, within thirty (30) days following the day construction commenced. The permittee must provide written notice to City within ten (10) days after completing construction.

The expiration date shall be suspended until an appeal and/or litigation regarding the subject permit is resolved.

8. The Planning Director may grant up to four one-year extensions of the timeline, in Condition 7 above, for completing the installation and construction authorized by a WRP approval, if the Planning Director finds that the conditions, including but not limited to changes in the wireless ordinance under which the WRP approval was issued, have not significantly changed.
9. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
10. All structures shall conform to the requirements of the Environmental Sustainability Department, City Public Works Department, FCC and Los Angeles County Fire Department requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from the City, shall be secured.
11. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the MMC. An application with all required materials and fees shall be required.

Cultural Resources

12. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required pursuant to MMC Section 17.54.040(D)(4)(b).
13. If human bone is discovered, the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. These procedures require notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in

Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Wireless Facility Conditions

14. All antennas shall meet the minimum siting distances to ~~public/uncontrolled areas~~~~habitable structures~~ required for compliance with the FCC regulations and standards governing the environmental effects of radio frequency emissions. Permittee shall keep up-to-date on current information from the FCC in regards to maximum permissible radio frequency exposure levels. In the event that the FCC changes its guidelines for human exposure to radio frequency, permittee shall, within 30 days after any such change, submit to the Planning Director a report prepared by a qualified engineer that demonstrates actual compliance with such changed guidelines. The Director may, at permittee's sole cost, retain an independent consultant to evaluate the compliance report and any potential modifications to the permit necessary to conform to the FCC's guidelines. Failure to submit the compliance report required under this condition, or failure to maintain compliance with the FCC's guidelines for human exposure to radio frequency at all times shall constitute grounds for permit revocation.
15. All antennas shall be located so that any person walking adjacent to the transmitting surface of the antenna will be walking on a grade, which is a minimum of eight and one-half feet below the transmitting surface.
16. All antennas, equipment, and support structures shall be ~~engineered and~~ designed to prevent unauthorized climbing.
17. The wireless facility shall be erected, operated, and maintained in compliance with the general requirements set forth in the Standards.
18. The antenna and electrical support equipment shall, at all times, be operated in a manner that conforms to the applicable federal health and safety standards.
19. Wireless facilities and equipment must comply with the City's noise ordinance in MMC 8.24, or any successor provisions, and ~~be designed to~~ prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.

20. The installation of a permanent onsite generator and/or other equipment is prohibited. The Planning Director's approval is required if a generator is to be placed onsite for temporary or permanent use.
21. All pole-mounted equipment associated with the application shall be located no lower than eight feet above grade or ground level on the utility pole.
22. The City or its designee may enter onto the facility area to inspect the facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case, shall notify permittee within 24 hours of doing so.
23. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
24. Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of five million dollars (\$5,000,000) per occurrence for bodily injury and property damage and six million dollars (\$6,000,000) general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of the cancellation or material modification of any applicable insurance policy.
25. Prior to issuance of a wireless encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to the cost of physically removing the facility and all related facilities and equipment on the site, based on the higher of

two contractor's quotes for removal that are provided by the permittee. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.

26. Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a WRP, the permittee shall provide the City with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way or City utility easement to be affected by permittee's facilities.
27. The permission granted by a WRP shall not in any event constitute an easement on or an encumbrance against the ROW. No right, title, or interest (including franchise interest) in the ROW, or any part thereof, shall vest or accrue in permittee by reason of a WRP or the issuance of any other permit or exercise of any privilege given thereby.
28. No possessory interest is created by a WRP. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, permittee acknowledges that City has given to permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a WRP may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this WRP.
29. If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to

constructing, attaching, or operating a facility on municipal infrastructure. This permit is not a substitute for such agreement.

30. For all facilities located within the ROW, the permittee shall remove or relocate, at its expense and without expense to the City, any or all of its facilities when such removal or relocation is deemed necessary by the City by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way.
31. If a facility is not operated for a continuous period of three (3) months, the WRP and any other permit or approval therefore shall be deemed abandoned and terminated automatically, unless before the end of the three (3) month period (i) the Director has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation or the permittee has notified the Director of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Director. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned but will not be effective for the entirety thereof until all users cease use thereof.
32. In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.

Construction

33. Installation hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No installation activities shall be permitted on Sundays and City-designated holidays. The restricted work hours described in this condition do not apply to emergency maintenance necessary to protect health or property. The City of Malibu may issue a Stop Work Order if permittee violates this condition. Construction activities shall be conducted in compliance with, and abide by, all applicable safety codes.

Site Specific Conditions

34. In the event that the electric service provider does not currently offer an alternative metering option, the permittee shall remove the above-grade electric meter when such option becomes available. Prior to removing the above-grade 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.
35. The permittee acknowledges that the City specifically includes conditions of approval related to (a) painting, coloring or finishing the equipment to match the pole; (b) undergrounding all equipment to the extent possible; and (c) installing equipment within shrouds, conduits and risers as concealment elements engineered and designed to integrate the wireless facility with the surrounding built and natural environment. Any future modifications to the permittee's wireless facility must maintain or improve all concealment elements.
36. Before the permittee submits any applications for construction, encroachment, excavation or other required permits in connection with this permit, the permittee must incorporate a true and correct copy of this permit, all conditions associated with this permit and any approved photo simulations into the project plans (collectively, the "Approved Plans"). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans as determined by the Director or the Director's designee. Any substantial or material 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 wireless facility, must be submitted in a written request subject to the Director's prior review and approval,

who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.

37. The permittee shall install and at all times maintain in good condition a “Network Operations Center Information” and “RF Caution” sign on the utility pole no less than three (3) feet below the antenna (measured from the top of the sign) and no less than nine (9) feet above the ground line (measured from the bottom of the sign). Signs required under this condition shall be installed so that a person can clearly see the sign as he or she approaches within three (3) feet of the antenna structure. If any person on or within the public ROW is or may be exposed to emissions that exceed applicable FCC uncontrolled/general population limits at any time the sign shall expressly so state, and provide instructions on how persons can avoid any such exposure. The sign shall also include the name(s) of the facility owner(s), equipment owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall not be lighted, unless applicable law, rule or regulation requires lighting. No signs or advertising devices other than required certification, warning, required seals or signage, other signage required by law, this Chapter, any City or applicable state code or the Los Angeles County Fire Department Chief or his or her designee shall be permitted. The sign shall be no larger than two (2) square feet.

37-38. The permittee shall ensure that all signage complies with FCC Office of Engineering and Technology Bulletin 65, CPUC General Order 95 or American National Standards Institute C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC.

38-39. In the event that the FCC changes any of radio frequency signage requirements that are applicable to the project site approved herein or ANSI Z535.1, ANSI Z535.2, and ANSI C95.2 standards that are applicable to the project site approved herein are changed, the permittee, within 30 days of each such change, at its own cost and expense, shall replace the signage at the project site to comply with the current standards.

- ~~39.40.~~ The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
- ~~40.41.~~ All improvements, including foundations, and appurtenant ground wires, shall be removed from the property and the site restored to its original pre-installation conditions within 90 days of cessation of operation or abandonment of the facility.
- ~~41.42.~~ Build-Out Conditions.
- a. Permittee shall not commence any excavation, construction, installation or other work on the project site until and unless it demonstrates to the City Public Works Department that the project complies with all generally applicable laws, regulations, codes and other rules related to public health and safety, including without limitation all applicable provisions in California Public Utilities Commission General Order 95 and MMC Chapters 8.12, 8.24 and 15.08.
 - b. To the extent that the pole owner requires greater or more restrictive standards than contained in California Public Utilities Commission General Order 95, those standards shall control.
- ~~42.43.~~ Permittee shall at all times maintain compliance with all applicable federal, State and local laws, regulations, ordinances and other rules, including Americans with Disabilities Act (ADA) requirements.
- ~~43.44.~~ The permittee shall cooperate with all inspections. The City and its designees reserves the right to support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- ~~44.45.~~ Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Department at the time of permit issuance and within one business day of permittee's receipt of City staff's written request.
- ~~45.46.~~ Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise

from the construction, operation, maintenance, modification and removal of the facility.

46.47. The site and the facility must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

47.48. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.

Prior to Operation

48.49. The applicant shall request a final Planning Department inspection immediately after the wireless facility has been installed and prior to the commencement of services and final electrical inspection by the City of Malibu Environmental Sustainability Department.

49.50. Within thirty (30) calendar days following the installation of any wireless facilities, the applicant shall provide to the Planning Department with a field report prepared by a qualified engineer verifying that the unit has been inspected, tested, and is operating in compliance with FCC standards. Specifically, the on-site post-installation radiofrequency (RF) emissions testing must demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety guidelines for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit. Such report and documentation shall include the make and model (or other identifying information) of the unit tested, the date and time of the inspection, a certification that the unit is properly installed and working within applicable FCC limits, and a specific notation of the distance from the transmitter at which the emissions are equal to or less than the uncontrolled/general population limit.

50.51. The operation of the approved facility shall commence no later than one (1) month after the City completes its post-installation inspection of the facility, any issues with the facility are resolved, and the City receives the RF testing report required in the condition of approval above, or the wireless ROW permit will expire without further action by the City.

Fixed Conditions

~~51-52.~~ Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.

Eligible Facilities Requests

In addition to all of the other conditions of approval placed on a WRP, all permits for an eligible facilities request under MMC Chapter 12.02 shall be subject to the following additional conditions, unless modified by the approving authority:

~~52-53.~~ Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.

~~53-54.~~ The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

~~54-55.~~ The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

Small Cell Facilities

In addition to the other conditions of approval placed on a WRP, all permits for a small cell facility under MMC Chapter 12.02 shall be subject to the following additional condition, unless modified by the approving authority:

~~55-56.~~ The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

SECTION 11. Environmental Review

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

SECTION 12. This Resolution will become effective immediately upon adoption.

SECTION 13. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 9th day of December 2020.

MIKKE PIERSON, Mayor

ATTEST:

HEATHER GLASER, City Clerk
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

CHRISTI HOGIN, City Attorney