

From: **susan nine**
Date: Fri, Dec 7, 2018 at 4:36 PM
Subject: Application content
To: cole@monterey.org

If you look at letter b. of the attached working draft, you will see that any items included on any ordinance list of application requirements is considered a "minimum" and the language allows you to add to, delete and change the checklist as you see fit so long as a few essentials are included. What those essential items we would like included in the ordinance as well as in any existing or future checklists is still open for discussion. I am still working on a draft of that part and will run a possible list by you when I am done. I am trying to keep it consistent with your current checklist, but two items, alternative analysis and certificate of public necessity, the PC approved subject to legal review so those are not yet on the current checklist until that gets resolved. We are waiting an analysis on those two as well as the two members of PC wanted to add about surveying, and archaeological impact issues connected with excavation. I think they agreed to put them in unless they would violate some legal principle, which I do not believe they do.

I would like to understand which possible "minimum" application requirements you may feel limited by, so if you want to talk before Monday night, I am game, or I will just bring a draft to the meeting and you can respond then. Meanwhile, have a good weekend. We are looking forward to Christmas in the Adobe's tonight. ..Susan N.

Sent from my iPad

2. Applications - Submittal and Review Procedures. Any request to construct a new wireless communications facility, whether on an existing or new support structure shall require a written application subject to Planning Commission review under the standards and procedures contained below:

a. Applicant must submit a complete application as a condition of approval.

b. Application content. This section governs minimum application requirements for and procedures for new wireless communications facilities and substantial changes to existing facilities. The Community Development Director will develop, and publish application forms and checklists subject to Planning Commission approval. The director may, from time to time update and alter the application forms and checklists as the director deems necessary or appropriate to respond to regulatory, technological, or other changes, subject to Planning Commission approval. The materials required under this section are minimum requirements for any eligible facility.

I. Written Authorizations. Every applicant applying for authorization to construct, modify, or remove a wireless facility located on private or public property must include with its application a written authorization signed by the owner of the property. If the applicant is an agent, the applicant shall provide a duly executed letter of authorization from the owner of the facility. If the owner will not directly provide wireless communications services, the applicant shall provide a duly executed letter of authorization from the person(s) or entity(ies) that will provide those services.

II. Evidence that the applicant holds all current licenses and registrations from the FCC and any other regulatory bodies. where such license(s) or registration(s) are necessary to provide wireless service s using the proposed wireless communications facility.

III. Site development plans. A fully dimensioned site plan and. elevation drawings prepared by a California-licensed engineer showing any existing wireless communications facilities with all transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements.

IV. Equipment Specifications. Specifications that show the height, width, depth and weight for all proposed equipment.

- V. Structural Integrity Report. A report signed by a California licensed engineer specializing in structural engineering documenting the ability of support structure to safely accept all proposed equipment such as the structure's capacity for additional as well as documentation that the structure will comply with all applicable Laws and codes.
- VI. Photographs and photo simulations. Photographs and photo simulations that show the proposed facility in context of the site from public streets or other adjacent viewpoints, together with a map that shows the photo location of each view angle. At least one photo simulation must clearly show the impact on the concealment elements of the support structure, if any, from the proposed modification.
- VII. RF Compliance Report. An RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any collocated facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radiated power (ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- VIII. Project Description.
- IX. Noise study. A noise study prepared and certified by an acoustical engineer licensed by the state of California for the proposed facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators, demonstrating compliance with the city's noise regulations. The noise study must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.

- X. Electronic Copy of Application. The applicant shall provide an electronic copy of all materials in a searchable format that can be posted online.
- XI. Inventory of Existing Sites.
- XII. Claim of Required Approval
- XIII. Alternative Analysis. A siting analysis which identifies a minimum of five other feasible locations within or outside the City which could serve the area intended to be served by the facility, unless the applicant provided compelling technical reasons for providing fewer than the minimum. The alternative site analysis should include at least one collocation site if feasible.
- XIV.



Jenny Leinen <leinen@monterey.org>

Please forward Eshoo, Blumenthal press FCC for evidence of 5G s afety

1 message

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Thu, Dec 6, 2018 at 2:34 PM

To: leinen@monterey.org

Please forward to the Planning Commission and Wireless Ordinance Subcommittee. Thank you.

Dear Planning Commission and Wireless Ordinance Subcommittee:

On Dec. 3, Congresswoman Anna Eshoo and Senator Richard Blumenthal sent a letter to the FCC pressing the agency for evidence of 5G (5th generation wireless technology) safety. Below is the media release, and attached is the letter they sent.

Sincerely,

Nina Beety

<https://www.businesswire.com/news/home/20181203006017/en/Blumenthal-Presses-FCC-Commissioner-Brendan-Carr-Disclose>

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DEC 06 2018
City of Monterey
PEEC DIVISION

Blumenthal Presses FCC Commissioner Brendan Carr to Disclose Evidence of '5G Safety'

December 03, 2018 05:43 PM Eastern Standard Time

WASHINGTON--(BUSINESS WIRE)--The National Institute for Science, Law & Public Policy (NISLAPP) applauds Connecticut Senator Richard Blumenthal (D-CT) [and Congresswoman Anna Eshoo (D-CA)] for pressing FCC Commissioner Brendan Carr, Esq. to provide documentation substantiating the Commissioner's remarks defending '5G safety.'

NISLAPP seconds this request. Jim Turner, Esq., President of NISLAPP, says:

NISLAPP considers it a mistake to place new high-frequency radiating antennas in local communities, in very close proximity to homes, offices and schools, when no pre-market health testing at scale has been conducted on the effects of the radiation emitted, to our knowledge, and when much safer hard-wired internet access technologies are readily available. We strongly support Senator Blumenthal's request of FCC Commissioner Carr to provide the documentation evidencing the FCC's 'safety determination for 5G,' along with the supporting scientific citations used in making that determination."

different and dangerous fifth generation radiofrequency technologies that the telecom industry intends to deploy widely within our living environments, about which scientists around the world are warning."

International scientists in many countries are calling for a moratorium on 5G until the potential hazards are fully investigated.

Additional Warnings about Radiofrequency (RF) and 5G Health Effects from Scientists:

Beatrice Golumb, MD, PhD, Professor of Medicine, UC San Diego

Martin Pall, PhD, Professor Emeritus, Washington State University

170 Review Studies on RF Biological Effects prepared by Martin Pall, PhD

NISLAPP Paper Explains the Far Better Alternative to 5G 'Antenna Densification'

"Re-Inventing Wires: The Future of Landlines and Networks" by Timothy Schoechle, PhD

<http://electromagnetichealth.org/electromagnetic-health-blog/wires-long-press-release/>

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303-443-5490 (or Tues/Wed only: 303-818-8760)



Blumenthal, Eshoo letter to FCC Brendan Carr 12-3-18.pdf

291K

Congress of the United States

Washington, DC 20510

December 3, 2018

The Honorable Brendan Carr
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Commissioner Carr:

We write with interest regarding your recent remarks on the safety of 5G technologies during a Senate Commerce Committee field hearing in Sioux Falls, South Dakota.

During this hearing, the Mayor of Sioux Falls, the Honorable Paul TenHaken, asked about “the health ramifications of 5G and small cell deployment.” His request, as the leader of his municipality, was for “clear direction, talking points, studies that have been done that show that there is no harm to our constituents and to the taxpayers on putting these small cells on towers close to libraries, close to schools, close to their homes.”

Speaking on behalf of the Federal Communications Commission (FCC), you explained, “Federal law actually says that state and local governments can’t take [radiofrequency] concerns into account given how much work has gone into this issue at the federal level...Both at the FCC and other expert health agencies in Washington, they stay very much up to speed on these issues and have reached the determination that these are safe.”

Most of our current regulations regarding radiofrequency safety were adopted in 1996 and have not yet been updated for next generation equipment and devices. For example, the FCC’s specific absorption rate (SAR) limits do not apply to devices operating above 6.0 GHz; however, 5G devices will operate at frequencies as high as or even exceeding 24 GHz. The FCC has acknowledged, “The SAR probe calibration, measurement accuracy, tissue dielectric parameters and other SAR measurement procedures required for testing recent generation wireless devices need further examination.”¹

Furthermore, the final results of the world’s largest and most expensive study to date on the link between radiofrequency radiation and cancer were only just released on November 1, 2018 by the National Toxicology Program (NTP)—an inter-agency program within the U.S.

¹ Federal Communications Commission, Office of Engineering and Technology, Laboratory Division, “SAR Measurement Requirements for 100 MHz TO 6 GHz,” https://apps.fcc.gov/kdb/GetAttachment.html?id=RUMcMDL7fmDLsdRSsbCNoA%3D%3D&desc=865664%20D01%20SAR%20Measurement%20100%20MHz%20to%206%20GHz%20v01r04&tracking_number=28242.



Jenny Lelnen <lelnen@monterey.org>

Please forward: PG wireless ordinance update

1 message

RECEIVED

Thu, Dec 6, 2018 at 4:14 PM

DEC 06 2018

City of Monterey
PEEC DIVISION

XXXXXXXXXXXXXXXXXXXXX
 To: lelnen@monterey.org
 Cc: XXXXXXXXXXXXXXXX

Please forward to the wireless ordinance subcommittee. Thank you.

To the Wireless Ordinance Subcommittee:

The Pacific Grove wireless ordinance for public right of way cell towers got its first approval last week on Nov. 28, and will get its final vote on Dec. 19 by the city council.

The ordinance, written by consultant Joseph Van Eaton/BBK and city staff, deprives residents of due process, and gives near complete and unprecedented power to the city manager for all decisions. Section 15.26.050 was amended to have the Planning Commission review applications and make rules, but the City Council removed this change, and this section now enumerates the City Manager's authority per original
<https://www.cityofpacificgrove.org/sites/default/files/planning-commission/2018/10-18-2018/planning-commission-october-18-2018-agenda-packet.pdf> – original version

Most cell tower and wireless infrastructure applications could be exempted by this ordinance, eliminating public hearings, public decision-making and public notification. Section 15.26.030 (b)

Exempted facilities include

- a) any cell towers if the city manager has signed a contract with the carrier,
- b) "temporary" cell towers, with no specified time limit definition of "temporary" or specified setback from homes, and
- c) microwave antennas installed on electrical powerlines (broadband over powerline/powerline communication), effectively turning powerlines into one massive cell tower

With these exemptions, residents can wake up and find workers installing equipment on poles or erecting new poles. They wouldn't have been notified, and they won't have any power to stop them.

Also, under the ordinance --

All non-exempt cell towers are decided by the city manager.
 The Planning Commission is removed from decision-making.
 The public has to pay appeal fees to get a public hearing and public process.
 Only those who are property owners 300 feet from a tower will get notification. Renters won't get any notification. No one else in the neighborhood or community will know about the towers including those who walk their dog, shop nearby, go to the nearby schools, etc.

PG could adopt Monterey's revision in the interim, but has not.

The council further asked the city manager to pick a committee to create a future overall wireless ordinance, and there may be just one member of the public on the committee. Maybe.

Precedent:

1) Once this is adopted, any cell tower approvals will create a precedent. Even if more restrictive rules are adopted later, telecom companies can argue the precedent and say they are being discriminated against, which is prohibited by federal rules. Future more restrictive rules are pointless once the first cell tower is approved under this ordinance.

2) If adopted, these PROW rules could be made to apply to all cell towers, again due to federal telecom anti-discrimination rules.

Here is the draft before the CC made its changes eliminating the Planning Commission and the video of the meeting.
<https://www.cityofpacificgrove.org/sites/default/files/city-council/2018/11-28-2018/city-council-11-28-2018-11a-cell-tower-ord-1st-read.pdf>

Purpose Statements:

WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

12.18.010

Purpose.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the city's public right-of-way. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides standards necessary (1) for the preservation of the public right-of-way in the city for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the General Plan, and (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations.

Relevant CA Statutes

5. Section 2902 of the California Public Utilities Code authorizes municipal corporations to retain their powers of control to supervise and regulate the relationships between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility and the location of the poles, wires, mains, or conduits of any public utility on, under, or above any public streets.

6. Section 7901 of the California Public Utilities Code authorizes telephone and telegraph corporations to construct telephone or telegraph lines along and upon any public road or highway, along or across any of the waters or lands within this state, and to erect poles, posts, piers, or abatements for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

7. Section 7901.1 of the California Public Utilities Code confirms the right of municipalities to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed, which control must be applied to all entities in an equivalent manner, and may involve the imposition of fees.

8. Section 50030 of the California Government Code provides that any permit fee imposed by a city for the placement, installation, repair, or upgrading of telecommunications facilities, such as lines, poles, or antennas, by a telephone corporation that has obtained all required authorizations from the CPUC and the FCC to provide telecommunications services, must not exceed the reasonable costs of providing the service for which the fee is charged, and must not be levied for general revenue purposes.

Applicability

Applicability.

- A. This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way as follows:
1. All facilities for which applications were not approved prior to January 10, 2019 shall be subject to and comply with all provisions of this division.
 2. All facilities for which applications were approved by the city prior to January 10, 2019 shall not be required to obtain a new or amended permit until such time as a provision of this code so requires. Any wireless telecommunication facility that was lawfully constructed prior to January 10, 2019 that does not comply with the standards, regulations and/or requirements of this division, shall be deemed a nonconforming use and shall also be subject to the provisions of section 12.18.230.

Permit Required

B. Permit Required. Installation of wireless communications facilities within the public rights-of-way will be permitted subject to payment of applicable permit fees. The director or his designee will review and approve encroachment permit applications from carriers which hold a certificate of public convenience and necessity (CPCN) from the California Public Utilities Commission (CPUC), subject to the criteria contained in this section.

C. Insurance Required. A certificate of general liability insurance and commercial automobile liability insurance in a form and amount acceptable to the city must be submitted prior to issuance of the permit, and maintained for as long as the facilities exist within the public rights-of-way.

D. Permit Duration. Unless Government Code Section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless communications facility shall be valid for a period of ten years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of ten years from the date of issuance, such permit shall automatically expire.

Design Standards

E. Design Standards.

1. Location. Facilities may be located in the public rights-of-way when doing so would not conflict with one or more of the standards set forth in this subsection or with federal law.
2. Wireless communications facilities in the public rights-of-way shall be located in the most preferred location as described in this subsection, which range from the most preferred to the least preferred locations.

a. Location on an existing city-owned structure in a nonresidential ^{non} ~~or historic~~ zone.

b. Location on an existing structure, utility pole or street sign pole in non-residential ^{non} ~~or historic~~ districts

c. Location on a new camouflaged structure in a non-residential, non-historic zone

3. In districts where utilities are underground:
- a. ~~existing street sign~~ Location on an existing city-owned structure such as a street light in non-residential, non-historic districts or street sign pole
 - b. Location on ~~an~~ new camouflaged structure in a non-residential, non-historic zone

Undergrounding of Equipment

4. Undergrounding of Equipment. To preserve ~~visual nature and~~ the community aesthetics, all portions of a wireless communications facility, excluding antennas and the towers or poles they are mounted to, shall be required to be located underground, flush to the finished grade, fully enclosed, and not cross property lines. Electrical meter boxes related to wireless communications facilities shall be appropriately screened and located in less prominent areas within the public rights-of-way.

~~Delisting~~
Poles & Non-Poles

Grounds for denial

3. Proposed facilities located in the public rights-of-way may be denied if any of the following occurs:

- a. Conflicts with existing overhead or underground utilities or structures;
- b. Interferes with traffic visibility;
- c. Results in vehicular access problems;
- d. Results in a safety hazard;
- e. Would violate any law or regulation; or
- f. Significantly impacts the aesthetics of the area.

F. Antennas and Other Pole-Mounted Equipment. Antennas located above ground on an existing utility pole or on a sign pole shall conform to the following criteria:

- 1. Wireless communications facilities shall be appropriately scaled and aesthetically designed to be consistent with the surrounding area in which it is installed.
- 2. No more than one antenna array may be attached to any structure in the public rights-of-way unless for a collocation.
- 3. If required, an antenna enclosure shall be attached directly to the top of the pole or mounted around the main pole circumference. Antennas shall not be mounted perpendicular to the main pole structure and shall not be mounted on cross members or outrigger structures extending from the main pole unless required by the CPUC.
- 4. Antennas may not exceed ²six feet above the utility pole tip height, unless additional separation is required by applicable safety codes.
- 5. Pole-mounted equipment, other than antennas, are prohibited ^{on sign poles} ~~on sign poles unless otherwise approved by the planning commission.~~ Equipment shall be located within a ground-mounted cabinet or underground vault.
- 6. No new poles may be installed except as replacements for existing poles.
- 7. No new utility pole may be installed in a public rights-of-way unless the CPUC has authorized the applicant to install such facilities and the applicant demonstrates that no other feasible alternative exists.
- 8. All facilities may only have subdued colors and nonreflective materials that blend with the surrounding area.
- 9. Conduits shall not be exposed and must be concealed within the support pole. ^{or} ~~(Ord. 722 § 1, 2017)~~ How to do that w/a wooden pole

Antennas
and other
pole
mounted
equipment

- A. *Design and Development Standards.* All wireless telecommunications facilities that are located within the public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:
1. General Guidelines.
 - a. The applicant shall employ screening, undergrounding and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties all in a manner that achieves compatibility with the community and in compliance with section 17.02.040 of this Code.
 - b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.
 - c. Facilities shall be located such that views from a residential structure are not significantly impaired. Facilities shall also be located in a manner that protects public views over city view corridors, as defined in the city's general plan, so that no significant view impairment results in accordance with this Code including section 17.02.040. This provision shall be applied consistent with local, state and federal law.
 3. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.
 4. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.
 5. Equipment. The applicant shall use the least visible equipment possible. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this section, antennas shall be situated as close to the ground as possible.
 6. Poles.
 - a. Facilities shall be located consistent with section 12.18.200 unless an exception pursuant to section 12.18.190 is granted.
 - b. Only pole-mounted antennas shall be permitted in the right-of-way. All other telecommunications towers are prohibited, and no new poles are permitted that are not replacing an existing pole. (For exceptions see subparagraph (h) below and sections 12.18.190 and 12.18.220.)
 - c. Utility Poles. The maximum height of any antenna shall not exceed forty-eight (48) inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than twenty-four (24) feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.
 - d. Light Poles. The maximum height of any antenna shall not exceed four (4) feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than sixteen and a half (16 1/2) feet above any drivable road surface.
 - e. Replacement Poles. If an applicant proposes to replace a pole in order to accommodate a proposed facility, the pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible.
 - f. Pole mounted equipment, exclusive of antennas, shall not exceed six (6) cubic feet in dimension.
 - g. [Reserved]
 - h. An exception shall be required to place a new pole in the public right-of-way. If an exception is granted for placement of new poles in the right-of-way:
 - i. Such new poles shall be designed to resemble existing poles in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced.

- ii. Such new poles that are not replacement poles shall be located at least ninety (90) feet from any existing pole to the extent feasible.
- iii. Such new poles shall not adversely impact public view corridors, as defined in the general plan, and shall be located to the extent feasible in an area where there is existing natural or other feature that obscures the view of the pole. The applicant shall further employ concealment techniques to blend the pole with said features including but not limited to the addition of vegetation if appropriate.
- iv. A new pole justification analysis shall be submitted to demonstrate why existing infrastructure cannot be utilized and demonstrating the new pole is the least intrusive means possible including a demonstration that the new pole is designed to be the minimum functional height and width required to support the proposed facility.
- i. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the pole and shall be camouflaged or hidden to the fullest extent feasible. For all wooden poles wherein interior installation is infeasible, conduit and cables attached to the exterior of poles shall be mounted flush thereto and painted to match the pole.

7. ~~Space. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.~~

8. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this Code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.

Hebura

9. Obstructions. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the right-of-way, or safety hazards to pedestrians and motorists and in compliance with section 17.48.070 so as not to obstruct the intersection visibility triangle.

10. Public Facilities. A facility shall not be located within any portion of the public right-of-way interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.

11. Screening. All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least eighteen (18) inches from the curb and gutter flow line.

12. Accessory Equipment. Not including the electric meter, all accessory equipment shall be located underground, except as provided below:

a. Unless city staff determines that there is no room in the public right-of-way for undergrounding, or that undergrounding is not feasible, an exception shall be required in order to place accessory equipment above-ground and concealed with natural or manmade features to the maximum extent possible.

b. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five (5) feet and a total footprint of fifteen (15) square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged. Also, while pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this Chapter.

c. In locations where homes are only along one side of a street, above-ground accessory equipment shall not be installed directly in front of a residence. Such above-ground accessory equipment shall be installed along the side of the street with no homes. Unless said location is located within the coastal setback or the landslide moratorium area, then such locations shall be referred to the city's geotechnical staff for review and recommendations.

13. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs. Additional landscaping shall be planted, irrigated and maintained by applicant where such landscaping is deemed necessary by the city to provide screening or to conceal the facility.

14. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.

15. Lighting.

- a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.
- b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles.
- c. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods.
- d. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The city may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.
- e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties. Should no lighting be proposed, no lighting study shall be required.

16. Noise.

- a. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 PM and 7:00 AM.
17. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The director may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no lethal devices or elements shall be installed as a security device.
18. Modification. Consistent with current state and federal laws and if permissible under the same, at the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.
19. The installation and construction approved by a wireless telecommunications facility permit shall begin within one (1) year after its approval or it will expire without further action by the city.

and in this section, all

Relocation for undergrounding

C. Relocation Procedures for Facilities in the Rights-of-Way. After reasonable written notice to the permittee, the director may require a permittee, at the permittee's sole expense and in accordance with the standards in this chapter applicable to such wireless communications facility, to relocate or reconfigure a wireless communications facility in the public rights-of-way as the director deems necessary to maintain or reconfigure the rights-of-way for other public projects or take any actions necessary to protect public health, safety and welfare. The provisions in this section are intended to include circumstances in which a wireless communications facility is installed on a pole scheduled for undergrounding. (Ord. 722 § 1, 2017)

Also: in districts slated for undergrounding utilities and utility pole removal - preferred design is camouflaged monopoles

noise study by acoustical engineer

16. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this Code including section 12.18.080(A)(16)(B).

Mock-up Language

22. Proof that a temporary mock-up of the facility and sign has been installed at the proposed location for a period of at least thirty (30) calendar days.

a. Applicant shall obtain an encroachment permit before installing the temporary mock-up, and must remove the temporary mock-up within five (5) calendar days of receiving a written notice to remove from the director.

b. When seeking the encroachment permit, the applicant shall provide address labels for use by the city in noticing all property owners within 500 feet of the proposed installation. The city shall mail a notice regarding installation of the mock-up at least five (5) business days prior to the installation.

c. The mock-up shall demonstrate the height and mass of the facility, including all interconnecting cables. The applicant shall not be entitled to install the facility it intends to install permanently. The mock-up may consist of story poles or the like.

d. The mock-up shall include a sign that displays photo simulations depicting before and after images, including any accessory equipment cabinet, and the telephone number of the Public Works Department.

e. The applicant shall be required to follow any other city practices or processes relevant to the installation of a mock-up as may be provided in a publicly accessible form or document.

f. After installation of the mock-up, the applicant shall certify that the mock-up accurately represents the height and width of the proposed installation and has been installed consistent with this Code.

Mock
ups

Consultant Review

E. *Independent Expert.* The director is authorized to retain on behalf of the city an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall address any or all of the following:

1. Compliance with applicable radio frequency emission standards;
2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
3. The accuracy and completeness of submissions;
4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
5. The applicability of analysis techniques and methodologies;
6. The validity of conclusions reached or claims made by applicant;
7. The viability of alternative sites and alternative designs; and
8. Any other specific technical issues identified by the consultant or designated by the city.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution. No permit shall be issued to any applicant which has not fully reimbursed the city for the consultants cost.

F. Rule 6409, Eligible Wireless Communications Facilities.

1. Purpose. The purpose of this section is to adopt reasonable regulations and procedures, consistent with and subject to federal and California state law, for compliance with Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified in 47 U.S.C. Section 1455(a), and related Federal Communication Commission regulations codified in 47 C.F.R. Section 1.4000 et seq. ~~X~~
 - a. Section 6409(a) generally requires that state and local governments "may not deny and must approve" requests to collocate, remove or replace transmission equipment at an existing wireless tower of base station. FCC regulations interpret the statute and create procedural rules for local review, which generally preempt subjective land-use regulations, limit application content requirements and provide applicant with a "deemed granted" remedy when the local government fails to approve or deny the request within 60 days after submittal (accounting for any tolling period). Moreover, whereas Section 704 of the Telecommunications Act of 1996 Pub. L. 104-104, codified in 47 U.S.C. Section 332 applies to only "personal wireless service facilities" (e.g., cellular telephone towers and equipment), Section 6409(a) applies to all "Wireless" facilities licensed or authorized by the FCC (e.g., wi-if, satellite, or microwave backhaul).
 - b. The partial overlap between wireless deployments covered under Section 6409(a) and other wireless deployments, combined with different substantive and procedural rules applicable to such deployments, creates a potential for confusion. A separate permit and review process specifically designed for compliance with Section 6409(a), contained in a section devoted to Section 6409(a), will best prevent such confusion.
 - c. Accordingly, the City of Monterey adopts this section to reasonably regulate requests submitted for approval under Section 6409(a) to collocate, remove or replace transmission equipment at an existing wireless tower or base station, in a manner that complies with federal law and protects and promotes the public health, safety and welfare of the citizens of Monterey.
2. Applications - Submittal and Review Procedures. Any request to collocate, replace or remove transmission equipment at an existing cell tower or base station submitted for approval under Section 6409(a) shall require a written application subject to Planning Commission review under the standards and procedures contained below:
 - a. Applicant must submit a complete application as a condition of approval.
 - b. Application content. This section governs minimum requirements for and procedures for additions and/or modifications to eligible facility applications. The director may will develop, and publish application forms and checklists subject to Planning Commission approval. The director may, from time to time update and alter the application forms and checklists as the director deems necessary or appropriate to respond to regulatory,

technological, or other changes, subject to Planning Commission approval. The materials required under this section are minimum requirements for any eligible facility.

- I. Application fee deposit
- II. Evidence that the applicant holds all current licenses and registrations from the FCC and any other regulatory bodies where such license(s) or registration(s) are necessary to provide wireless service using the proposed wireless communications facility. For any prior regulatory approval(s) associated with the wireless communications facility, the applicant must submit copies of all such approvals with any corresponding conditions of approval. Alternately, a written justification that sets forth reasons why prior regulatory approvals were not required for the wireless communications facility at the time it was constructed or modified.
- III. Site development plans. A fully dimensioned site plan and elevation drawings prepared by a California-licensed engineer showing any existing wireless communications facilities with all transmission equipment and other improvements, the proposed facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements.
- IV. Equipment Specifications. Specifications that show the height, width, depth and weight for all proposed equipment.
- V. Structural Integrity Report. A report signed by a California licensed engineer specializing in structural engineering documenting the ability of support structure to safely accept any different or equipment to be added to an existing wireless tower or base station such as the structure's capacity for additional or different antennas as well as the proposed method for affixing antennas, and the precise point at which the antennas or other equipment shall be mounted, as well as documentation that the structure will comply with all applicable Laws and codes.
- VI. Photographs and photo simulations. Photographs and photo simulations that show the proposed facility in context of the site from public streets or other adjacent viewpoints, together with a map that shows the photo location of each view angle. At least

photo simulation must clearly show the impact on the concealment elements of the support structure, if any, from the proposed modification.

- VII. RF exposure compliance report. An RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certified that the proposed facility, as well as any collocate Facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power (ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also limit (as that term is defined by the FCC). Each such boundary shall be clearly marked marked and identified for every transmitting antenna at the project site.
- VIII. Justification analysis. A written statement that explains in plain factual detail whether and why Section 6409(a) and the related FCC regulations at 47 C.F.R. Section 1.40001 et seq. require approval of the specific project. A complete written narrative analysis will state the applicable standard has been met-bare conclusions not factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also (i) include whether and why the support structure qualifies as an existing tower or base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment, or permit compliance.
- IX. Noise study. A noise study prepared and certified by an acoustical engineer licensed by the state of California for the proposed facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators, and permanent backup power generators, demonstrating compliance with the city's noise regulations. The noise study must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.
- X. Electronic Copy of Application. The applicant shall provide an

electronic copy of all materials in a searchable format that can be posted online. The applicant may mark any sections as "confidential" for purposes of the online, publicly-available application copy, subject to state and federal law regarding public records.

3. Pre-Application Meeting Appointment. Prior to application submittal, applicants may schedule and attend an optional pre-application meeting with City staff for all eligible facility permit applications. Such pre-application meeting is intended to streamline the application review through discussions including, but not limited to, the appropriate project classification, including whether the project qualifies as an eligible facility request; any latent issues in connection with existing tower or base station; potential concealment issues; coordination with other city departments responsible for application review; and application completeness issues. City staff shall endeavor to provide applicants with an appointment between five and fifteen (15) working days after a written request for an appointment is received.
4. Application Submittal Appointment. All applications for a 6409(a) eligible collocation and/or modification to an existing cell tower or existing base station shall be submitted to the city at a pre-scheduled appointment with the Community Development Director. City staff will endeavor to provide applicants with an appointment between approximately five and fifteen (15) working days after a written request for an appointment is received. During the Application Submittal Appointment, or thereafter, the Community Development Director shall review the application materials and determine whether the application is complete. If the application is found to be complete, the Community Development Director will refer the application to the Planning Commission. If the application is not complete, the Community Development Director shall issue in writing a denial of the application without prejudice to refilling, specifying the reasons for the denial, unless the omissions are corrected at the pre-scheduled appointment, or the Community Development Director determines that permitting submission of additional materials will not prevent the City from conducting or the public participating in a timely review of the application. A denial may be appealed to the Planning Commission, but the appeal is limited to consideration of whether the application denial was properly denied.
5. Notice. (To be filled in)
6. Review Procedures for Section 6409(a) Applications.
 - a. The use permit for existing facilities shall be reopened for review by the Planning Commission. The Planning Commission may grant a Section 6409(a) approval only when it finds all of the following:

- I. The public notice required by law has occurred.
 - II. The project involved the collocation, replacement, or removal of transmission equipment on an existing wireless tower or base station.
 - III. All prior regulatory approvals and conditions required for the initial construction and any later modifications to the tower or base station, if any, were properly obtained and conditions are in compliance with use permit of existing wireless tower or base station.
 - IV. The project would not substantially change the physical dimensions of the existing wireless tower or base station.
- b. Denied Applications for Section 6409(a) Projects. Any denial of an application for Section 6409(a) projects shall be in writing, contain the reasons for the denial, and be without prejudice to the applicant or the project. The applicant may immediately submit an application for a use permit or a Section 6409(a) approval for substantially the same project; provided, however, that the applicant has paid all fees and costs payable to the City in connection with the previously denied application.

7. Standard Conditions for Section 6409(a) Approvals.

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

d. Code Compliance. The permittee shall at all times maintain compliance with all applicable Federal, State and local laws, regulations and other rules.

e. Inspections--Emergencies. The City or its designee may enter onto the facility area to inspect the facility upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to enter or direct its designee the facility and support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

f. Contact Information for Responsible Parties. The permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Department upon permittee's receipt of the Planning Department's written request, except in an emergency determined by the City when all such contact information for responsible parties shall be immediately provided to the Planning Department upon that person's verbal request.

g. Indemnities. The permittee and, if applicable, the nongovernment owner of the private property upon which the tower and/or base station is installed shall defend, indemnify and hold harmless the City of Monterey, its agents, officers, officials and employees (i) from any and all damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, lawsuits, writs of mandamus and other actions or proceedings brought against the City or its agents, officers, officials or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs and expenses and any and all claims, demands, lawsuits or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one's agents, employees, licensees, contractors, subcontractors or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.

h. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.

i. General Maintenance. The site and the facility, including but not limited to all landscaping, fencing and related transmission equipment, shall be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

j. Graffiti Removal. All graffiti on facilities shall be removed at the sole expense of the permittee within 48 hours after notification from the City.

k. RF Exposure Compliance. All facilities shall comply with all standards and regulations of the FCC and any other State or Federal government agency with the authority to regulate RF exposure standards.

l. Build-Out Period. As a condition of approval, the approval authority may establish a reasonable build-out period for the approved facility.

m. Record Retention. The permittee shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions and other documentation associated with the permit or regulatory approval. In the event that the City cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permittee fails to retain full and complete permits or other regulatory approvals in the permittee's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permittee.