



Council Agenda Report

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

Prepared by: Heather Glaser, City Clerk

Approved by: Reva Feldman, City Manager

Date prepared: December 16, 2020 Meeting date: January 11, 2021

Subject: Second Reading and Adoption of Ordinance No. 477

RECOMMENDED ACTION: Conduct second reading, unless waived, and adopt Ordinance No. 477 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); and finding the action exempt from the California Environmental Quality Act.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This item was included as item 4o in the Adopted Work Plan for Fiscal Year 2020-2021.

DISCUSSION: On December 9, 2020, the Council introduced on first reading Ordinance No. 477.

ATTACHMENT: Ordinance No. 477

ORDINANCE NO. 477

AN 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); 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.

F. 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 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;

G. 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. 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 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 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;

H. 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;

I. 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;

J. 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 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

K. On December 9, 2020, the City Council held a duly noticed public hearing on the proposed ordinance, reviewed and considered the staff report, written reports, public testimony, and other information in the record and approved the ordinance and directed staff to schedule second reading and adoption for January 11, 2021.

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 incommoded 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 electroliners 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 design 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.

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 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 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 five (5) business 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 (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
 - (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;

- 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, engineering analysis, or compliance with FCC radio frequency emissions limits.

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.

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;
 6. Chapter 8.24: Noise;
 7. Chapter 8.32: Solid Waste and Recyclable Materials;
 8. Chapter 9.08: Offenses Against Property;
 9. Chapter 9.20: Water Conservation;
 10. Chapter 9.24: Ban on Expanded Polystyrene Food Packaging;
 11. Chapter 9.28: Ban on Plastic Shopping Bags;
 12. Chapter 9.33: Share On-Demand Personal Mobility Devices;
 13. Chapter 9.38: Valet Attendant Safety Requirements;
 14. Chapter 9.40: Ban of On-Site Self-Regenerating Water Softeners and Regulating Previously Installed Self-Regenerating Water Softeners
 15. Chapter 10.18: Oversize Vehicles;
 16. Chapter 12.02: Wireless Facilities in Public Right of Way

17. Chapter 13.04: Storm Water Management and Discharge Control
18. Chapter 13.60: Recycled Water Requirements;
19. Chapter 15.04: Building Code Adopted;
20. Chapter 15.08: Electrical Code Adopted;
21. Chapter 15.12: Plumbing Code Adopted;
22. Chapter 15.16: Mechanical Code Adopted;
23. 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. Effective Date In accordance with California Government Code section 36937, this Ordinance shall become effective on the 30th day following its passage and adoption.

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 and enter it into the book of original ordinances.

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
JOHN COTTI, Interim City Attorney