



Council Agenda Report

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

Prepared by: Kelsey Pettijohn, City Clerk

Approved by: Steve McClary, City Manager

Date prepared: June 26, 2024 Meeting date: July 8, 2024

Subject: Second Reading and Adoption of Ordinance No. 519

RECOMMENDED ACTION: Conduct second reading, unless waived, and adopt Ordinance No. 519 determining the proposed code amendments are exempt from the California Environmental Quality Act, approving the California Coastal Commission suggested modifications to local coastal program amendment no. 16-007 specifically local implementation plan sections 2.2 and 3.16, chapter 13 and appendix 1 (Table B permitted uses), an amendment to the local coastal program to modify regulations, procedures, and application requirements for the installation of wireless communications facilities.

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

STRATEGIC PRIORITY: This item is part of the day-to-day operations identified in the Adopted FY 2023-24 Strategic Priority Project List.

DISCUSSION: On June 24, 2024, the Council introduced on first reading Ordinance No. 519.

ATTACHMENT: Ordinance No. 519

ORDINANCE NO. 519

AN ORDINANCE OF THE CITY OF MALIBU DETERMINING THE PROPOSED CODE AMENDMENTS ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, APPROVING THE CALIFORNIA COASTAL COMMISSION SUGGESTED MODIFICATIONS TO LOCAL COASTAL PROGRAM AMENDMENT NO. 16-007 SPECIFICALLY LOCAL IMPLEMENTATION PLAN SECTIONS 2.2 AND 3.16, CHAPTER 13 AND APPENDIX 1 (TABLE B PERMITTED USES), AN AMENDMENT TO THE LOCAL COASTAL PROGRAM TO MODIFY REGULATIONS, PROCEDURES, AND APPLICATION REQUIREMENTS FOR THE INSTALLATION OF WIRELESS COMMUNICATIONS FACILITIES

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

SECTION 1. Recitals.

A. On November 28, 2016, the City Council adopted Resolution No. 16-48 initiating Zoning Text Amendment (ZTA) No. 16-005 and Local Coastal Program Amendment (LCPA) No 16-007 directing staff to update the Wireless Telecommunication Facility Ordinance.

B. 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 the case of the 2007 fire, wireless communications facilities contributed to the overburdened power pole. 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 communications 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.

C. Cities retain the authority 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.

D. 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 should exercise its powers to protect its citizens and its right to exercise all available power and right over its own property and regulate the use and occupation of that property, 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 Federal Communications Commission (FCC).

E. To protect the public safety and welfare, it is necessary and appropriate to provide for certain procedures, standards and regulations relating to the location, placement, engineering, design, construction and maintenance of wireless communications facilities within the City, and providing for the enforcement of these standards and regulations, consistent with federal and state law limitations on that authority.

F. Since the City Council last amended the portions of its zoning code related to wireless communications facilities, significant changes in federal laws that affect local authority over wireless communication facilities deployments have occurred, including, but not limited to, the following recent developments:

- On August 2, 2018, the 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 Red. 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;
- On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, 33 FCC Red. 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 communications facilities which must be approved by local authorities according to federal law;
- In April, 2018 and January, 2021 the FCC adopted Declaratory Rulings preempting municipal ordinances in Philadelphia and Chicago that regulated satellite dishes by prohibiting placement of satellite dishes in locations visible to adjacent streets,

imposing installer certification and imposing removal requirements, under the over-the-air reception devices ("OTARD") rule; and

- On January 7, 2021 the FCC adopted a Report and Order amending the OTARD rule to now allow fixed wireless providers to install hub or relay antennas on one property that can provide service to nearby properties so long as the antenna serves a customer on whose premises it is located.

G. 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.

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

I. If not adequately regulated, the installation of wireless communications facilities within the City can pose a threat to the public health, safety, and welfare; traffic and pedestrian safety hazards due to the unsafe location and placement of wireless communications 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; creation of visual and aesthetic blights and potential safety concerns arising from improper design or excessive size, heights, noise, or lack of camouflaging of wireless communications facilities, including the associated pedestals, meters, equipment and power generators; reduce property values and/or frustrate Malibu's longstanding effort 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.

J. On December 9, 2020, the City Council held a duly noticed public hearing on an urgency ordinance, a regular ordinance, and a design standards and standard permit conditions resolution for wireless communications facilities in the public right-of-way. The City Council reviewed and considered the staff report, written reports, public testimony, and other information in the record and: (1) adopted the urgency ordinance and resolution; and (2) approved the regular ordinance and directed staff to schedule second reading and adoption for January 11, 2021.

K. On December 16, 2020, the City Council held a duly noticed community wireless workshop on wireless communications facility design, federal and state limitations on local authority, and permitting of wireless communications facilities in the City.

L. On January 19, 2021, a Notice of Public Hearing and Notice of Availability of Local Coastal Program (LCP) Documents was published in a newspaper of general circulation within the City of Malibu and mailed to all interested parties.

M. On March 1, 2021, the Planning Commission held a duly noticed public hearing on LCPA No. 16-007 and ZTA No. 16-005 regarding the regulation and permitting of wireless communications facilities on private land in the City, reviewed the materials in the record, the agenda report, public testimony and other information in the record and recommended approval of the amendments with some modifications.

N. On April 1, 2021, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation within the City of Malibu and mailed to all interested parties.

O. On April 12, 2021, the City Council held a duly noticed public hearing on LCPA No. 16- 007 and ZTA No. 16-005 regarding the regulation and permitting of wireless communications facilities on private land in the City, reviewed the materials in the record, the agenda report, public testimony and other information in the record.

P. On February 7, 2024, the California Coastal Commission (CCC) held a public hearing and conditionally certified the LCPA, subject to modifications as outlined in the CCC letter, dated 8, 2024.

Q. On April 18, 2024, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation within the City of Malibu and mailed to all interested parties.

R. On May 13, 2024, the City Council continued the subject item to the May 28, 2024 Regular City Council meeting.

S. On May 20, 2024, a Notice of Public Hearing cancellation for May 28, 2024 was posted at City Hall and distributed to interested parties.

T. On May 30, 2024, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation within the City of Malibu and mailed to all interested parties.

U. On June 24, 2024, the City Council held a duly noticed public hearing on LCPA No. 16-007 and ZTA No. 16-005 regarding the regulation and permitting of wireless communications facilities on private land in the City, reviewed the CCC suggested modifications to LCPA No. 16-007, other materials in the record, the agenda report, public testimony and other information in the record.

SECTION 2. Environmental Review.

Pursuant to Public Resources Code Section 21080.9, the California Environmental Quality Act (CEQA) does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This application is for an amendment to the LCP, which must be certified by the CCC before it takes effect. LCP Local Implementation Plan (LIP) Section 1 .3.1 states that the provisions of the LCP take precedence over any conflict between the LCP and the City's Zoning Ordinance. In order to prevent an inconsistency between the LCP and the City's Zoning Ordinance, if the LCP amendment is approved, the City must also approve the corollary amendment to the Zoning Ordinance. This amendment is necessary for the preparation and adoption of the LCPA and because they are entirely dependent on, related to, and duplicative of, the exempt activity, they are subject to the same CEQA exemption.

This Ordinance is not a project within the meaning of CEQA Guidelines Section 15378, 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 was 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 because the City Council's adoption of the Ordinance would be 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 would 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 communications 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 a preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless communications facilities on a particular site, the installation would be exempt from CEQA review in accordance with 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, determines that the proposed ordinance is exempt from CEQA.

SECTION 3. Local Coastal Program Amendment and Findings.

Based on evidence in the whole record, the City Council hereby finds that the proposed LCPA meets the requirements of and is in compliance with the policies and requirements of Chapter 3 of the California Coastal Act as follows and hereby amends the LCP local implantation plan as set forth in Exhibit A:

A. The amendments to the LCP meet the requirements of, and are in conformance with the goals, objectives and purposes of the LCP. Updated standards and regulations specific to wireless communications facilities ensure compliance with federal and State law while maintaining design and safety standards in the City's jurisdiction of the Coastal Zone which advance the overarching goals of protecting coastal resources. This Ordinance advances the following LCP policies:

- Policy 4.2: All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.
- Policy 4.45: New development shall minimize risks to life and property from fire hazard through:
 - b. Siting and designing development to avoid hazardous locations; and
 - d. Use of appropriate building materials and design features to insure the minimum amount of required fuel modification.

B. As a part of the LIP, the updated wireless communications facility standards and process ensures that wireless communications facilities within the City conform to applicable LCP policies, goals, and provisions, while taking into consideration the protection and enhancement of visual resources, public access, and recreation opportunities.

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, except for the amendment to the Local Coastal Program. The LCPA is subject to certification by the California Coastal Commission and shall become effective after certification.

SECTION 5. Pending Applications.

All applications for wireless facilities on land other than public ROW 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 24th day of June 2024.

STEVE UHRING, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

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

TREVOR RUSIN, Interim City Attorney

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the Malibu Municipal Code and Code of Civil Procedure.

Exhibit A

LIP Section 2.2 is amended as follows:

2.2. WIRELESS COMMUNICATIONS DEFINITIONS

ANTENNA - A typically metallic device used for radiating or receiving radio waves.

ANTENNA, BUILDING MOUNTED SITES - Antennas which are located and/or mounted on an existing building's exterior walls.

ANTENNA, ROOF-MOUNTED - An antenna, and its associated support structure, that is attached to a roof of a building or similar structure.

APPLICATION - A formal request, including all required and requested documentation and information, submitted by an applicant to the City for a wireless permit.

APPLICANT - A person filing an application for placement or modification of a wireless communications facility in the City of Malibu.

CO-LOCATION - is (1) mounting or installing an antenna facility on a pre-existing structure; and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. However, as used for Eligible Facilities Requests, "collocation" is limited to the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

EQUIPMENT CABINET - is a physical container used to house smaller, distinct pieces of equipment or devices that are components of a wireless communication facility.

ELIGIBLE FACILITIES REQUEST or EFR - Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, as defined by FCC regulations (47 C.F.R. Section 1.6100), involving:

- (i) Collocation of new transmission equipment;
- (ii) Removal of transmission equipment; or
- (iii) Replacement of transmission equipment.

A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria pursuant to 47 C.F.R. Section 1.6100(b)(7):

(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply 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 (i) through (iv).

FCC - is 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.

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 - A wireless communications facility used for the provision of personal wireless services.

PROFESSIONAL ENGINEER or 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 - 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.

- (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 is 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 and/or antenna.

STEALTH FACILITY - A wireless communications facility designed to look like something other than a wireless tower or 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 COMMUNICATIONS FACILITIES - The wiring, cables, electronic equipment, 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).

LIP Section 3.16 is repealed and replaced with the following:

3.16. WIRELESS COMMUNICATIONS FACILITIES

3.16.1 Purpose and objectives

A. Purpose. The purpose and intent of this Section is to provide a uniform and comprehensive set of standards for the development, siting and installation of wireless communication facilities and antennas. The regulations contained herein are designed to protect and promote the public health, safety and community welfare and the aesthetic quality and value of the City as set forth within the goals, objectives and policies of the General Plan and Local Coastal Program, while at the same time providing for managed development of wireless communications infrastructure.

B. Objectives. Recognizing the City's roles as regulator, service provider, facilitator and user, it is intended that the City shall apply these regulations in furtherance of the following goals and policy objectives, including but not limited to:

1. To retain control of private and public property within the confines of state and federal legislation to regulate wireless communications services.
2. To facilitate the creation of an advanced wireless communications infrastructure for citizens, businesses, industries and schools.
3. To protect the City from potential adverse effects of wireless communications facility development.
4. To ensure that the wireless communications infrastructure is designed to enhance and not interfere with the City's emergency response network.

3.16.2 Permit Requirements

A. Every person who desires to place a wireless communications facility in the public rights-of-way or modify an existing wireless facility in the public rights-of-way must obtain a Coastal Development Permit authorizing the placement or modification, unless the requirement for a Coastal Development Permit is exempt or waived pursuant to Section 13.4. Additionally, a Wireless ROW (WRP) is required pursuant to the Malibu Municipal Code where shown in LIP Table B (Permitted Uses)

B. Every person who desires to place or modify a wireless communications facility must obtain a Coastal Development Permit authorizing the placement or modification, unless the requirement for a Coastal Development Permit is exempt or waived pursuant to Section 13.4 and subsection B.3 below. Additionally, a Wireless Permit (WP) is required pursuant to the Malibu Municipal Code where shown in LIP B (Permitted Uses). The CDP shall be obtained in one of the following ways, based on facility type:

1. Type 1: The installation or modification of a facility that qualifies as a small cell facility, or eligible facilities request, or collocation of a non-small cell facility; or
2. Type 2: (a) the installation or modification of all wireless facilities that do not qualify as Type 1; and (b) any application that includes a waiver of development standards request.
3. Exemptions. Installation of the following antennas and/or appurtenant equipment which comply with all applicable requirements and standards pertaining to radio frequency (RF) emissions are not required to obtain a Coastal Development Permit:
 - a. Antennas designed to receive video programming signals from direct broadcast satellite (DBS) services, residential fixed wireless communications, multi-

channel multi-point distribution providers (MMD) or television broadcast stations in all zoning districts are exempt, provided that all of the following conditions are met:

- i. The antenna will be accessory to an existing use and measures thirty-nine (39) inches (one meter) or less in diameter.
 - ii. The antenna will be installed in a location where it is not readily visible from the public right-of-way.
 - iii. The antenna will not be located within a required setback area, driveway or parking space.
- b. Amateur radio antenna (including ham and short wave) provided the antenna is the minimum height necessary to be effective and does not exceed the maximum base building height for the zoning district in which it is located by more than fifteen (15) feet.
 - c. Communications facilities exempt from the provisions of this Section by operation of state or federal law.

C. The determination of whether or not a proposed facility meets the requirements of subsection B.3 above shall be made by the Planning Director.

D. Other applicable requirements. In addition to the CDP required herein, the persons who will own or control the facility(ies) must comply with applicable laws, including, but not limited to, applicable laws governing RF emissions, the Americans with Disabilities Act (ADA) and electrical and fire codes.

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.

F. Coastal Development Permit for a Wireless Communication Facility – Eligible Facility Requests.

1. Unless exempt from the requirement to obtain a CDP pursuant to LIP Section 13.4 and subsection B.3 above, eligible facilities requests are subject to the granting of a CDP. An application for an eligible facilities request that complies with the standards of this section 3.16.2 (F) shall be approved by the Planning Director and shall not be subject to a public hearing. If the City finds that a proposed eligible facilities request application does not qualify as an eligible facilities request, the application shall be processed as a regular coastal development permit application.
2. The findings required to be made by the Planning Director for an eligible facilities request shall be limited to the following: (a) the proposed development meets each and every one of the applicable criteria in the LCP definition of eligible facilities request (the Planning Director shall make an express finding for each criterion); and (b) that the proposed facility will comply with all generally applicable laws, including generally applicable building, structural, electrical and safety codes, noise control ordinances, and other laws codifying objective standards reasonably related to health and safety. Public notice of the Planning Director decision shall be provided consistent with the timeframes of LIP Section 13.12.

3.16.3 Health and safety

- A. No wireless communications facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health, safety or welfare. All wireless communications facilities shall be designed by qualified, licensed persons to provide the maximum protection that is technically feasible to prevent electrical and fire hazards. All wireless facilities should be proactively monitored and maintained to continue and, if possible, improve the safety design.
- B. No facility or combination of facilities shall produce at any time power densities or exposure levels in any general population area that exceed the applicable FCC standards for radiofrequency (RF) emissions.

3.16.4 Standards for Wireless Communications Facilities

- A. Generally. Wireless communications facilities, except qualifying eligible facilities requests, shall meet the minimum requirements set forth in this Section and all applicable provisions of the LCP, in addition to the requirements of any other applicable law. Compliance with one or more of the development standards of this Section may be waived on a case-by-case basis pursuant to section 17.46.060(C) below.
- B. Engineering, Design, and Location Standards. All applications shall comply with the following engineering, design and location standards for wireless communications facilities.

1. All Wireless Communications Facilities.

- 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.

The proposed wireless facility and its supporting structure (if needed) shall also be limited to the minimum size necessary to serve the defined service objectives of the wireless service provider or providers that will be using the facility, except where a larger facility has superior concealment elements. Support equipment pads, cabinets, shelters and buildings require architectural, landscape, color, fencing, or other camouflage treatment to minimize visual impacts.

- B. The materials used shall be non-reflective and non-flammable. Cabinet doors must be designed 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.
- E. Stealth. Wireless facilities 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.
- F. Co-location. The use of existing infrastructure is preferred. 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 co-locate by the City and if possible to do so.
- G. 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.
- H. Fire Safety Standards and Process.
 - 1. All wireless facilities designs shall include:
 - a. a power shut off, such as by means of rapid entry Knox or similar type systems shall be installed;
 - b. surge protection devices capable of mitigating a direct or partial direct lightning discharge; and
 - c. surge protection devices capable of mitigating significant electrical disturbances that may enter the facility via conductive cables.
 - 2. After submittal by the applicant, the applicable application materials shall be transmitted to the Fire Department for its review and any recommended conditions.

2. Wireless Communications Facilities within the public right-of-way.

- A. 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.

B. Pole-Mounted Facilities.

1. Facilities on Streetlight Poles

- a. 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.
- b. 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.
- c. 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.
- d. Cables and Wiring. All cables and wiring must be within the pole.

2. Facilities on Wood Utility Poles.

- a. 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.
- b. Antennas. The preferred mounting type for wireless facilities on wood utility poles is side-mounting.
 - i. Side-mounted Facilities. Antennas and RRUs shall be midpole 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.
 - (2) Side-mounted wireless facilities shall be of the smallest size technically feasible and shall not project from the pole more than 30 inches. The diameter of the shroud shall be no greater than the diameter of the pole or 14.5 inches, whichever is less. Side-mounted facilities shall only extend out on one side of the pole.
 - ii. Top-mounted Facilities. Antennas and RRUs shall be top-mounted in a shroud. 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 72 inches in height and 14.5 inches in diameter.

3. Cables and Wiring. All cables and wiring 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.

C. Replacement Poles. If an applicant proposes or is required to install a replacement pole to accommodate the proposed facility:

1. Placement. A replacement pole must be in the same location as the pole that it is replacing or as close to the original location as possible, taking into account pole owner safety-related requirements and all applicable location and placement standards herein.
2. Design. Replacement poles should match the design (e.g., color, dimensions, height, style, and materials) of the existing pole that is being replaced.
3. Cables and Wiring. All cables and wiring on non-wood poles must be within the structure. All cables and wiring on wood poles must be within conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.
4. Stealth. The facility should be stealth.

D. New (Non-Replacement) Poles.

1. Waiver of Development Standard Required. New poles are prohibited, unless a waiver of development standard is approved by the City pursuant to Section 3.16.4(C) below 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.

3. Wireless Communications Facilities on land other than the public right-of-way.

- A. Facade-Mounted Equipment. Facade-mounted antennas and equipment shall be architecturally integrated into the building, or other support structure, design and otherwise made as unobtrusive as possible so that the facility does not appear to be a wireless facility. Antennas and equipment should be located entirely within an existing or

newly created architectural feature so as to be completely screened from view. Facade-mounted facilities shall generally not extend more than eighteen (18) inches out from and may not project above the building face. Facade-mounted wireless telecommunication facilities shall not exceed twenty-eight (28) feet in height above the ground. However, antenna elements, mounted flush on the facade of an existing structure that exceeds twenty-eight (28) feet, may have a height equal to the height of the building.

- B. Ground-Mounted Equipment. Outdoor ground-mounted equipment associated with base stations shall be avoided whenever feasible. In locations visible or accessible to the public, applicants shall conceal outdoor ground-mounted equipment, including ancillary power generation equipment, with opaque fences or landscape features that mimic the adjacent structure(s) (including, but not limited to, dumpster corrals and other accessory structures) and by painting, texturing, or otherwise concealing the facility as much as possible. Ground-mounted wireless communications facilities shall be located near existing structures or trees at similar heights for screening purposes where feasible. Not more than one ground-mounted antenna, provided that licensed amateur radio station antennas shall also be permitted on each site.
- C. Roof-Mounted Facilities. Roof-mounted antennas and necessary equipment shall be screened from above if visible from higher elevations. Rooftop-mounted wireless telecommunication facilities shall not exceed twenty-eight (28) feet in height or three (3) feet above the roof parapet from which they are attached, whichever is less restrictive. Associated roof-mounted equipment cabinets shall not extend more than three (3) feet above the roof from which it is attached and shall be set back a minimum of ten (10) feet from the edge of the roof. All roof-mounted equipment cabinets shall be located behind a mechanical screen wall. In the event that a roof parapet wall screens the equipment cabinets, a mechanical screen wall will not be required.
- D. Freestanding Facilities. Freestanding facilities requiring a new monopole or other new support structure shall be stealth facilities. Further, they shall be located as close as possible to existing above-ground utilities, such as electrical towers or utility poles (which are not scheduled for removal or under grounding for at least 18 months after the date of application), light poles, trees of comparable heights, and in areas where they will not detract from the visual appearance of the area.
 - 1. Freestanding wireless telecommunication facilities, including monopoles, shall not exceed twenty-eight (28) feet in height and shall not extend higher than the top of the ridgeline nearest the antenna. The height of a freestanding facility shall be measured from the natural undisturbed ground surface below the center of the base of the tower itself to the tip of the highest antenna or piece of equipment attached thereto.
 - 2. Aside from the antenna itself, no additional equipment may be visible. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the freestanding facility and shall be camouflaged or hidden to the fullest extent feasible without jeopardizing the physical integrity of the facility.
 - 3. Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.

4. All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background or existing architectural elements so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.
5. Monopoles shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility.

C. Waiver of Development Standards. Requests for waivers from any development standard of this Section 13.6.4 shall be made in writing to the Director as part of the CDP application.

1. A waiver may be requested (a) to avoid a denial of an application that would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations; or (b) if compliance with a development standard would be technically infeasible; or (c) if the particular engineering, design, or location proposed involves only minor non-compliance with a development standard. Waivers shall comply with requirements for processing of coastal development permits and appeals consistent with the LCP.
2. All waivers approved pursuant to this subsection shall only be granted on a case-by-case basis based on substantial evidence if the decision-maker affirmatively finds (as applicable): (a) for a waiver requested under 1(a), that denial based on strict adherence to the standard would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, and the standard is waived only to the minimum extent required to avoid the prohibition or violation; (b) for a waiver requested under 1(b), that compliance with a standard of this Section 13.6.4 would be technically infeasible and the proposed wireless facility complies with the requirements of this Section to the greatest extent technically feasible; (c) for a waiver requested under 1(c), that such non-compliance is minor but either results in no increase in visual harms to the community or provides other benefits, and failure to adhere to the standard in the specific instance will not increase the visibility of the facility and will not decrease public safety, and will not result in greater impact to coastal resources including sensitive habitat, coastal waters, and public access.

3.16.7 Permit review, renewal and revocation procedure

A. The City finds that the technology associated with communications equipment is subject to rapid changes and upgrades as a result of industry competition and customer demands, and anticipates that communications antennas and related equipment with reduced visual impacts will be available from time to time with comparable or improved coverage and capacity capabilities. There may also be advancements and enhancements with regard to design, practice, operations and structural safety. The city further finds that it is in the interest of the public health, safety, and welfare that communications providers be required to replace older facilities with newer equipment of equal or greater capabilities, reduced visual impacts safety enhancements as technological improvements become available. Therefore, any modifications, other than eligible facilities requests, requested to an existing facility that has been issued a permit shall permit the Planning Director to review the carrier's existing facility to determine whether requiring updates to concealment elements and screening techniques that reduce visual impacts is appropriate if technically feasible, and the Planning Director may require such updates as a condition of approval of such modification.

Local Coastal Program Local Implementation Plan Chapter 13 and Appendix 1 is amended as follows:

Replace LIP Section 13.4.11 to read as follows:

Add section 13.4.11 to read as follows (moving the content previously in Section 13.4.11 to this new section, with the addition of the underlined text below):

13.4.11 General Requirements for De Minimis Waiver

A. General Requirements for De Minimis Waiver.

The requirement for a coastal development permit may be waived through a De Minimis Coastal Development Permit Waiver issued by the planning director for the items listed below where the improvements are not otherwise exempt pursuant to Section 13.4, provided all the requirements of subsections B and C are met. The planning director's decision on whether to issue a de minimis waiver is not locally appealable.

1. Improvements to an onsite wastewater treatment system (OWTS) serving a structure that was damaged or destroyed as a result of a natural disaster, where the improvements involve installing a new system or upgrading an existing system to an advanced system on the same lot.

2. Minor improvements to existing driveways or access roads that are required by the fire department after a natural disaster, such as minor changes to the width or grade of driveways or access roads. Access improvements that do not meet the findings for a waiver may be processed as an administrative coastal development permit (ACDP) under Section 13.13.1(A) or as a regular coastal development permit.

1. New wireless communications facilities that qualify as small cell facilities.

2. The replacement, minor relocation and modifications (including minor increase in height) of existing utility poles to comply with California Public Utility Code requirements when the height of a replacement utility pole would not allow a new facility to be added to the pole, such as the installation of a new wireless communications facility.

5. Temporary wireless communications facilities on wheels to temporarily replace a wireless communications facility that was damaged or destroyed as a result of a natural disaster provided the antennas and poles do not exceed the height of the approved facility and is removed immediately after the damaged or destroyed facility is constructed or in no case more than six months.

B. Findings for and Reporting of De Minimis Waivers.

All decisions on de minimis waivers shall be accompanied by written findings:

1. That the development has no potential for adverse effects, either individually or cumulatively, on coastal resources.

2. That the development is consistent with the certified Malibu Local Coastal Program, including the resource protection policies, as applicable.

3. If an OWTS is to be relocated on the lot, that the director, in consultation with the environmental health administrator, has determined the relocation is necessary to better protect coastal resources.

4. If driveway/road improvements are proposed, that: (a) they are in the same general alignment as the existing road; (b) they are not located in environmentally sensitive habitat area (ESHA); (c) they do not remove or encroach within the protected zone of native trees; and (d) they do not adversely impact visual resources.

5. That the development is not in a location where an action on the development would be appealable to the coastal commission (See Chapter 2 – Definitions).

C. Reporting De Minimis Waiver.

1. At the time the application is submitted for filing, the applicant must post, at a conspicuous place as close to the site as possible that is easily accessible by the public and approved by the city, notice, on a form approved by the city, that an application for a de minimis waiver has been submitted to the city. Such notice shall contain a general description of the nature of the proposed development.

2. The planning director shall issue a notice of determination on the application which shall be reported to the planning commission. The notice of determination shall be provided to all known interested parties, including the executive director of the coastal commission, at least ten (10) days prior to the waiver determination being reported to the planning commission.

3. If, after consideration of the waiver and any public objections to it, the planning commission requests that the waiver not be effective, then the applicant shall be advised that a coastal development permit is required for the development. Otherwise, the waiver is effective immediately after the planning commission meeting where the matter is heard.

D. Waiver Expiration.

A de minimis waiver shall expire and be of no further force and effect if the authorized development has not commenced pursuant to a valid grading and/or building permit, as applicable, within five years of the effective date of the waiver. If expired, a coastal development permit or another waiver shall be required.

Amend LIP Section 13.13.1(A) to add a new subsection (7) as follows:

7. Wireless communication facilities that do not meet the criteria for an exemption or a de minimis waiver.

Amend LIP Section 13.4.9 to read and to add a new subsection (F) as follows:

13.4.9 Temporary Event

Amend Appendix 1 TABLE B PERMITTED USES:

Replace all references to “WTF” with “WP” and “Wireless Telecommunication Facility” with “Wireless Permit”.