Monday, May 23, 2022

Good morning Mayor Potter, City Council members, Brandon, and Planning Commissioners,

Attached is the draft wireless ordinance for Carmel-by-the-Sea formulated by specialist New York telecom attorney, Andrew Campanelli. The ordinance he has prepared is meant to protect a small, distinctive community such as ours from cell tower proliferation. This work product was paid for entirely by donations from the residents of Carmel-by-the-Sea. We are presenting it to you as an educational document, as this is a complicated and technical issue, and ideally it could serve as a template of what a strong and comprehensive wireless ordinance for Carmel-by-the-Sea can be.

We hope at the very least you will read it to familiarize yourselves with this matter, which will be in the forefront in the coming months as the city updates its wireless ordinance. Portions of this comprehensive document could be incorporated into the wireless ordinance draft the city's outside counsel has prepared. At best, Mr. Campanelli's draft can be a substantive basis for the wireless ordinance update. Please be assured though that in no way is it meant to undermine the work of the city's outside counsel.

Mr. Campanelli has offered to answer any questions by email or phone that city staff, Planning Commissioners, and City Council members may have. He can be reached by phone at (516) 746-1600 (New York office, EST) or by email at ajc@campanellipc.com. There is no charge for this communication, and additionally we have also prepaid three hours for him to be available by Zoom at upcoming Planning Commission and City Council meetings. We look forward to working positively and productively with all of you in this process to do the most we can to protect our beautiful and unique community.

Sincerely,

Christy Hollenbeck

Tasha Witt

Alissandra Dramov

Bob Kavner

Stop Cell Towers in Carmel Neighborhoods

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§17.46 Personal Wireless Service Facilities

This Chapter §17.46 is intended to repeal and replace all previous versions of, and amendments to, Chapter §17.46 of the Carmel-by-the-Sea Municipal Code ("Municipal Code"), all of which are hereby repealed and replaced in their entirety by this Chapter §17.46 et. seq., as of the effective date hereof.

No Personal Wireless Service Facility (PWSF) shall be sited, constructed, reconstructed, installed, materially changed or altered, expanded, or used unless in conformity with this Chapter.

For the installation, construction, erection, relocation, substantial expansion, or material alteration of any PWSF, the City shall require a conditional use permit pursuant to the provisions of this Chapter, which shall be applied for in accord with the procedure set forth in Section §17.52.020, unless otherwise provided herein below.

The performance of maintenance, routine maintenance, in-kind replacement of components, and/or repairs (as defined herein) to an existing PWSF and/or existing personal wireless service equipment shall not require a conditional use permit.

Each application for a conditional use permit under this Chapter and each individual PWSF for which an application for a conditional use permit is submitted shall be considered based upon the individual characteristics of each respective installation at each proposed location as an individual case. In other words, each installation, at each proposed location, shall be reviewed and considered independently for its own characteristics and potential impacts, irrespective of whether the proposed facility is designed and intended to operate independently or whether the installation is designed and/or intended to operate jointly as part of a Distributed Antenna System.

§17.46.010 Purpose and Legislative Intent

The purpose of this section is to promote the health, safety, and general welfare of the residents of the City of Carmel-by-the-Sea, to preserve, conserve and enhance the unique natural beauty and irreplaceable natural resources of the City consistent with the general purpose of, and Section G7-1 of the City's General Plan/Coastal Land Use Plan, while simultaneously providing standards for the safe provision, monitoring, and removal of cell towers and other personal wireless service facilities consistent with applicable federal, state and local laws and regulations.

Consistent with the balancing of interests which the United States Congress intended to embed with the federal Telecommunications Act of 1996 (hereinafter "the TCA"), Chapter 17.46 is intended to serve as a *Smart Planning Provision*, designed to achieve the four (4) simultaneous objectives of: (a) enabling personal wireless service providers to provide adequate personal wireless services throughout the City so that City residents can enjoy the benefits of same, from any FCC-licensed wireless carrier from which they choose to obtain such services, while (b)

minimizing the number of cell towers and/or other personal wireless service facilities needed to provide such coverage, (c) preventing, to the greatest extent reasonably practical, any unnecessary adverse impacts upon the City's communities, residential areas, and individual homes, (d) subordinating business and commercial uses of property to the interests of preserving the predominantly residential nature of the City, consistent with Ordinance No. 96 adopted in 1929, and maintained through Title 17 of the Municipal Code, and (d) complying with all of the legal requirements which the TCA imposes upon the City, when the City receives, processes and determines applications seeking approvals for the siting, construction and operation of cell towers and/or other personal wireless service facilities.

The City seeks to minimize, to the greatest extent possible, any unnecessary adverse impacts caused by the siting, placement, physical size, and/or unnecessary proliferation of, personal wireless service facilities, including, but not limited to, adverse aesthetic impacts, adverse impacts upon property values, adverse impacts upon the character of any surrounding properties and communities, adverse impacts upon historical and/or scenic properties and districts, and the exposure of persons and property to potential dangers such as structural failures, ice fall, debris fall, and fire.

The City also seeks to ensure that, in applying this section, the Planning Commission ("Commission") is vested with sufficient authority to require applicants to provide sufficient, accurate, and truthful probative evidence, to enable the Commission to render factual determinations consistent with both the provisions set forth herein below and the requirements of the TCA when rendering decisions upon such applications.

To achieve the objectives stated herein, the City seeks to employ the "General Authority" preserved to it under Section 47 U.S.C.A. §332(c)(7)(A) of the TCA to the greatest extent which the United States Congress intended to preserve those powers to the City, while simultaneously complying with each of the substantive and procedural requirements set forth within the subsection 47 U.S.C.A. §332(c)(7)(B) of the TCA.

§17.46.020 Definitions; Word Usage

For purposes of this article, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations, shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The definitions set forth herein shall supersede any definitions set forth within the Municipal Code, and the definitions set forth herein below shall control and apply to Chapter 17.46 and all subsections herein.

ACCESSORY FACILITY OR ACCESSORY STRUCTURE
A facility or structure serving or being used in conjunction with a personal wireless services facility or complex and located on the same property or lot as the personal wireless services facility or complex, or an immediately adjacent lot including, but not limited to, utility or transmission equipment storage sheds or cabinets.

ACHP
The Federal Advisory Council on Historic Preservation.

ADEQUATE COVERAGE
As determined by the Planning Commission, adequate coverage means that a specific wireless carrier's personal wireless service coverage is such that the vast majority of its customers can successfully use the carrier's personal wireless service the vast majority of the time, in the vast majority of the geographic locations within the City, that the success rate of using their devices exceeds 97%, and that any geographic gaps in a carrier's gaps in personal wireless services are not significant gaps, based upon such factors including, but not limited to, lack of significant physical size of the gap, whether the gap is located upon a lightly traveled or lightly occupied area, whether only a small number of customers are affected by the gap, and/or whether or not the carrier's customers are affected for only limited periods of time. A wireless carrier's coverage shall not be deemed inadequate simply because the frequency or frequencies at which its customers are using its services are not the most preferred frequency of the wireless carrier.

ANTENNA
An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location, for the provision of personal wireless service.

APPLICANT
Any individual, corporation, limited liability company, general partnership, limited partnership, estate, trust, joint-stock company, association of two or more persons having a joint common interest, or any other entity submitting an application for a conditional use permit, site plan approval, variance, building permit, and/or any other related approval, for the installation, operation and/or maintaining of one or more personal wireless service facilities.

APPLICATION
Refers to all necessary and required documentation and evidence that an applicant must submit to receive a conditional use permit, building permit, or other approval for personal wireless service facilities from the City.

CELL TOWER
A free-standing, guy-wired, or otherwise supported pole, tower, or other structure designed to support or employed to support, equipment and/or antennas used to provide personal wireless services, including, but not limited to, a pole, monopole, monopine, slim stick, lattice tower or other types of standing structures.

CEQ
The Council on Environmental Quality was established under NEPA.

CEQA

The California Environmental Quality Act, codified as Public Resources Code §21000, et seq., as amended.

CFR
The Code of Federal Regulations.

CITY
The City of Carmel-by-the-Sea.

COLOCATION and/or CO-LOCATE
To install, mount or add new or additional equipment to be used for the provision of personal wireless services to a pre-existing structure, facility, or complex which is already built and is currently being used to provide personal wireless services, by a different provider of such services, wireless carrier or site developer.

COMMISSION or PLANNING COMMISSION
The Planning Commission of the City of Carmel-by-the-Sea.

COMPLETE APPLICATION, COMPLETED APPLICATION
An application that contains all the necessary and required information, records, evidence, reports, and/or data necessary to enable an informed decision to be made with respect to an application. Where any information is provided pursuant to the terms of this Chapter and the Planning Commission or the City's expert or consultant or the Director determines, based upon information provided, that any additional, further or clarifying information is needed as to one or more aspects, then the application will be deemed incomplete until that further or clarifying information is provided to the satisfaction of the Planning Commission or the City's expert or consultant or the Director.

COMPLEX
The entire site or facility, including all structures and equipment, located at the site.

CONDITIONAL USE PERMIT
The official document or permit granted by the Planning Commission pursuant to which an applicant is allowed to file for and obtain a building permit to construct and use a personal wireless services facility, personal wireless service equipment, and/or any associated structures and/or equipment which are used to house, or be a part of, any such facility or complex, or to be used to provide personal wireless services.

DBM (dBm)
DBM stands for decibel milliwatts, which is a concrete measurement of the wireless signal strength of wireless networks. Signal strengths are recorded in negative numbers, and can range from approximately -30 dBm to -110 dBm. The closer the number is to 0, the stronger the cell signal.

DEPLOYMENT

The placement, construction, or substantial modification of a personal wireless service facility.

DISTRIBUTED ANTENNA SYSTEM, DAS
A network of spatially separated antenna nodes connected to a common source via a transport medium that provides personal wireless service within a geographic area.

EFFECTIVE PROHIBITION
A finding by the Planning Commission that, based upon an applicant's submission of sufficient probative, relevant, and sufficiently reliable evidence, and the appropriate weight which the Commission deems appropriate to afford same, an applicant has established that an identified wireless carrier does not have adequate coverage as defined hereinabove, but suffers from a significant gap in its personal wireless services within the City and that a proposed installation by that applicant would be the least intrusive means of remedying that gap, such that a denial of the application to install such facility would effectively prohibit the carrier from providing personal wireless services within the City. Any determination of whether an applicant has established, or failed to establish, both the existence of a significant gap and whether its proposed installation is the least intrusive means of remedying such gap, shall be based upon substantial evidence, as is hereinafter defined.

ELEVENTH HOUR SUBMISSIONS
An applicant's submission of new and/or additional materials in support of an application within 48 hours of the expiration of an applicable shot clock, or at an otherwise unreasonably short period of time before the expiration of the shot clock, making it impracticable for the Planning Commission to adequately review and consider such submissions due to their complexity, volume, or other factors, before the expiration of the shot clock.

ENURE
To operate or take effect. To serve to the use, benefit, or advantage of a person or party.

EPA
The United States Environmental Protection Agency.

FAA
The Federal Aviation Administration, or its duly designated and authorized successor agency.

FACILITY
A set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.

FCC
The Federal Communications Commission.

GENERAL POPULATION/UNCONTROLLED EXPOSURE LIMITS

The applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (ii), made applicable pursuant to 47 CFR §1.1310(e)(3).

HEIGHT
When referring to a tower, personal wireless service facility, or personal wireless service facility structure, the height shall mean the distance measured from the pre-existing grade level to the highest point on the tower, facility, or structure, including, but not limited to, any accessory, fitting, fitment, extension, addition, add-on, antenna, whip antenna, lightning rod or other types of lightning-protection devices attached to the top of the structure.

HISTORIC STRUCTURE
Any structure that is either listed on the National Register of Historic Places, or is eligible for inclusion in the National Register of Historic Places under 36 CFR §63.1.

ILLEGALLY EXCESSIVE RF RADIATION or ILLEGALLY EXCESSIVE RADIATION
RF radiation emissions at levels that exceed the legally permissible limits set forth within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

IN-KIND REPLACEMENT
The replacement of a malfunctioning component(s) with a properly functioning component of substantially the same weight, dimensions, and outward appearance.

MACROCELL
A cellular base station that typically sends and receives radio signals from large towers and antennas. These include traditionally recognized cell towers, which typically range from 50 to 199 feet in height.

MAINTENANCE or ROUTINE MAINTENANCE
Plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the personal wireless service facility. It is work necessary to assure that a wireless facility and/or telecommunications structure exists and operates: reliably and in a safe manner, presents no threat to persons or property, and remains compliant with the provisions of this chapter and FCC requirements.

MUNICIPAL CODE
The Municipal Code of the City of Carmel-by-the-Sea, as the term has been codified in Chapter 1.01, §1.01.010.

NECESSARY or NECESSITY or NEED
What is technologically required for the equipment to function as designed by the manufacturer, and that anything less will result in prohibiting the provision of service as intended and described in the narrative of the application. “Necessary” or “need” does not mean what may be desired, preferred, or the most cost-efficient approach and is not related to an applicant’s specific chosen design standards. Any situation involving a workable choice between or among alternatives or options is not a need or a necessity.

NEPA
The National Environmental Policy Act, 42 U.S.C. §4321 et seq.

NHPA
The National Historic Preservation Act, 54 U.S.C. 300101 et seq, and 36 CFR Part 800 et seq.

NODE, DAS NODE
A fixed antenna and related equipment installation that operates as part of a system of spatially separated antennas, all of which are connected through a medium through which they work collectively to provide personal wireless services, as opposed to other types of personal wireless facilities, such as macrocells, which operate independently.

NOTICE ADDRESS
An address, which is required to be provided by an applicant at the time it submits an application for a conditional use permit, at which the City, Planning Commission, Director and/or any City representative can mail notice, and the mailing of any notice to such address by first-class mail shall constitute sufficient notice to any and all applicants, co-applicants, and/or their attorneys, to satisfy any notice requirements under this Chapter, as well as any notice requirements of any other local, state and/or federal law.

NOTICE OF INCOMPLETENESS, NOTICE OF INCOMPLETE APPLICATION
A written notice, mailed by first class mail, to an applicant seeking an approval for the installation of a PWSF, wherein the sender advises the applicant that its application is either incomplete, the wrong type of application, or is otherwise defective, and setting for the reason or reasons why the application is incomplete and/or defective.

NOTICE OF EFFECTIVE PROHIBITION CONDITIONS
A written notice which is required to be provided to the City at the time of the filing of any application, by all applicants at seeking any approval, of any type, for the siting, installation and/or construction of a PWSF, wherein the respective applicant asserts, claims or intends to assert or claim, that a denial of their respective application, by any agent, employee, board or body of the City, would constitute an "effective prohibition" within the meaning of the TCA, and concomitantly, that a denial of their respective application or request would violate Section 47 U.S.C. §332(c)(7)(B)(i)(II) of the TCA.

OCCUPATIONAL/CONTROLLED EXPOSURE LIMITS
The applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (i), made applicable pursuant to 47 CFR §1.1310(e)(2).

OHP
The California Office of Historic Preservation

PERSONAL WIRELESS SERVICE/PERSONAL WIRELESS SERVICES
Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, within the meaning of 47 U.S.C. §332(c)(7)(c)(i), and as defined therein.

PERSONAL WIRELESS SERVICE FACILITY, PERSONAL WIRELESS SERVICES FACILITY or PWSF
A facility or facilities used for the provision of personal wireless services, within the meaning of 47 U.S.C. §332(c)(7)(c)(ii). It means a specific location at which a structure that is designed or intended to be used to house or accommodate antennas or other transmitting or receiving equipment is located. This includes, without limitation, towers of all types and all kinds of support structures, including but not limited to buildings, church steeples, silos, water towers, signs, utility poles, or any other structure that is used or is proposed to be used as a telecommunications structure for the placement, installation and/or attachment of antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets, and other structures enabling the complex to provide personal wireless services.

PROBATIVE EVIDENCE
Evidence which tends to prove facts, and the more a piece of evidence or testimony proves a fact, the greater its probative value, as shall be determined by the Planning Commission, as the finder-of-fact in determining whether to grant or deny applications for conditional use permits under this provision of the Municipal Code.

REPAIRS
The replacement or repair of any components of a wireless facility or complex where the replacement is substantially identical to the component or components being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without the addition, removal, or change of any of the physical or visually discernible components or aspects of a wireless facility or complex that will impose new visible intrusions of the facility or complex as originally permitted.

RF
Radiofrequency.

RF RADIATION
Radiofrequency radiation, that being electromagnetic radiation which is a combination of electric and magnetic fields that move through space as waves, and which can include both Non-Ionizing radiation and Ionizing radiation.

SECTION 106 REVIEW
A review under Section 106 of the National Historic Preservation Act.

SETBACK
For purposes of conditional use permit applications, a setback shall mean the distance between (a) any portion of a personal wireless facility and/or complex, including but not limited to any and all accessory facilities and/or structures, and (b) the exterior line of any parcel of real property or part thereof which is owned by, or leased by, an applicant seeking a conditional use permit to construct or install a personal wireless facility upon such real property or portion thereof. In the event that an applicant leases only a portion of real property owned by a landlord,

the setback shall be measured from the facility to the line of that portion of the real property which is actually leased by the applicant, as opposed to the exterior lot line of the non-leased portion of the property owned by the landlord.

SHOT CLOCK
The applicable period which is presumed to be a reasonable period within which the City is generally required to issue a final decision upon an application seeking conditional use permit approval for the installation or substantial modification of a personal wireless services facility or structure, to comply with Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA.

SITE DEVELOPER or SITE DEVELOPERS
Individuals and/or entities engaged in the business of constructing wireless facilities and wireless facility infrastructure and leasing space and/or capacity upon, or use of, their facilities and/or infrastructure to *wireless carriers*. Unlike *wireless carriers*, site developers generally do not provide personal wireless services to end-use consumers.

SMALL CELL
A fixed cellular base station that typically sends and receives radio signals and which are mounted upon poles or support structures at substantially lower elevations than macrocell facilities.

SMALL WIRELESS FACILITY (SWF)
A personal wireless service facility that meets all of the following criteria

(a) The facility does not extend the height of an existing structure to a total cumulative height of more than fifty (50) feet, from ground level to the top of the structure and any equipment affixed thereto;
(b) Each antenna associated with the deployment is no more than three (3) cubic feet in volume;
(c) All wireless equipment associated with the facility, including any pre-existing equipment and any proposed new equipment, cumulatively total no more than twenty-eight (28) cubic feet in volume;
(d) The facility is not located on tribal land; and
(e) The facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1).

STATE
The State of California.

STEALTH or STEALTH TECHNOLOGY
A design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and generally in the same area as the requested location of such personal wireless service facilities. This shall mean building the least visually and physically intrusive facility and complex under the facts and circumstances.

STRUCTURE

A pole, tower, base station, or other building, physical support of any form used for, or to be used for, the provision of personal wireless service.

SUBSTANTIAL EVIDENCE
Substantial Evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

TCA
The Telecommunications Act of 1996, 47 U.S.C. §332(c)

TOLLING or TOLLED
The pausing of the running of the time period permitted under the applicable shot clock for the respective type of application for a personal wireless services facility. Where a shot clock is tolled because an application has been deemed incomplete and timely notice of incompleteness was mailed to the applicant, the submission of additional materials by the applicant to complete the application will end the tolling, thus causing the shot clock period to *resume* running, as opposed to causing the shot clock to begin running *anew*.

TOWER, TELECOMMUNICATIONS TOWER
Any structure designed primarily to support one or more antennas and/or equipment used or designed for receiving and/or transmitting a wireless signal.

UNDERTAKING
Any application for a conditional use permit seeking Commission approval for the installation of a personal wireless services facility licensed under the authority of the FCC shall constitute an undertaking within the meaning of NEPA, in accord with 42 CFR §137.289 and 36 CFR §800.16.

WIRELESS CARRIERS or CARRIER
Companies that provide Personal Wireless Services to end-use consumers.

ZONING LAW A/K/A THE ZONING ORDINANCE
The Carmel-by-the-Sea Zoning Ordinance and Coastal Zone Implementation Plan, as entitled under Chapter 17.02, §17.02.020.

§17.46.030 Application Types

There shall be four (4) specific types of applications for conditional use permits under this section,
which shall include Type I, Type II, Type III, and Type IV applications. It shall be the obligation of any applicant to explicitly and correctly identify which type of application they are filing.

1. Type I Applications Colocations of Small Wireless Facilities

Type I applications shall be limited to applications wherein an applicant seeks to co-locate a new small wireless facility, as defined in this Chapter, by installing new personal wireless service equipment upon an already existing small personal wireless services facility structure.

If the completed facility would still meet the physical limits and requirements to meet the definition
of a small wireless facility after the installation of the new equipment, then the application to install
such new equipment is a Type I application.

Type I applications for co-location of a small wireless facility in Residential District (R4), Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3), to the extent an already existing small personal wireless services facility structure already exists in these districts, shall be a permitted use with a building permit.

Type I applications for co-location of a small wireless facility in all other districts delineated in Chapter 17.04 of the Zoning Ordinance shall require an applicant to obtain a conditional use permit from the Planning Commission.

2. Type II Applications Co-locations which do not meet the definition of a Small Wireless Facility.

Type II applications shall be limited to applications wherein an applicant is seeking to co-locate new personal wireless service equipment by installing such new wireless equipment upon an already existing personal wireless services facility structure, tower, or complex, which does not meet the definition of a small wireless facility or which will not meet the definition of a small wireless facility if and when the proposed new personal wireless service equipment is installed upon the existing facility and/or structure. Type II applications for co-location of personal wireless service facility equipment in Residential District (R4), Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3), to the extent an already existing personal wireless services facility structure already exists in these districts, shall either be a permitted use with a building permit, or a conditional use permit, as set forth below.

The co-location of personal wireless service facility equipment on an approved PWSF tower or PWSF structure on property within Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3) is a permitted use subject to the issuance of a building permit, provided that the Planning Commission determines that the proposed co-location will not:

(a) Increase the approved height of the supporting structure by more than 15%;
(b) Cause the original approved number of antennas to be exceeded by more than 50%;
(c) Increase the original approved square footage of accessory buildings by more than 200 square feet;
(d) Add new or additional microwave antenna dishes;
(e) expand the footprint of said support structure; or

(f) potentially cause significant adverse impacts on the existing support structure or the surrounding area.

If the Planning Commission cannot make the findings above, conditional use permit and site plan approvals will be required in accord with the provisions of the Zoning Ordinance, and the application shall be referred to the Planning Commission, where it will be subject to the terms and conditions specified in the requirements and standards in this section as part of the conditional use permit and site plan review process.

3. Type III Applications New Small Wireless Facilities

Type III applications shall be limited to applications seeking to install and/or construct a new small
wireless facility as defined in Section §17.46.020 hereinabove.

Type III applications shall require applicants to obtain a conditional use permit and site plan approvals from the Planning Commission.

4. Type IV Applications New Towers and All Other Wireless Facilities

Type IV applications shall include applications for the installation of a new telecommunications tower, personal wireless service facility, complex, structure, or equipment, which does not meet the criteria for Type I, Type II, or Type III applications.

Type IV applications shall require applicants to obtain a conditional use permit and site plan approvals from the Planning Commission.

§17.46.040 Shot Clock Periods

To comply with the requirements of Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA, the following shot clock periods set forth herein below shall be presumed to be reasonable periods within which the Planning Commission shall render determinations upon conditional use permit applications for personal wireless service facilities.

The Planning Commission shall render determinations upon such applications within the periods set forth hereinbelow, unless the applicable shot clock period list below is tolled, extended by agreement or the processing of the application is delayed due to circumstances beyond the Commission and/or City's controls, as addressed within subsections §17.46.150, §17.46.160, §17.46.170 and §17.46.180 herein below.

1. Type I Applications Colocations of Small Wireless Facilities
Sixty (60) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Planning Commission shall issue a written decision upon a Type I application within sixty (60) days from the date when the City receives a Type I application.

Upon receipt of a Type I application, the Director shall review the application for completeness. If the Director determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within **ten (10) days** of the City's receipt of the application, the Director, or his designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the Director shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Director shall toll the 60-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Director to remedy the issues the Director identified in the Notice of Incomplete Application, which he had mailed to the applicant. The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again, mail a Notice of Incompleteness within **ten (10) days** of the applicant having filed its supplemental or corrected materials to the City and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

2.	Type II Applications	Colocations on existing Towers, Structures or other Facilities which do not meet the definition of a Small Wireless Facility. Ninety (90) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Planning Commission shall issue a written decision upon a Type II application within ninety (90) days from the date when the City receives a Type II application.

Upon receipt of a Type II application, the Director shall review the application for completeness. If the Director determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within **thirty (30) days** of the City's receipt of the application, the Director, or his designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the Director shall advise the applicant, with reasonable clarity of the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Director shall toll the 90-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Director to remedy the issues the Director identified in the Notice of Incomplete Application, which he had mailed to the applicant.

The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again, mail a Notice of Incompleteness within ten (10) days of the applicant having filed its supplemental or corrected materials to the City. The shot clock shall once again be tolled, and the same procedure provided hereinabove shall be repeated.

3.	Type III Applications	New Small Wireless Facilities Ninety (90) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Planning Commission shall issue a written decision upon a Type III application within ninety (90) days from the date when the City receives a Type III application.

Upon receipt of a Type III application, the Director shall review the application for completeness. If the Director determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within **ten (10) days** of the City's receipt of the application, the Director, or his designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address which the applicant has provided.

Within such Notice of Incompleteness, the Director shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Director shall toll the 90-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Director to remedy the issues the Director identified in the Notice of Incomplete Application, which he had mailed to the applicant.

The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again, mail a Notice of Incompleteness within **ten (10) days** of the applicant having filed its supplemental or corrected materials to the City and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

4.	Type IV Applications	New Towers and All Other Wireless Facilities One Hundred Fifty (150) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Planning Commission shall issue a written decision upon a Type IV application within one hundred fifty (150) days from the date when the City receives a Type IV application.

Upon receipt of a Type IV application, the Director shall review the application for completeness. If the Director determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within **thirty (30) days** of the City's receipt of the application, the Director, or his designee, shall mail the applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the applicant.

Within such Notice of Incompleteness, the Director shall advise the applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Director shall toll the 150-day shot clock, which shall not thereafter resume running unless and until the applicant tenders an additional submission to the Director to remedy the issues the Director identified in the Notice of Incomplete Application, which he had mailed to the applicant.

The submission of any responsive materials by the applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again, mail a Notice of Incompleteness within **ten (10) days** of the applicant having filed its supplemental or corrected materials to the City and the shot clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

§17.46.050 Shot Clock Tolls, Extensions & Reasonable Delay Periods

Consistent with the letter and intent of Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA, each of the shot clock periods set forth within Section §17.46.040 hereinabove shall generally be presumed to be sufficient periods within which the Planning Commission shall render decisions upon conditional use permit applications.

Notwithstanding same, the applicable shot clock periods may be tolled, extended by mutual agreement between any applicant and/or its representative and the Planning Commission, and the Planning Commission shall not be required to render its determination within the shot clock period, presumed to be reasonable for each type of application, where the processing of such application is reasonably delayed, as described hereinbelow.

1. Tolling of the Applicable Shot Clock Due to Incompleteness and/or Applicant Error

As provided for within Section §17.46.040 hereinabove, in the event that the Director deems an application incomplete, the Director shall send a Notice of Incompleteness to the applicant to notify the applicant that its application is incomplete and/or contains material errors, and shall reasonably identify the missing information and/or documents and/or the error(s) in the application.

If the Director mails a Notice of Incompleteness as described hereinabove, the applicable shot clock shall automatically be tolled, meaning that the applicable shot clock period within which the Planning Commission is required to render a final decision upon the application shall immediately cease running, and shall not resume running, unless and until the City receives a responsive submission from the applicant.

If and when the applicant thereafter submits additional information in an effort to complete its application, or cure any identified defect(s), then the shot clock shall automatically *resume* running, but shall not be deemed to start running *anew*.

The applicable shot clock period shall, once again, be tolled if the Director thereafter provides a second notice that the application is still incomplete or defective, despite any additional submissions which have been received by the City, from the applicant, up to that point.

2. Shot Clock Extension by Mutual Agreement

The Planning Commission, in its sole discretion, shall be free to extend any applicable shot clock period by mutual agreement with any respective applicant. This discretion on the part of the Commission shall include the Commission's authority to request, at any time, and for any period of time the Planning Commission may deem reasonable or appropriate under the circumstances, consent from a respective applicant, to extend the applicable shot clock period, to enable the Commission, the applicant, or any relevant third party, to complete any type of Undertaking or task related to the review, analysis, processing, and determination of the particular application, which is then pending before the Commission, to the extent that any such Undertaking, task, or review is consistent with, or reasonably related to, compliance with any federal, state, or local law, and/or the requirements of any provision of the Municipal Code, including but not limited to this Chapter.

In response to any request by the Commission, the applicant, by its principal, agent, attorney, site acquisition agent, or other authorized representative can consent to any extension of any applicable shot clock, by affirmatively indicating its consent either in writing or by affirmatively indicating its consent on the record at any public hearing or public meeting. The Planning Commission shall be permitted to reasonably rely upon a representative of the applicant indicating that they are authorized to grant such consent on behalf of the respective applicant, on whose behalf they have been addressing the Commission within the hearing process.

3. Reasonable Delay Extensions of Shot Clock Periods

The City recognizes that there may be situations wherein, due to circumstances beyond the

control of the City and/or the Planning Commission, the review and issuance of a final decision upon a conditional use permit application for a personal wireless facility cannot reasonably be completed within the application shot clock periods delineated within Section §17.46.040 hereinabove.

If, despite the exercise of due diligence by the City and the Planning Commission, the determination regarding a specific application cannot reasonably be completed within the applicable shot clock period, the Commission shall be permitted to continue and complete its review, and issue its determination at a date beyond the expiration of the applicable period, if the delay of such final decision is due to circumstances including, but not limited to, those enumerated hereinbelow, each of which shall serve as a reasonable basis for a reasonable delay of the applicable shot clock period.

Reasonable delays which may constitute proper grounds for extending the presumed sufficient periods for rendering determinations under the applicable shot clock periods may include, but are not necessarily limited to, those set forth within Sections §17.46.150, §17.46.160, §17.46.170 and §17.46.180 herein below.

§17.46.060 Application Requirements

Applications for conditional use permits under this section shall be made to the Director, who shall initially determine whether or not the application is complete and/or free of defects upon receipt of the same.

If the Director determines that the application is defective or incomplete, they shall promptly mail a **Notice of Incompleteness** to the applicant, in accord with §17.46.040 to toll the applicable shot clock, to ensure that the City and the Planning Commission are afforded sufficient time to review and determine each respective application.

Each application shall include the following materials, the absence of any one of which listed hereinbelow, shall render the respective application incomplete:

1. Conditional use permit and site plan Applications

   Completed applications for a conditional use permit and site plan that shall identify all applicants, co-applicants, site developer(s), and wireless carrier(s) on whose behalf the application is being submitted, as well as the property owner of the proposed site.

2. Filing Fees

   The appropriate filing fees then being charged by the City for applications for conditional use applications, site plan applications, and other related applications.

3. A “Notice Address”

A "Notice Address," that being a specific address to which the City, Planning Commission, and/or Director may mail any type of notice, and that the mailing of same to such address shall constitute sufficient notice to any applicant, co-applicant, and/or their attorney, to comply with any requirement under this section as well as any local, state and/or federal law

4. Proof of Authorization for Site Occupancy

Where an applicant is not the owner of the real property upon which it seeks to install its equipment or facility, they shall submit proof of authorization to occupy the site at issue. If the applicant is leasing all or a portion of real property upon which it intends to install its new facility or equipment, then the applicant shall provide a written copy of its lease with the owner of such property. The applicant may redact any financial terms contained within the lease, but it shall not redact any portion of the lease which details the amount of area leased nor the specific portion of the real property to which the applicant has obtained the right to occupy, access, or preclude others from entering.

Where an applicant is seeking to Co-Locate new equipment into an existing facility, it shall provide a copy of its written co-location agreement with the owner of such pre-existing facility, from which it may redact any financial terms.

5. A Drawn-To-Scale Depiction

The applicant shall submit drawn-to-scale depictions of its proposed wireless support structure and all associated equipment to be mounted thereon, or to be installed as part of such facility, which shall clearly and concisely depict all equipment and the measurements of same, to enable the Director to ascertain whether the proposed facility would qualify as a small wireless facility as defined under this Chapter.

If the applicant claims that its proposed installation qualifies as a small wireless facility within this Chapter, the drawn-to-scale depiction shall include complete calculations for all of the antennas and equipment of which the facility will be comprised, depicting that, when completed, the installation and equipment will meet the physical size limitations which enable the facility to qualify as a small wireless facility.

6. Site plan

The applicant shall submit a site plan and site plan application in accordance with the Zoning Ordinance, Chapter 17.52. The site plan shall show all existing and proposed structures and improvements, including antennas, roads, buildings, guy wires and anchors, parking, and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.

7. Engineer's Report

To the extent that an application proposes the co-location of new equipment onto an existing tower or facility, the applicant shall provide an engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure and explaining what modifications, if any, will be required in order to certify to the above.

8. Environmental Assessment Form

A completed environmental assessment form (EAF) and a completed visual EAF addendum.

9. Visual Impact Analysis

A completed visual impact analysis, which, at a minimum, shall include the following:

(a) Small Wireless Facilities

For applications seeking approval for the installation of a small wireless facility, the applicant shall provide a visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.

(b) Telecommunications Towers and Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility

For applications seeking approval for the installation of a telecommunications tower or a personal wireless service facility that does not meet the definition of a small wireless facility, the applicant shall provide:

(i) A "Zone of Visibility Map" to determine locations from where the new facility will be seen.

(ii) A visual impact analysis which shall include photographic images taken from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility, as well as those properties which would reasonably be expected to sustain the most significant adverse aesthetic impacts due to such factors as their close proximity to the site, their elevation relative to the site, the existence or absence of a "clear line of sight" between the tower location and their location.

The photographic images shall depict the height at which the proposed facility shall stand when completed, including all portions and proposed attachments to the facility, including, but not limited to, the main support structure, all antennas, transmitters, whip antennas, lightning rods, t-bars, crossbars, and cantilever attachments which shall, in whole or in part, be affixed to it, any and all surrounding equipment compound(s), fencing, cellular equipment cabinets, transformers, transformer vaults and/or cabinets, sector distribution boxes, ice bridges, backup generators, including but not limited to equipment boxes, switch boxes, backup generators, ice bridges, etc., to the extent that any of such compound and/or equipment will be visible from properties other than the property upon which the proposed tower and compound are to be installed.

The visual impact analysis shall include an assessment of alternative designs and color schemes, as well as an assessment of the visual impact of the proposed facility, taking into consideration any supporting structure which is to be constructed, as well as its base, guy wires, accessory structures, buildings, and overhead utility lines from abutting properties and streets.

10. Alternative Site Analysis

A completed alternative site analysis of all potential less intrusive alternative sites which the applicant has considered, setting forth their respective locations, elevations, and suitability or unsuitability for remedying whatever specific wireless coverage needs the respective applicant or a specific Wireless Carrier is seeking to remedy by the installation of the new facility which is the subject of the respective application for a conditional use permit.
If, and to the extent that an applicant claims that a particular alternative site is unavailable, in that the owner of an alternative site is unwilling or unable to accommodate a wireless facility upon such potential alternative site, the applicant shall provide probative evidence of such unavailability, whether in the form of communications or such other form of evidence that reasonably establishes same.

The alternative site analysis shall contain:

(a) an inventory of all existing tall structures and existing or approved communications towers within a two-mile radius of the proposed site.
(b) a map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, the height of the structure and/or tower, and accessory buildings on the site of the inventoried location.
(c) an outline of opportunities for shared use of an existing wireless facility as opposed to the installation of an entirely new facility.
(d) a demonstration of good-faith efforts to secure shared use from the owner of each potential existing tall structure and existing or approved communications tower,

as well as documentation of the physical, technical, and/or financial reasons why shared usage is not practical in each case.

11. FCC Compliance Report

An FCC compliance report, prepared by a licensed engineer, and certified under penalties of perjury, that the content thereof is true and accurate, wherein the licensed engineer shall certify that the proposed facility will be FCC compliant as of the time of its installation, meaning that the facility will not expose members of the general public to radiation levels that exceed the permissible radiation limits which the FCC has set.

If it is anticipated that more than one carrier and/or user is to install transmitters into the facility that the FCC compliance report shall take into account anticipated exposure from all users on the facility and shall indicate whether or not the combined exposure levels will, or will not exceed the permissible General Population Exposure Limits, or alternatively, the occupational Exposure Limits, where applicable.
Such FCC Compliance Report shall provide the calculation or calculations with which the engineer determined the levels of RF radiation and/or emissions to which the facility will expose members of the general public.

On the cover page of the report, the report shall explicitly specify: (a) Whether the applicant and their engineer are claiming that the appliable FCC limits based upon which they are claiming FCC compliance are the *General Population Exposure* Limits or the *Occupational Exposure Limits*. If the applicant and/or their engineer are asserting that the Occupational Exposure Limits apply to the proposed installation, they shall detail a factual basis as to why they claim that the higher set of limits is applicable, (b) The exact minimum distance factor, measured in feet, which the applicant's engineer used to calculate the level of radiation emissions to which the proposed facility will expose members of the general public. The minimum distance factor is the closest distance (i.e., the minimum distance) to which a member of the general public shall be able to gain access to the transmitting antennas mounted upon, or which shall be a part of, the proposed facility.

12. FCC License

A copy of any applicable Federal Communications Commission license possessed by any carrier named as an applicant, co-applicant, or whose equipment is proposed for installation as of the time the application is being filed with the City.

13. Effective Prohibition Claims

The City is aware that applicants seeking approvals for the installation of new wireless Facilities often assert that federal law, and more specifically the TCA, prohibits the local government from denying their respective applications.

In doing so, they assert that their desired facility is "necessary" to remedy one or more significant gaps in a carrier's personal wireless service, and they proffer computer-generated propagation maps to establish the existence of such purported gaps.

The City is additionally aware that, in August 2020, driven by a concern that propagation maps created and submitted to the FCC by wireless carriers were inaccurate, the FCC caused its staff to perform actual drive tests, wherein the FCC staff performed 24,649 tests, driving nearly ten thousand (10,000) miles through nine (9) states, with an additional 5,916 stationary tests conducted at 42 locations situated in nine (9) states.

At the conclusion of such testing, the FCC Staff determined that the accuracy of the propagation maps submitted to the FCC by the wireless carriers had ranged from as little as 16.2% accuracy to a maximum of 64.3% accuracy.[1]

As a result, the FCC Staff recommended that the FCC no longer accept propagation maps from wireless carriers without supporting drive test data to establish their accuracy. The City considers it of critical import that applicants provide truthful, accurate, complete, and sufficiently reliable data to enable the Planning Commission to render determinations upon applications for new wireless Facilities consistent with both the requirements of this Chapter and the statutory requirements of the TCA.

Consistent with same, if, at the time of filing an application under this Chapter, an applicant intends to assert before the Planning Commission or the City that: (a) an identified wireless carrier suffers from a significant gap in its personal wireless services within the City, (b) that the applicant's proposed installation is the least intrusive means of remedying such gap in services, and/or (c) that under the circumstances pertaining to the application, a denial of the application by the Planning Commission would constitute an "effective prohibition" under Section 47 U.S.C. §332 the TCA, then, at the time of filing such application, the applicant shall be required to file a written statement which shall be entitled:

"**Notice of Effective Prohibition Conditions**"

If an applicant files a Notice of Effective Prohibition Conditions, then the applicant shall be required to submit Probative Evidence to enable the Planning Commission to reasonably determine: (a) whether or not the conditions alleged by the respective applicant exist, (b) whether there exists a significant gap or gaps in an identified wireless carrier's personal wireless services within the City, (c) the geographic locations of any such gaps, and (d) the geographic boundaries of such gaps, to enable the Planning Commission to determine whether granting the respective application would be consistent with the requirements of this Chapter and the legislative intent behind same, and whether or not federal law would require the Planning Commission to grant the

[1] *See* FCC Staff Report, GN Docket No. 19-367, https://docs.fcc.gov/public/attachments/DOC-361165A1.pdf

respective application, even if it would otherwise violate the Municipal Code, including, but not limited to, this Chapter.

The additional materials which the applicant shall then be required to provide shall include the following:

(a) Drive Test Data and Maps

If, and to the extent that an applicant claims that a specific wireless carrier suffers from a significant gap in its personal wireless services within the City, the applicant shall conduct or cause to be conducted a drive test within the specific geographic areas within which the applicant is claiming such gap or gaps exist, for each frequency at which the carrier provides personal wireless services. The applicant shall provide the City and the Planning Commission with the actual drive test data recorded during such drive test, in a simple format which shall include, in table format:

(i) the date and time for the test or test,
(ii) the location, in longitude and latitude of each point at which signal strength was recorded and
(iii) each signal strength recorded, measured in DBM, for each frequency.

Such data is to be provided in a separate table for each frequency at which the respective carrier provides personal wireless services to any of its end-use customers.

(iv) the applicant shall also submit drive test maps, depicting the actual signal strengths recorded during the actual drive test, for each frequency at which the carrier provides personal wireless services to its end-use customers.

If an applicant claims that it needs a "minimum" signal strength (measured in DBM) to remedy its gap or gaps in service, then for each frequency, the applicant shall provide three (3) signal strength coverage maps reflecting actual signal strengths in three (3) DBM bins, the first being at the alleged minimum signal strength, and two (2) additional three (3) DBM bin maps depicting signal strengths immediately below the alleged minimum signal strength claimed to be required.

By way of example, if the applicant claims that it needs a minimum signal strength of – 95 DBM to remedy its alleged gap in service, then the applicant shall provide maps depicting the geographic area where the gap is alleged to exist, showing the carrier's coverage at – 95 to -98 DBM, -99 to -101 DBM and -102 to -104 DBM, for each frequency at which the carrier provides personal wireless services to its end-use customers.

(b) Denial of Service and/or Dropped Call Records

If and to the extent that an applicant claims that a specific wireless carrier suffers from a capacity deficiency, or a gap in service that renders the carrier incapable of providing adequate coverage of its personal wireless services within the City, then the applicant shall provide dropped call records and denial of service records evidencing the number and percentage of calls within which the carrier's customers were unable to initiate, maintain and conclude the use of the carrier's personal wireless services without actual loss of service, or interruption of service.

14. Estimate for Cost of Removal of Facility

A written estimate for the cost of the decommissioning, removal of the facility, including all equipment that comprises any portion or part of the facility, compound, and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein

15. Property Owner Consent & Liability Acknowledgement

A signed written consent from each owner of the subject real property upon which the respective applicant is seeking installation of its proposed personal wireless service facility, wherein the owner or owners, both authorize the applicant to file and pursue its conditional use permit application and acknowledge the potential landowner's responsibility, under section §17.46.110 for engineering, legal and other consulting fees incurred by the City.

§17.46.070 Design Standards

The following design standards shall apply to all applications for the siting, construction, maintenance, use, erection, movement, reconstruction, expansion, material change, or structural alteration of a personal wireless service facility.

1. Small Wireless Facilities

Small Wireless Facilities (SWF) shall be sited to inflict the minimum adverse impacts upon individual residential properties, and specifically, to minimize, to the greatest extent reasonably feasible, adverse aesthetic impacts upon residential homes or reductions in the property values of same.

SWFs attached to pre-existing wooden and non-wooden poles shall conform to the following criteria:

(a) Proposed antenna and related equipment shall meet:

(i) design standards which the City may maintain and update as needed, provided that the City makes its designed standards publicly available for review by any potential applicant seeking approval for the installation of an SWF within the City, and

(ii) National Electric Safety Code (NESC) standards; and
(iii) National Electrical Code (NEC) standards.

(b) Antennas and antenna equipment, including but not limited to radios, cables, associated shrouding, disconnect boxes, meters, microwaves, and conduit, which are mounted on poles, shall be mounted as close to the pole as technically feasible. They shall not be illuminated except as required by municipal, federal, or state authority, provided this shall not preclude deployment on a new or replacement street light.

(c) Antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible. Conduits and cabinets shall cover all cables and wiring to the extent that it is technically feasible if allowed by the pole owner. The number of conduits shall be minimized to the extent technically feasible. To the extent technically feasible, antennas, equipment enclosures, and all ancillary equipment, boxes, and conduits shall match the approximate material and design of the surface of the pole or existing equipment on which they are attached.

SWFs attached to replacement poles and new poles shall conform to the criteria set forth herein above for SWF's attached to pre-existing wooden and non-wooden poles, but shall additionally conform to the following criteria:

(a) The City prefers that wireless providers and site developers install SWF's on existing or replacement poles instead of installing new poles, and accordingly, to obtain approval for the installation of a new pole, the provider shall be required to document that installation on an existing or replacement pole is not technically feasible.

(b) To the extent technically feasible, all replacement poles and new poles and pole-mounted antennas and equipment shall substantially conform to the material and design of the pole being replaced, or in the case of a new pole, it shall conform to the nearest adjacent pole or poles.

(c) The height of replacement poles and new poles shall conform with the height limitations applicable to the district within which the applicant seeks to install their proposed SWF unless the applicant obtains a variance to obtain relief from any such limitation(s).

2. Telecommunications Towers and Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility

The design of a proposed new telecommunications tower or personal wireless service facility shall comply with the following:

(a) The choice of design for installing a new personal wireless service facility or the substantial modification of an existing personal wireless service facility shall be chosen to minimize the potential adverse impacts that the new or expanded facility may, or is likely to, inflict upon nearby properties.

(b) Any new telecommunications tower shall be designed to accommodate future shared use by other communications providers.

(c) Unless specifically required by other regulations, a telecommunications tower shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.

(d) Notwithstanding the height restrictions listed elsewhere in this Chapter, the maximum height of any new telecommunications tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state, and/or federal law and/or regulation.

(e) Accessory Structures

(i) Accessory structures shall maximize the use of building materials, colors, and textures designed to blend with the natural surroundings. The use of camouflage communications towers may be required by the Planning Commission to blend the communications tower and/or its accessory structures further into the natural surroundings. "Camouflage" is defined as the use of materials incorporated into the communications tower design that give communications towers the appearance of tree branches and bark coatings, church steeples and crosses, sign structures, lighting structures, or other similar structures.

(ii) Accessory structures shall be designed to be architecturally similar and compatible with each other and shall be no more than 12 feet high. The buildings shall be used only for housing equipment related to the particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.

(iii) No portion of any telecommunications tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to the company name, phone numbers, banners, and streamers, except the following. A sign of no greater than two square feet indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone shall be posted adjacent to any entry gate. In addition, "no trespassing" or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of the City.

(f) Towers must be placed to minimize visual impacts. Applicants shall place towers on the side slope of the terrain so that, as much as possible, the top of the tower does not protrude over the ridgeline, as seen from public ways.

(g) Existing vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees shall take place on a site connected with an application made under this article prior to the approval of the conditional use permit use.

(h) Screening.

(i) Deciduous or evergreen tree plantings may be required to screen portions of the telecommunications tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas.

(ii) Where a site adjoins a residential property or public property, including streets, screening suitable in type, size and quantity shall be required by the Planning Commission.

(iii) The applicant shall demonstrate to the approving board that adequate measures have been taken to screen and abate site noises such as heating and ventilating units, air conditioners, and emergency power generators. telecommunications towers shall comply with all applicable sections of this chapter as it pertains to noise control and abatement.

(i) Lighting. Telecommunications towers shall not be lighted except where FAA/FCC required lighting of the telecommunications towers necessary. No exterior lighting shall spill from the site in an unnecessary manner.

(j) Access.

(a) Adequate emergency and service access shall be provided and maintained. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to the top of fill, the top of cuts, or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

(b) To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site,

sufficient conduit shall be laid to accommodate the maximum possible number of telecommunications providers that might use the facility.

(k) Parking. Parking shall be provided to assure adequate emergency and service access. The Planning Commission shall determine the number of required spaces, but in no case shall the number of parking spaces be less than two spaces.

(l) Fencing. The telecommunications tower and any accessory structures shall be adequately enclosed by a fence, the design of which shall be approved by the Planning Commission. The Planning Commission may waive this requirement if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility.

§17.46.080 Planning Commission Initial Review

1. Initial Review

Upon the acceptance of an application that appears to be complete, the Director shall transmit the application to the Planning Commission for initial review.

The Planning Commission shall then conduct an initial review to consider whether or not to establish itself as Lead Agency pursuant to CEQA and/or NEPA and whether or not a use or area variance is required for the proposed application such that a referral for an application to the Planning Commission will be required to be made after the Planning Commission has declared itself to serve as Lead Agency and during the process of the Planning Commission considering a CEQA determination of environmental significance. That consideration of granting any required variances is done concurrently with the Planning Commission's review and consideration of conditional use permit and site plan approval.

The Planning Commission shall then conduct a public hearing upon each application, and render its determinations in accord with Sections §17.46.090 and §17.46.100 herein below, and shall ultimately determine whether or not to grant each applicant a conditional use permit and/or site plan approval.

§17.46.090 Hearings and Public Notice

1. Public Hearings

The Planning Commission shall conduct a public hearing upon each conditional use permit application, consistent with the procedures in §17.52.110, except the Planning Commission shall have authority to schedule such additional or more frequent public hearings as may be necessary to comply with the applicable shot clocks imposed upon the City and the Planning Commission under the requirements of the TCA.

2. Required Public Notices

The Planning Commission shall ensure that both the public and property owners whose properties might be adversely impacted by the installation of a wireless facility receive Notice of any public hearing pertaining to same and shall ensure that they are afforded an opportunity to be heard concerning same.

Before the date scheduled for the public hearing, the Planning Commission shall cause to be published a

"**NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY**"

Each "Notice of Public Hearing for New Wireless Facility" shall state the name or names of the respective applicant or co-applicants, provide a brief description of the personal wireless facility for which the applicant seeks a conditional use permit, and the date, time, and location of the hearing.

Each "Notice of Public Hearing for New Wireless Facility" shall be published both: (a) once per week for two successive weeks in the official newspaper of the City as provided in §17.52.110(D); and (b) by mailing copies of such notice to property owners, as provided for herein below.

The face of each envelope containing the notices of the public hearing shall state, in all bold typeface, in all capital letters, in a font size no smaller than 12 point, the words:

"**NOTICE OF PUBLIC HEARING FOR NEW WIRELESS FACILITY**"

For Type I and Type III applications, notices of public hearing shall be mailed to all property owners whose real properties are situated within 300 feet of any property line of the real property upon which the applicant seeks to install its new wireless facility. If the site for the proposed facility is situated on, or adjacent to, a residential street containing twelve (12) houses or less, the Planning Commission shall additionally mail a copy of such notices to all homeowners on that street, even if their home is situated more than 300 feet from any property line of the property upon which the applicant proposes to install its facility.

For Type II and Type IV applications, the applicant shall mail such notices of public hearing to all property owners whose real properties are situated within 1,500 feet of any property line of the real property upon which the applicant seeks to install its new wireless facility.

The applicant shall additionally post a notice upon the proposed site advising the public of the public hearing.

Prior to the date of the hearing, the respective applicant shall file an Affidavit of Mailing, attesting to whom such notices were mailed by the applicant, and the content of the notices which were mailed to such recipients.

§17.46.100 Factual Determinations to be Rendered by the Planning Commission

1. Evidentiary Standards

In determining conditional use permit applications for personal wireless service facilities, the Planning Commission shall have sole discretion to determine what probative evidence it shall require each applicant to produce in support of its application to enable the Commission to make each of the factual determinations enumerated below.

By way of common examples of the types of evidence which the Commission may require an applicant to produce, are the following:

(a) where an applicant is not the owner of the real property upon which it proposes to install a new wireless facility, the Commission can require the applicant to provide a copy of the applicant's lease with the property owner (including any schedules, property descriptions, appendices or other attachments), from which the applicant may censor or delete any financial terms which would be irrelevant to the factual issues which the Commission is required to determine;

(b) where the Commission deems it appropriate, the Commission can require the applicant to perform what is commonly known as a "balloon test" and to require the applicant to publish reasonably sufficient advance public notice of same, to enable the Commission, property owners, and the community, an opportunity to assess the actual adverse aesthetic impact which the proposed facility is likely to inflict upon the nearby properties and surrounding community;

(c) where the applicant asserts a claim that a proposed facility is necessary to remedy one or more existing significant gaps in an identified wireless carrier's personal wireless services, the Commission may require the applicant to provide drive-test generated coverage maps, as opposed to computer-generated coverage maps, for each frequency at which the carrier provides personal wireless services, to show signal strengths in bins of three (3) DBM each, to enable the Commission to assess the existence of such significant gaps accurately, and/or whether the carrier possesses adequate coverage within the geographic area which is the subject of the respective application.

(d) where the applicant asserts that a potential less intrusive alternative location for a proposed facility is unavailable because the owner of the potential alternative site is incapable or unwilling to lease space upon such site to the applicant, the Commission may require the applicant to provide proof of such unwillingness in the form of communications to and from such property owner, and/or a sworn affidavit wherein a representative of the applicant affirms, under penalty of

perjury, that they attempted to negotiate a lease with the property owner, what the material terms of any such offer to the property owner were, when the offer was tendered, and how, if at all, the property owner responded to such offer.

The Commission shall have sole discretion to determine, among other things, the relevance of any evidence presented, the probative value of any evidence presented, the credibility of any testimony provided, whether expert or otherwise, and the adequacy of any evidence presented.

The Commission shall not be required to accept, at face value, any unsupported factual claims asserted by an applicant but may require the production of evidence reasonably necessary to enable the Commission to determine the accuracy of any factual allegations asserted by each respective applicant.
Conclusory factual assertions by an applicant shall not be accepted as evidence by the Commission.

2. Factual Determinations

To decide applications for conditional use permits under this Section, the Planning Commission shall render factual determinations, which shall include two (2) specific types of factual determinations, as applicable.

First, the Commission shall render local zoning determinations according to Section (a) hereinbelow.

Then, if, and only if, an applicant asserts claims that:

(i) its proposed wireless facility or installation *is necessary to remedy a significant gap in personal wireless services for an explicitly identified wireless carrier*, and that its proposed installation *is the least intrusive means of remedying a specifically identified significant gap or gaps*, or

(ii) that a denial of their application would materially inhibit an identified wireless carrier from providing personal wireless services to its end-use customers,

then the Commission shall *additionally* render TCA determinations, in accord with Section (b) hereinbelow.

The Commission shall separately record each factual determination it makes in a written decision and shall reference, or make note of, the evidence based upon which it rendered each of its factual determinations.

Each factual determination made by the Commission shall be based upon Substantial Evidence.

For purposes of this provision, "Substantial Evidence" shall mean such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means less than a preponderance but more than a scintilla of evidence.

Evidence which the Commission may consider shall include any evidence submitted in support of an application, and any evidence submitted by anyone opposing a respective application, whether such evidence is in written or photographic form, or whether it is in the form of testimony by any expert, or any person who has personal knowledge of the subject of their testimony. The Commission may, of course, additionally consider as evidence any information or knowledge which they, themselves, personally possess, and any documents, records or other evidence which is a matter of public record, irrespective of whether such public record is a record of the City, or is a record of or is maintained by, another federal, state and/or other governmental entity and/or agency which maintains records which are available for, or subject to, public review.

The requirements for specific factual determinations set forth below are intended to enure to the benefit of the City, its residents, and property owners, and not applicants.

If, and to the extent that the Planning Commission fails to render one or more of such determinations, that omission shall not constitute grounds upon which the respective applicant can seek to annul, reverse or modify any decision of the Planning Commission.

(a) Local Zoning Determinations

The Commission shall make the following factual determinations as to whether the application meets the requirements for granting a conditional use permit under this Chapter.

(i) Compliance with Chapter 17.64

Whether the proposed installation will meet each of the conditions and standards set forth within Chapter 17.64 in the absence of which the Planning Commission is not authorized to grant a conditional use permit.

(ii) Potential Adverse Aesthetic Impacts

Whether the proposed installation will inflict a significant adverse aesthetic impact upon properties that are located adjacent to, or in close proximity to, the proposed site, or any other properties situated in a manner that would sustain significant adverse aesthetic impacts by the installation of the proposed facility.

(iii) Potential Adverse Impacts Upon Real Estate Values

Whether the proposed installation will inflict a significant adverse impact upon the property values of properties that are located adjacent to, or in close proximity

to the proposed site, or properties that are otherwise situated in a manner that would cause the proposed installation to inflict a significant adverse impact upon their value.

(iv) Potential Adverse Impact Upon the Character of the Surrounding Community

Whether the proposed installation will be incompatible with the use and/or character of properties located adjacent to or in close proximity to the proposed site or other properties situated in a manner that would cause the proposed installation to be incompatible with their respective use.

(v) Potential Adverse Impacts Upon Historic Properties or Historic Districts

Whether the proposed installation will be incompatible with and/or would have an adverse impact upon, or detract from the use and enjoyment of, and/or character of a historic property, historic site, and/or historic district, including but not limited to historic structures, properties and/or districts which are listed on, or are eligible for listing on, the National Register of Historic Places.

(vi) Potential Adverse Impacts Upon Ridgelines or Other Aesthetic Resources of The City

Whether the proposed installation will be incompatible with and/or would have an adverse aesthetic impact upon or detract from the use and enjoyment of, and/or character of, recognized aesthetic assets of the City including, but not limited to, scenic areas and/or scenic ridgelines, scenic areas, public parks, and/or any other traditionally or historically recognized valuable scenic assets of the City.

(vii) Sufficient Fall Zones

Whether the proposed installation shall have a sufficient fall zone and/or safe zone around the facility to afford the general public safety against the potential dangers of structural failure, icefall, debris fall, and fire.

(viii) Mitigation

Whether the applicant has mitigated the potential adverse impacts of the proposed facility to the greatest extent reasonably feasible. To determine mitigation efforts on the part of the applicant, the mere fact that a less intrusive site, location, or design would cause an applicant to incur additional expense is not a reasonable justification for an application to have failed to propose reasonable mitigation measures.

If when applying the evidentiary standards set forth in subparagraph (a) hereinabove, the Planning Commission determines that the proposed facility would not meet the standards set forth within Chapter 17.64, or that the proposed facility would inflict one or more of the adverse impacts described hereinabove to such a substantial extent that granting the respective application would inflict upon the City and/or its citizens and/or property owners the types of adverse impacts which this provision was enacted to prevent, the Planning Commission shall deny the respective application for a conditional use permit unless the Commission additionally finds that a denial of the application would constitute an Effective Prohibition, as provided for in Sections (b) and (c) immediately hereinbelow.

(b) TCA Determinations

In cases within which an applicant has filed a "Notice of Effective Prohibition Conditions," the Planning Commission shall make three (3) additional factual determinations, as listed herein below:

(i) Adequate Personal Wireless Services Coverage

Whether the specific wireless carrier identified by the applicant has "adequate coverage" (as defined in §17.46.010) within the geographic areas which the applicant claims to need its proposed new facility to serve

(ii) Significant Gap in Personal Wireless Services of an Identified Carrier

Whether the applicant has established, based upon probative evidence provided by the applicant and/or its representative, that a specific wireless carrier suffers from a significant gap in its personal wireless services within the City.

In rendering such determination, the Commission shall consider factors including, but not necessarily limited to (a) whether the identified wireless carrier which is alleged to suffer from any significant gap in their personal wireless services has adequate service in its personal wireless services at any frequency being used by the carrier to provide personal wireless services to its end-use customers, (b) whether any such alleged gap is relatively large or small in geographic size, (c) whether the number of the carrier's customers affected by the gap is relatively small or large, (d) whether or not the location of the gap is situated on a lightly traveled road, or sparsely or densely occupied area, and/or (d) overall, whether the gap is relatively insignificant or otherwise relatively *de minimis*.

A significant gap cannot be established simply because the carrier's customers are currently using the carrier's personal wireless services, but the frequency at which the customers are using such services is not the frequency most desired by the carrier.

(iii) Least Intrusive Means of Remedying Gap(s) in Service

Whether the applicant has established based upon probative evidence provided by the applicant and/or its representative, that the installation of the proposed facility, at the specific site proposed by the applicant, and the specific portion of the site proposed by the applicant, and at the specific height proposed by the applicant is the least intrusive means of remedying whatever significant gap or gaps which the applicant has contemporaneously proved to exist as determined by the Planning Commission based upon any evidence in support of, and/or in opposition to, the subject application.

In rendering such determination, the Commission shall consider factors including, but not necessarily limited to: (a) whether the proposed site is the least intrusive location at which a facility to remedy an identified significant gap may be located, and the applicant has reasonably established a lack of potential alternative less intrusive sites and lack of sites available for co-location, (b) whether the specific location on the proposed portion of the selected site is the least intrusive portion of the site for the proposed installation (c) whether the height proposed for the facility is the minimum height actually necessary to remedy an established significant gap in service, (d) whether or not a pre-existing structure can be used to camouflage the facility and/or its antennas, (e) whether or not, as proposed, the installation mitigates adverse impacts to the greatest extent reasonably feasible, through the employ of Stealth design, screening, use of color, noise mitigation measures, etc., and/or (f) overall whether or not there is a feasible alternative to remedy the gap through alternative, less intrusive substitute installations, such as the installation of multiple shorter installation, instead of a single microcell facility.

(c) Finding of Effective Prohibition or Lack of Effective Prohibition

If, when applying the evidentiary standards set forth in subparagraph (a) hereinabove, the Planning Commission affirmatively determines that:

(i) The identified wireless carrier has adequate coverage, or

(ii) the applicant has failed to establish either: (I) that an identified wireless carrier suffers from a significant gap(s) in its personal wireless services within the City, and/or (II) that the applicant has failed to establish that the proposed installation is the least intrusive means of remedying any such gap or gaps,

then the Planning Commission may deny the application pursuant to Section (a) hereinabove, and such denial shall not constitute an "Effective Prohibition."

§17.46.110 Retention of Consultants

1. Use of Consultants

Where deemed reasonably necessary by the Planning Commission and/or the City, the Planning Commission and/or the City may retain the services of professional consultants to assist the Planning Commission in carrying out its duties in deciding conditional use permit applications for personal wireless service facilities. Where the Planning Commission uses the services of private engineers, attorneys, or other consultants for purposes of engineering, scientific, land use planning, environmental, legal, or similar professional reviews of the adequacy or substantive aspects of applications, or of issues raised during the course of review of applications for conditional use permit approvals of personal wireless service facilities, the applicant and landowner, if different, shall be jointly and severally responsible for payment of all the reasonable and necessary costs incurred by the City for such services. In no event shall that responsibility be greater than the actual cost to the City of such engineering, legal, or other consulting services.

2. Advance Deposits for Consultant Costs

The City and/or Planning Commission may require advance periodic monetary deposits held by the City on account of the applicant or landowner to secure the reimbursement of the City's consultant expenses. The City Council shall establish policies and procedures for the fixing of escrow deposits and the management of payment from them. After audit and approval of itemized vouchers by the City Administrator as to reasonableness and necessity of the consultant charges, the City may make payments from the deposited funds for engineering, legal or consultant services. Upon receiving a request by the applicant or landowner, the City shall supply copies of such vouchers to the applicant and/or landowner reasonably in advance of audit and approval, appropriately redacted where necessary to shield legally privileged communications between City officers or employees and the City's consultant. When it appears that there may be insufficient funds in the account established for the applicant or landowner by the City to pay current or anticipated vouchers, the City shall cause the applicant or landowner to deposit additional sums to meet such expenses or anticipated expenses in accordance with policies and procedures established by the City Council. Consultants shall undertake no review on any matter scheduled before the Planning Commission until the initial escrow deposit has been made or requested replenishment of the escrow deposit has been made. No reviewing agency shall be obligated to proceed unless the applicant complies with escrow deposit requirements.

3. Reasonable Limit Upon Consultant Expenses

A consultant expense or part thereof is reasonable in amount if it bears a reasonable relationship to the customary fee charged by engineers, attorneys, or planners within the region for services performed on behalf of applicants or reviewing boards in connection with comparable applications for land use or development.

The City may also take into account any special conditions for considerations as it may deem relevant, including but not limited to the quality and timeliness of submissions on

behalf of the applicant and the cooperation of the applicant and agents during the review process.

A consultant expense or part thereof is necessarily incurred if it was charged by the engineer, attorney or planner, or other consultants, for a service which was rendered to assist the Planning Commission in: (a) making factual determinations consistent with the goals of protecting or promoting of the health, safety or welfare of the City or its residents; (b) assessing potential adverse environmental impacts such as those identified within a CEQA process; (c) accessing potential adverse impacts to historic properties, structures and/or districts, and/or (d) assessing and determining factual issues relevant to Effective Prohibition claims, as addressed herein, to enable the Commission to best comply with the letter and intent of the provision of the TCA which is relevant thereto.

4. Audits Upon the Request of an Applicant

Upon request of the applicant or landowner, the City Council shall review and audit all vouchers and determine whether such engineering, legal and consulting expenses are reasonable in amount and necessarily incurred by the City in connection with the review and consideration of a conditional use permit application for personal wireless service facility. In the event of such a request, the applicant or landowner shall be entitled to be heard by the City Council on reasonable advance notice.

5. Liability for Consultant Expenses

For a land-use application to be complete, the applicant shall provide the written consent of all owners of the subject real property, both authorizing the applicant to file and pursue land development proposals and acknowledging potential landowner responsibility, under this section, for engineering, legal, and other consulting fees incurred by the City. If different from the applicant, the owner(s) of the subject real property shall be jointly and severally responsible for reimbursing the City for funds expended to compensate services rendered to the City under this section by private engineers, attorneys, or other consultants. The applicant and the owner shall remain responsible for reimbursing the City for its consulting expenses, notwithstanding that the escrow account may be insufficient to cover such expenses. No conditional use permit, building permit or other permit shall be issued until reimbursement of costs and expenses determined by the City to be due. In the event of failure to reimburse the City for such fees, the following shall apply:

The City may seek recovery of unreimbursed engineering, legal, and consulting fees by court action in an appropriate jurisdiction, and the defendant(s) shall be responsible for the reasonable and necessary attorney's fees expended by the City in prosecuting such action.

Alternatively, and at the sole discretion of the City, a default in reimbursement of such engineering, legal and consulting fees expended by the City shall be remedied by charging such sums against the real property that is the subject of the conditional use permit application, by adding that charge to and making it a part of the next annual real property tax assessment roll of the City. Such charges shall be levied and collected

simultaneously and in the same manner as City-assessed taxes and applied in reimbursing the fund from which the costs were defrayed for the engineering, legal and consulting fees. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the City Council to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.

§17.46.120 Setback Requirements

1. Small Wireless Facilities

(a) Within Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3), the minimum setback shall be fifty (50) feet, unless the facility is being installed upon a pre-existing utility pole or other utility structure.

(b) Within all residentially-zoned and other districts, all small wireless facilities shall be set back a minimum of three hundred (300) feet from any residential dwelling or structure, unless the facility is being installed upon a pre-existing utility pole or is being co-located upon a pre-existing personal wireless service facility.

2. Cell Towers and all Personal Wireless Service Facilities that do not meet the definition of a Small Wireless Facility

(a) Each proposed wireless personal service facility and personal wireless service facility structure, compound, and complex shall be located on a single lot and comply with applicable setback requirements. Adequate measures shall be taken to contain on-site all icefall or debris from tower failure and preserve the privacy of any adjoining residential properties.

(b) Each lot containing a wireless personal service facility and personal wireless service facility structure, compound, and complex shall have the minimum area, shape, and frontage requirements generally prevailing for the zoning district where located, in the Schedules of Regulations for Nonresidential and Residential Districts of this Chapter, and such additional land if necessary to meet the setback requirements of this section.

(c) Cell towers and personal wireless service facilities that do not meet the definition of a small wireless facility, shall maintain a minimum setback of a distance equal to one hundred ten (110%) percent of the height of the facility, for front yard setbacks, rear yard setbacks and side yard setbacks, in all zoning districts.

§17.46.130 Height Restrictions

1. Small Wireless Facilities

Personal Wireless Service Facilities which meet the definition of a small wireless facility shall not exceed a maximum height of 60 feet above ground elevation in Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3), and shall not exceed a maximum height of 45 feet within all other zoning districts.

2. Non-Small Wireless Facilities

Personal Wireless Service Facilities which do not meet the definition of a small wireless facility shall not exceed a maximum height of 150 feet above ground elevation in Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3), and 100 feet above ground level in all other zoning districts.

§17.46.140 Use Restrictions and Variances

1. Use Restrictions by Application Type and Zoning District

Type I applications No Use Variance Required

Type I applications for co-location of a small wireless facility in Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3) shall be a permitted use with a building permit.

Type I applications for co-location of a small wireless facility in any residentially-zoned district shall be a conditional use permit use, requiring an applicant to obtain a conditional use permit from the Planning Commission.

Type II applications No Use Variance Required Unless Determined Otherwise

Applications for colocations of a wireless personal services facility, which do not meet the definition of a small wireless facility, shall be considered a conditional use permit in all Districts and shall require a conditional use permit and a building permit, but shall not require a use variance, unless the Planning Commission, in its sole discretion, determines that the proposed colocation will increase the overall intrusiveness of the site to a sufficient extent that its presence would no longer be compatible with the surrounding properties and/or surrounding community, in which case the Planning Commission shall issue a decision determining that the applicant shall be required to obtain a variance from the Planning Commission pursuant to §17.52.070 and §17.64.210 of the Municipal Code.

In rendering a determination of whether or not a variance shall be required, the Planning Commission shall consider, among other things: (a) the physical size, number, and potential intrusiveness of each new item of equipment to be installed as part of the proposed colocation, (b) the extent to which the installation of such equipment is to require or effectuate a significant physical expansion of the size or area of the facility or complex, (c) the extent to which the addition of such additional equipment will likely increase the adverse aesthetic impact of the facility, and/or any other potentially significant adverse impacts which are likely to cause a significant increase in the overall intrusiveness of the wireless facility, and/or its compound or complex, such that it will no

longer be reasonably compatible with the use of nearby or surrounding properties and/or that its presence would be incompatible with the character and use of the nearby properties and/or surrounding community.

If the Planning Commission determines that a variance is required for a specific proposed facility, then the applicant shall be required to file an application for a variance to the Planning Commission. The Planning Commission shall thereafter have the authority to (a) determine that no variance is necessary, (b) grant the application for a variance, or (c) deny the application for a variance.

Type III Applications No Use Variance Required

Applications for installing new Small Wireless Facilities that meet the criteria for Type III applications shall be considered a conditional use permit use in all Districts. They shall require a conditional use permit and building permit but shall not require a variance, unless they do not meet the applicable setback requirements or height limitation.

Type IV Applications Variance Requirements

Type IV applications seeking approval for the installation of a new cell tower and/or all other wireless facilities that are not a small wireless facility shall be a permitted use in Commercial Districts (CC, SC, RC), Public and Quasi-Public Districts (P-1, P-2, A-1, A-2, A-3), which shall not need a use variance, but shall require a conditional use permit, building permit, and area variance if the proposed facility does not meet the applicable height limitation and/or setback requirements.

Type IV applications seeking approval for the installation of a new cell tower and/or all other wireless facilities that are not a small wireless facility in all other districts shall be a prohibited use which shall require a use variance, conditional use permit, building permit, and area variance if the proposed installation does not meet the applicable height limitation and/or setback requirements.

§17.46.150 Environmental Impacts

If, and to the extent that, the Planning Commission determines a proposed installation bears the potential for a significant adverse impact upon the environment within the meaning of CEQA and/or the NEPA, then the Commission shall be expected to comply with the requirements of CEQA in determining both (a) the extent of adverse impacts upon the environment and/or historic properties and (b) what mitigation measures the applicant should be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites, structures and/or districts.

If a respective applicant fails to obtain a review from the CalEPA and/or NEPA and opinion letters from the CalEPA and the FCC pertaining to its proposed installation prior to a first public hearing before the Planning Commission for the respective application, then the Planning Commission may make direct requests to the CalEPA and the FCC for their review of the

application. The Planning Commission may request OHP and the FCC's review and input in completing the statutorily-required environmental impact analysis pursuant to CEQA and NEPA.

In addition, the Planning Commission shall comply with the statutory requirements of CEQA to complete a CEQA review, make determinations of significance, and where appropriate, require the applicant to complete a draft environmental impact statement, and if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Planning Commission acts with reasonable diligence in completing its CEQA and NEPA review, if compliance with the statutory requirements for environmental review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

§17.46.160 Historic Site Impacts

The Planning Commission shall consider the potential adverse impacts of any proposed facility upon any historic site, district, or structure consistent with the requirements of the City's historic preservation law and general plan and CEQA.

If, and to the extent that, the Planning Commission determines that a proposed installation bears the potential for a significant adverse impact upon a historic site or a historic district within the meaning of CEQA and/or the NHPA (especially if the historic site at issue is listed upon the national register of historic places), then the Commission shall comply with the requirements of both CEQA and City law in determining both: (a) the extent of adverse impacts upon the historic properties, and (b) what mitigation measure might the applicant be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites, structures and/or district.

Should a respective applicant fail to obtain a OHP and/or a Section 106 review under NHPA, and opinion letters from OHP and the FCC pertaining to its proposed installation prior to a first public hearing before the Planning Commission for the respective application, then the Planning Commission shall make direct requests to OHP and the FCC for their review of the application. They shall request OHP and the FCC's review and input in completing the statutorily-required environmental/historic impact analysis pursuant to SEQRA and NHPA.

This request shall include, but not be limited to, a request to the FCC for a Section 106 review, as defined in this Chapter, as the City recognizes each application for a conditional use permit for the installation of a personal wireless services facility shall constitute "an undertaking" for purposes of compliance with the National Historic Preservation Act.

In addition, the Planning Commission shall comply with the statutory requirements of CEQA to complete a CEQA review, make determinations of significance, and where appropriate, require the applicant to complete a draft environmental impact statement, and if additionally appropriate, to thereafter complete a final environmental impact statement and analysis.

So long as the Planning Commission acts with reasonable diligence in completing its CEQA and NHPA review, if compliance with the statutory requirements for historic preservation review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

§17.46.170 *Force Majeure*

In the event that the rendering of a final decision upon a conditional use permit application under this Chapter is delayed due to natural and/or unnatural events and/or forces which are not within the control of the City or the Planning Commission, such as the unavoidable delays experienced in government processes due to the COVID 19 pandemic, and/or mandatory compliance with any related federal or state government orders issued in relation thereto, such delays shall constitute reasonable delays which shall be recognized as acceptable grounds for extending the period for review and the rendering of final determinations beyond the period allotted under the applicable shot clock.

§17.46.180 *Eleventh Hour* Submissions

In the event that an applicant tenders eleventh-hour submissions to the City and/or the Planning Commission in the form of (a) expert reports, (b) expert materials, and/or (c) materials which require a significant period for review due either to their complexity or the sheer volume of materials which an applicant has chosen to provide to the Commission at such late point in the proceedings, the Planning Commission shall be afforded a reasonable time to review such late-submitted materials.

If reasonably necessary, the Planning Commission shall be permitted to retain the services of an expert consultant to review any late-submitted expert reports which were provided to the Commission, even if such review or services extend beyond the applicable shot clock period, so long as the Commission completes such review and retains and secures such expert services within a reasonable period of time thereafter, and otherwise acts with reasonable diligence in completing its review and rendering its final decision.

§17.46.190 Prohibition Against Illegally Excessive Emissions and RF Radiation Testing

As disclosed upon the FCC's public internet website, personal wireless services facilities erected at any height under 200 feet are not required to be registered with the FCC.

Of even greater potential concern to the City is the fact that the FCC does not enforce the RF radiation limits codified within the CFR by either: (a) testing the actual radiation emissions of wireless Facilities either at the time of their installation or at any time thereafter, or (b) requiring their owners to test them. *See* relevant excerpts from the FCC's public internet website annexed as Appendix 2.

This means that when wireless Facilities are constructed and operated within the City, the FCC will have no idea where they are located and no means of determining, much less ensuring, that they are not exposing residents within the City and/or the general public to Illegally Excessive levels of RF Radiation.

The City deems it to be of critical importance to the health, safety, and welfare of the City, its residents, and the public at large that personal wireless service facilities do not expose members of the general public to levels of RF radiation that exceed the limits which have been deemed safe by the FCC, and/or are imposed under CFR.

In accord with the same, the City enacts the following RF Radiation testing requirements and provisions set forth herein below.

No wireless telecommunications facility shall at any time be permitted to emit illegally excessive RF Radiation as defined in §17.46.020, or to produce power densities that exceed the legally permissible limits for electric and magnetic field strength and power density for transmitters, as codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

To ensure continuing compliance with such limits by all owners and/or operators of personal wireless service facilities within the City, all owners, and operators of personal wireless service facilities shall submit reports as required by this section.

As set forth hereinbelow, the City may additionally require, at the owner and/or operator's expense, independent verification of the results of any analysis set forth within any reports submitted to the City by an owner and/or operator.

If an operator of a personal wireless service facility fails to supply the required reports or fails to correct a violation of the legally permissible limits described hereinabove, following notification that their respective facility is believed to be exceeding such limits, any conditional use permit or other zoning approval granted by the Planning Commission or any other board or representative of the City is subject to modification or revocation by the Planning Commission following a public hearing.

1. Initial Certification of Compliance with Applicable RF Radiation Limits

   Within forty-five (45) days of initial operation or a substantial modification of a personal wireless service facility, the owner and/or operator of each Telecommunications antenna shall submit to the Director a written certification by a licensed professional engineer, sworn to under penalties of perjury, that the facility's radio frequency emissions comply with the limits codified within 47 CFR §1.1310(e)(1), Table 1 Sections (i) and (ii), as made applicable pursuant to 47 CFR §1.1310(e)(3).

   The engineer shall measure the emissions of the approved facility, including the cumulative impact from other nearby Facilities, and determine if such emissions are within the limits described hereinabove.

   A report of these measurements and the engineer's findings with respect to compliance with the FCC's Maximum Permissible Exposure (MPE) limits shall be submitted to the Director.

   If the report shows that the facility does not comply with applicable limits, then the owner and/or operator shall cease operation of the facility until the facility is brought into

compliance with such limits. Proof of compliance shall be a certification provided by the engineer who prepared the original report. The City may require, at the applicant's expense, independent verification of the results of the analysis.

2. Random RF Radiofrequency Testing

At the operator's expense, the City may retain an engineer to conduct random unannounced RF Radiation testing of such Facilities to ensure the facility's compliance with the limits codified within 47 CFR §1.1310(e)(1) et seq.

The City may cause such random testing to be conducted as often as the City may deem appropriate. However, the City may not require the owner and/or operator to pay for more than one test per facility per calendar year unless such testing reveals that one or more of the owner and/or operator's facilities are exceeding the limits codified within 47 CFR §1.1310(e)(1) et seq., in which case the City shall be permitted to demand that the facility be brought into compliance with such limits, and to conduct additional tests to determine if, and when, the owner and/or operator thereafter brings the respective facility and/or facilities into compliance.

If the City at any time finds that there is good cause to believe that a personal wireless service facility and/or one or more of its antennas are emitting RF radiation at levels in excess of the legal limits permitted under 47 CFR §1.1310(e)(1) et seq., then a hearing shall be scheduled before the Planning Commission at which the owner and/or operator of such facility shall be required to show cause why any and all permits and/or approvals issued by the City for such facility and/or facilities should not be revoked, and a fine should not be assessed against such owner and/or operator.

Such hearing shall be duly noticed to both the public and the owner and/or operator of the respective facility or facilities at issue. The owner and/or operator shall be afforded not less than two (2) weeks written notice by first-class mail to its Notice Address.

At such hearing, the burden shall be on the City to show that, by a preponderance of the evidence, the Facilities emissions exceeded the permissible limits under 47 CFR §1.1310(e)(1) et seq.

In the event that the City establishes same, the owner and/or operator shall then be required to establish, by clear and convincing evidence, that a malfunction of equipment caused their failure to comply with the applicable limits through no fault on the part of the owner/operator.

If the owner and/or operator fails to establish same, the Planning Commission shall have the power to, and shall revoke any conditional use permit, variance, building permit, and/or any other form of zoning-related approval(s) which the Planning Commission, Director and/or any other representative of the City may have then issued to the owner and/or operator, for the respective facility.

In addition, the Planning Commission shall impose a fine of not less than $1,000, nor more than $5,000 for such violation of subparagraph 1. hereinabove, or, in the case of a second offense within less than five (5) years, a minimum fine of $5,000, nor more than $25,000.

In the event that an owner or operator of one or more personal wireless service facilities is found to violate subparagraph 1. hereinabove, three or more times within any five (5) year period, then in addition to revoking any zoning approvals for the facilities which were violating the limits codified in 47 CFR §1.1310(e)(1) et seq., the Planning Commission shall render a determination within which it shall deem the owner/operator prohibited from filing any applications for any new wireless personal services facilities within the City for a period of five (5) years.

§17.46.200 Bond Requirements, Removal of Abandoned Facilities and Reclamation

1. Bond Requirement

At, or prior to the filing of an application for a conditional use permit for the installation of a new personal wireless service facility, each respective applicant shall provide a written estimate for the cost of the decommissioning and removal of the facility, including all equipment that comprises any portion or part of the facility, compound and/or complex, as well as any accessory facility or structure, including the cost of the full restoration and reclamation of the site, to the extent practicable, to its condition before development in accord with the decommissioning and reclamation plan required herein. The Planning Commission's engineer shall review this estimate.

Upon receiving a conditional use permit approval from the Planning Commission, and a building permit, prior to the commencement of installation and/or construction of such facility or any part thereof, the applicant shall file with the City a bond for a length of no less than three years in an amount equal to or exceeding the estimate of the cost of removal of the facility and all associated structures, fencing, power supply, and other appurtenances connected with the facility. The bond must be provided within thirty (30) days of the approval date and before any installation or construction begins.

Replacement bonds must be provided ninety (90) days prior to the expiration of any previous bond.

At any time, the City has good cause to question the sufficiency of the bond at the end of any three-year period, the owner and/or operator of the facility, upon request by the City, shall provide an updated estimate and bond in the appropriate amount.

Failure to keep the bonds in effect is cause for removal of the facility at the owner's expense. A separate bond will be required for each facility, regardless of the number of owners or the location.

2. Removal of Abandoned Facilities

Any personal wireless service facility that is not operated or used for a continuous period of twelve (12) consecutive months shall be considered abandoned. At the owner's expense, the owner of said facility shall be required to remove the facility and all associated equipment buildings, power supply, fence, and other items associated with such facility, compound and/or complex, and permitted with, the facility.

If the facility is not removed within ninety (90) days, the bond secured by the facility owner shall be used to remove the facility and any accessory equipment and structures.

§17.46.210 ADA Accommodations

The City of Carmel By The Sea seeks to comply with the Americans With Disabilities Act, and shall comply with same in the event that any person who is disabled within the meaning of the Act seeks a reasonable accommodation, to the extent that they are entitled to same under the Act.

§17.46.220 General Provisions

1. Balancing of Interests

The City formally recognizes that, as has been interpreted by federal courts, when it enacted the TCA, Congress chose to preserve local zoning authority over decisions regarding the placement, construction, and modification of personal wireless facilities (47 U.S.C. §332(c)(7)(A)) subject only to the limitations set forth in subsection §332(c)(7)(b), consistent with the holding of the United States Court of Appeals in Sprint Spectrum L.P. v. Willoth, 176 F3d 630 (2nd Cir.1999) and its progeny, and the City has relied upon such federal courts' interpretations of the TCA in enacting this Chapter.

The City similarly embraces the federal courts' determinations that the TCA was created to effectuate a balancing between the interests of facilitating the growth of wireless telephone service nationally and maintaining local control over the siting of wireless personal services facilities, as the Court additionally articulated in Omnipoint Communications Inc. v. The City of White Plains, 430 F3d. 529 (2nd Cir. 2005). This includes preserving to local governments, including the City of Carmel-by-the-Sea, the power to deny applications for the installation of wireless personal services facilities, based upon traditional grounds of zoning denials, including, but not limited to, the potential adverse aesthetic impacts or a reduction in property values which the construction of any proposed structure may inflict upon nearby properties or the surrounding community.

This additionally includes the recognition that, under this balancing of interest test, "once an area is sufficiently serviced by a wireless service provider, the right to deny applications (for new wireless facilities) becomes broader" Crown Castle NG East LLC v. The City of Hempstead, 2018 WL 6605857.

It is the intent of the City that this Chapter be applied in a manner consistent with the balancing of interests codified within the TCA.

Consistent with same, the City rejects and shall reject any current and/or future FCC interpretations of any provision of the TCA which are clearly inconsistent with, and/or are clearly contrary to, both the language of the TCA and binding decisions of the United States Court of Appeals and United States District Courts within this Circuit.

This includes a rejection of any FCC interpretations inconsistent with Willoth and any claims that the FCA legally prohibits the Planning Commission from denying a permit application, based solely upon a claim that an applicant desires the installation of its new facility for "densification" of its existing personal wireless services, or to offer a new service, irrespective of whether or not the carrier already possesses adequate coverage within the City, and irrespective of the potential adverse impact which the installation of such new facility or facilities would inflict upon the City, its property owners, citizens and/or communities.

2. Conflict With Federal or State Laws

To the extent that any provision of this Chapter is found to conflict with any applicable federal or State law, it is the intent of the City that the remaining portion of this Chapter which has not been found to conflict with such law be deemed to remain valid and in full force and effect.