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SCTCN Feedback on the City's Wireless Ordinance Draft (March 2023 Workshop)

- (1)** Start with the Campanelli Ordinance for Carmel (March 2022) as the framework and make any additions to make it stronger; rather than starting with the City Wireless Ordinance Draft and trying to strengthen it to the level of the Campanelli Ordinance.
- (2)** The role of The Planning Commission as the discretionary reviewing authority of evidentiary findings must be clearly articulated within the ordinance and the Wireless Ordinance Facility Application Checklist Types I-IV.
- (3)** The city draft's "Wireless Ordinance Application Types I-IV" do not require applicants to provide all of the probative evidence necessary for the Planning Commission to make factual determinations as to whether a denial of the application would materially inhibit an identified wireless carrier from providing personal wireless services. All the evidence necessary should also be articulated in the ordinance.
- (4)** All the Evidentiary Standards to be rendered by the Planning Commission must be within the ordinance or in both the ordinance and the checklist.
- (5)** The city draft's Wireless Ordinance Application Types I-IV & V must include a fire safety and engineering checklist.
- (6)** The city draft ordinance omits the finding of "adverse impacts upon real estate values" to be determined by the Planning Commission.
- (7)** The city draft's public noticing to neighbors is limited to a 100-foot radius.
- (8)** The city draft's "View Protection" language is weak and does not fully protect view impacts to individual properties and neighborhoods.
- (9)** The city draft's 250 feet spacing requirement between wireless facilities in the public-rights-of-way results in a proliferation effect of about 2 facilities per block.
- (10)** The city draft's "Purpose & Findings statements" are lacking protections of Carmel-by-the-Sea's character and safety elements in 5 areas.
- (11)** The city draft is missing "visual impact analysis from the perspectives of the properties situated in closest proximity to the location" of a proposed facility.

- (12) The city does not require the applicant to construct “a real-world mock-up” of the mass, scale, and height of the structure as field evidence necessary for the Planning Commission to be able to make factual determination on visual impacts to neighboring properties.
- (13) The city does not ask applicants to explore co-location of service opportunities outside of city limits before adding a new facility in Carmel as least intrusive means.
- (14) The city draft’s ordinance is missing “Definitions” necessary to give full explanation, distinction, and clarity to the document.

SCTCN Feedback **City Draft Weakness, Section & Solution**

(1) Primary Weakness: **We have thoroughly reviewed the City’s Wireless Ordinance Draft for the March 2023 Workshop and the Campanelli Wireless Ordinance for Carmel-by-the-Sea sent to the city for review March 2022. While both ordinances show commonalities and omissions from one another, we find that overall, the Andrew Campanelli Ordinance we submitted to the city last March 2022 is a stronger wireless ordinance than the city’s draft because:** (i) Everything is included within the ordinance for transparency to the public and the courts , (ii) The description and explanation of the application types are clearer and more defined, (iii) The critical role of the Planning Commissioner’s authority to render factual determinations and the findings are covered in 6 pages within the ordinance: articulating 8 zoning impacts and 4 effective prohibition conditions to determine adequate coverage, significant gap/capacity deficiency, and least intrusive means, and (iv) the Campanelli ordinance outshines the city’s draft it it’s ability for the Planning Commission to be able to make factual determinations on significant gap and capacity deficiency claims when an applicant has effective prohibition claims.

Solution: Start with the Campanelli Ordinance for Carmel (March 2022) as the framework and make any additions to make it stronger; rather than starting with the City Wireless Ordinance Draft and trying to strengthen it to the level of the Campanelli Ordinance.

(2) Primary Weakness: **The city draft does not define the role of the Planning Commission as the discretionary reviewing authority to render factual determinations. This important authority needs to be articulated in both the ordinance or the application checklist.**

Section: Ordinance & Wireless Ordinance Facility Application Checklist Types I-IV

Solution: The role of The Planning Commission as the discretionary reviewing authority of evidentiary findings must be clearly articulated within the ordinance and the Wireless Ordinance Facility Application Checklist Types I-IV. Add language from Andrew Campanelli’s Wireless Ordinance Referring to Evidentiary Standards for Effective Prohibition conditions

(p. 22-24) and rendering evidence for significant gap and capacity deficiency claims (page 30-36) in the Campnelli Ordinance:

“§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, icfall, 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 Remediating 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 remediating 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 remediating 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."

(3) Primary Weakness: This city draft’s “Wireless Facility Application Checklist Type I-IV” does not require applicants to provide all the probative evidence necessary for the Planning Commission to make factual determinations as to whether a denial of the application would materially inhibit an identified wireless carrier from providing personal wireless services. All the evidence necessary should also be articulated in the ordinance and the application.

Section: The following weakness (A-E) are in the Ordinance & the Wireless Facility Application Checklist (Type I-IV), under Special Exception Requests, under code section 17.46.080 Effective prohibition claims (p.11-12).

A. Primary Weakness: The city’s draft has no deadline when special exception requests can be turned in by the applicant during the shot clock timeline.

Solution: This section must require “*special exception requests only at time of application submission and no later in the process*”, due to the shot clock deadline, or the application will begin as a new application.

Example: We recommend the language used in Sonoma’s June 21, 2022 ordinance under 5.30.120 exceptions B. as such, “An applicant may request an exception only at the time of applying for a wireless telecommunications facility permit and not at any time thereafter. The request must include both the specific provision(s) of this chapter from which the exception is sought and the basis of the request. Any request for an exception after the city has deemed an application complete shall be treated as a new application.”

<https://www.codepublishing.com/CA/Sonoma/html/Sonoma05/Sonoma0530.html#5.30.050>

B. Primary Weakness: The city draft’s application instructions do not “require” the necessary evidence from the applicant for the Planning Commission to be able to make factual determinations. The city’s application instructions state that applicants “should include” all the following information and/or materials and indicate “whether” tests were conducted.

Solution: The application instructions must, “*require*” applicants to make a showing of all probative evidence necessary for the Planning Commission to make factual determinations as to whether a denial of the application would materially inhibit an identified wireless carrier from providing personal wireless services.

Expanded Reasoning: Who gets to decide what evidence is required to submit to the Planning Commission? The answer is our code does. If the code says we can ask for all of this information, then it can. Therefore, our code must ***require*** the information deemed necessary for our Planning Commission to make factual determinations.

C. Primary Weakness: The city draft’s application instructions do not require an applicant to submit all of the critical drive test data and map information which is necessary for the Planning Commission to be able to make factual determinations.

Solution: In this section, include the “*history of effective prohibition claims*” and the “*specific drive test data and map evidence*” an applicant must provide for the Planning Commission to be able to make factual determinations about significant gap claims. Include the specific language and testing criteria outlined in Andrew Campanelli’s ordinance:

“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

¹

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:

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.”

D. Primary Weakness: The city draft’s application instructions do not require applicants to provide “whether a mobile phone can connect to a landline” in the area to prove significant gap claims.

Solution: In this section, add a checkbox requiring applicants to make a showing as to whether “*mobile wireless services could connect to a landline*”, and if so, all results and data together with a report that describes how and when the applicant conducted such test(s), so that the Planning Commission may fully determine significant gap claims.

E. Primary Weakness: The city draft’s application instructions do not require applicants to provide “drop call records” and/or “denial of service records” in the area to prove capacity deficiency claims.

Solution: In this section, add in a checkbox on the city application instructions *requiring applicants make a showing of denial of service and/or dropped call records* so that the Planning Commission may determine capacity deficiency claims. We recommend the specific language from Andrew Campanelli’s ordinance as such:

“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.”

(4) Weakness: All the Evidentiary Standards to be rendered by the Planning Commission are missing from the ordinance and undefined and incomplete in the checklist (as mentioned in feedback #1 above).

Section: Ordinance & Wireless Facility Application Checklist Type I-IV

Solution: Include all the evidentiary standards to be rendered by the Planning Commission to be within the ordinance and the checklist.

(5) Weakness: The city draft’s Wireless Ordinance Application Types I-IV & V do not include a fire safety and engineering checklist.

Section: Wireless Facility Application Checklist Type I-IV & Wireless Application Checklist Type V

Solution: We recommend fire safety and engineer checklists outlined by fire utility consultant Susan Foster (see attachments)

(6) Weakness: The city draft omits the finding of “adverse impacts upon real estate values” to be determined by the Planning Commission.

Section: Wireless Ordinance, under Findings Required (p.26-27)

Solution: We recommend that “potential adverse impacts upon real estate values” be included in the findings to be determined by the Planning Commission as stated in Andrew Campanelli’s ordinance (p.34):

“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.”

Evidence of potential adverse impacts on real estate could be by evaluating the property value impact submitted by local, licensed real estate brokers.

(7) Weakness: The city draft’s public noticing to neighbors is limited to 100 feet.

Section: Wireless Ordinance: under section 17.46.070 Public Notices, under Public Hearings, Decision Notices and Appeals, under Application Submittal Notices- For Types I-IV, (p.24-25)

Solution: Prior to the hearing, the city draft’s public noticing to neighbors by the applicant must be expanded from a 100 foot radius of the site to a 300-foot radius of the site. In addition to hand delivery, require the applicant to send public mailings within a 300-foot radius of the site and require the applicant to file an Affidavit of Delivery and Mailing.

Example: from Andrew Campanelli’s wireless ordinance for CBTS:

“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.”

(8) Weakness: The city draft’s “View Protection” standard must not solely be that a wireless facility does not “substantially eliminate views”.

Section: Wireless Ordinance: Design Standards: View Protection (p.18)

Solution: We recommend the city draft’s “View Protection” language be strengthened by determining that the Planning Commission has the authority to analyze view impacts at the proposed site on a case-by-case basis. We propose the following language from the General Plan to protect surrounding properties and neighborhoods from negative view impacts:

++Wireless communications facilities, to every extent possible, should not be sited to create visual clutter or negatively affect important public or private views as determined by the Planning Commission.

++During the site visit, the City Planner shall annotate the survey regarding the potential view and privacy issues on neighboring lots.

++The project does not present excess visual mass or bulk to public view or to adjoining properties.

++Mitigate impacts on visual quality, circulation and ambience to the extent possible.

++Co-location is encouraged when it will decrease visual impact.

Weakness: Also in this section, the city draft language has an irrelevant statement, “No single parcel should enjoy a greater right than other parcels except the natural advantages of each site’s topography.”

Solution: This sentence should be edited out because the sentence is about equal view rights between parcels, not about determining wireless facility impact.

(9) Weakness: The city draft allows 250 ft spacing between facilities. This would equal roughly 2 wireless facilities per block in R-1 zones which defeats the following zoning requirements set forth in the CMC: Encroachment Standards, “The encroachment shall not create, extend, or be reasonably likely to lead to an undesirable land use precedent”.

Section: Wireless Ordinance, under Additional Public-Right-of-Way Location Selection Standards (p.15).

Solution: The city staff must do a technical analysis to determine the *maximum public-rights-of-way distance between facilities* that does not create an effective prohibition.

Example: The Sonoma June 21, 2022 Wireless Ordinance states under section 5.30.080 Additional design and development standards for facilities in the public right-of-way.F. Location:

“Each pole-mounted wireless telecommunications facility must be separated by at least 1,500 feet, except as the applicant may demonstrate by clear and convincing evidence in the written record that under the facts and circumstances surrounding the application enforcement of such requirement would result in effective prohibition of wireless telecommunications services and/or unreasonable discrimination as to the applicant under either [47](#) U.S.C. Section [253](#) or [332](#)(c) or would be otherwise prohibited under federal or state law.”

<https://www.codepublishing.com/CA/Sonoma/html/Sonoma05/Sonoma0530.html#5.30.050>

(10) Weakness: The Purpose & Findings Statements in the city draft are lacking General Plan language to protect Carmel’s unique assests in the following areas: (a) The city’s preservation of its residential character, (b) The city’s policy on limiting encroachments on public land, (c) The residential design character as uniquely small scale, (d) The POW design as part of the residential character streetscape design, and (e) Carmel’s geography & development as increased fire risk vulnerable to electrical equipment.

Section: This section is in the Wireless Ordinance, under 17.46.010 Purpose & Findings (p.3-4)

Solution: We recommend the city draft’s “Purpose & Findings” statements be strengthened by including language from the General Plan in 5 key areas:

(a): Include additional language from the General Plan to preserve the city’s residential character:

++ The preservation of the residential character in Carmel is central to all land uses.

++ Respecting the past as a continuing legacy that challenges each citizen to preserve the City's character in spite of on-going change.

++ Preserving Carmel's primarily residential character with business and commerce subordinate to its residential character.

(b): Include additional language from the General Plan to reflect the city's policy on limiting encroachments on public land:

++ The encroachment shall not create, extend, or be reasonably likely to lead to an undesirable land use precedent

(c): Include additional language from the General Plan to reflect the residential design character as small scale:

++ SCALE. Underlying much of Carmel's design character is a respect for scale. Scale can be defined as a relationship of size among two or more objects. In Carmel, the scale tends to be small and related to human size. The City itself is compact, its lots are small, and its streets are narrow. The character established by existing small homes and cottages reinforces this intimate size relationship. All of these contribute to a human scale and a pedestrian-friendly, built environment.

++ Designing buildings, infrastructure, and other improvements to a human scale

++ Oversized design elements make structures appear dominating and monumental. This out-of-scale character represents a poor fit to the human form, vitiates the more intimate, rural charm and village character of Carmel-by-the-Sea and shall be avoided.

++ That the project will preserve the community character and will be compatible with the streetscape, mass, bulk and height of the surrounding neighborhood context.

(d) Include additional language from the General Plan to reflect the intention of the POW as part of the residential character streetscape design:

++ Each site shall contribute to neighborhood character including the type of forest resources present, the character of the street, the response to local topography and the treatment of open space resources such as setbacks and landscaping. It is intended by this objective that diversity in architecture be encouraged while preserving the broader elements of community design that characterize the streetscape within each neighborhood.

(e) Include additional language from the General Plan to reflect better Carmel's fire risks due to its geography & development as especially vulnerable to electrical equipment failure.

++ Carmel by-the-Sea's urban forest poses significant fuel source for fire within the Community

++ High density of structures within the Carmel residential areas and business districts among numerous trees increase the hazard

++ Many buildings in the commercial district are very closely located with many building having common walls;

- ++Many of the commercial buildings and residential dwellings are older without fire sprinklers or fire resistant building materials;
- ++Of the approximately 250 commercial buildings in Carmel, more than half are equipped with fire alarm systems, and approximately 20 percent have automatic fire sprinkler systems.
- ++Most construction within Carmel contains wood; most roofs are made of combustible materials;
- ++High-density development with small setbacks increase fire spread and limit effectiveness of fire fighting efforts;
- ++The most significant factor increasing fire risk is human proximity;
- ++Areas with limited access prevent containment goals;
- ++Coastal windstorms and hillsides promote strong gusts of wind toward the city;
- ++Steep slopes promote spreading of wildfire through increased speed and preheating of vegetation;
- ++Risk of burning embers pushed by wind-blown wildfires from igniting building through small setbacks and vegetation;
- ++The village layout creates access challenges for the emergency vehicles. Many of the roads in the residential districts are very narrow and lack adequate turnaround space for larger emergency vehicles, such as fire trucks;
- ++In addition to constricted access, the tightly knit community of houses and trees doesn't provide adequate fuel breaks throughout the City;
- ++Another aspect of the "village" character that creates an obstacle to emergency response is lack of addresses. The lack of house numbers in response to emergencies such as fire, or flooding may not have a significant impact on the ability of emergency responders to find a property, as these are highly visible events. However, in case of medical emergency, lack of the house number may delay the arrival of the medical team.
- ++Dry summer and fall seasons with no precipitation create ideal conditions for fire spreading;
- ++A combination of generous rainy season followed by dry summer can result in large amounts of vegetation for fire fuel;
- ++Accidents related to spark charges from overhead transmission lines have started fires, as well as embers from wood burning stoves and faulty electrical wiring;
- ++ ~~already included~~ We have 4 very high severity hazard zones within the community (Pescadero Canyon, Forest Hill Park, Del Monte Forest and Mission Trails Nature Preserve);
- ++As discussed in the Public Facilities and Services Element, the water supply is one of the biggest challenges for Carmel and other Monterey Peninsula Cities. The City and its emergency responders have a limited supply of water. In case of a large, regional fire incident, where adjoining cities would be also drawing on water supply, the City of Carmel may experience inadequate water supply to fight fires.

(11) Weakness: The city draft is missing visual impact analysis from the perspectives of the properties situated in closest proximity to the location being proposed for the siting of the facility.

Section: This section is in the Wireless Facility Application Checklist Type I-IV, under 3.2 Photo Simulations (p.5) Add a checkbox in this section from Andrew Campanelli's ordinance:

“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.”

(12) Weakness: In this section, the city does not require the applicant to construct a real-world mock-up of the mass, scale and height of the structure as field evidence necessary for the Planning Commission to be able to make factual determination on visual impacts to neighboring properties.

Section: This section is in the ordinance, under the Wireless Facility Application Checklist (Type I-IV), under #15 Special Exception Requests (Code Section 17.46.080) (p.11-12).

Solution: When an applicant has an effective prohibition claim and requests a special exception to enter a least compatible zone, the applicant must be required to construct a real-world sized mock-up of the mass, scale and height of the facility proposed at cost to applicant. This evidence is required so that the Planning Commission may determine the visual impacts from and around the surrounding properties where the structure is to be located.

Example: Andrew Campanelli's Wireless Ordinance for CBTS:

“ (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;

Example: Sonoma's June 21, 2022 Wireless Ordinance which states under section 5.30.050 Application for Permit as part of a conditional use permit:

“Hold a community meeting at least two weeks before the date of the planning commission meeting at which the application will be heard, and invite the persons entitled to notice pursuant to subsection (A)(21)(a) of this section to attend such meeting to discuss the proposed application. The community meeting shall be held at a location

within the city. One meeting that includes all of the applications submitted on the same day shall be sufficient to satisfy this subsection. The mock-up of the proposed project shall be erected at the subject site before the meeting. The primary location and all alternative sites shall be presented to the community as well as the reasons for the selection of the primary location. Notice of the date, time and place of such meeting shall be sent at least seven days before the meeting and shall be filed with the planning department. The planning director may in his/her discretion waive this requirement in order for a determination to be made on the application in a timely manner.

<https://www.codepublishing.com/CA/Sonoma/html/Sonoma05/Sonoma0530.html#5.30.050>

(13) Weakness: The city does not ask applicants to explore co-location of service opportunities outside of city limits before adding a new facility in Carmel as least intrusive means. The city draft, under special exception requests, under effective prohibition claims says that an applicant *should include*, “a street level map that shows **general geographic area of the service area(s)** to be improved through the propose wireless facility. In the 12.3 justification section (p.10), outside of special exception requests, applicants are asked to include “**written justifications**” for alternative sites considered with no geographic range.

Section: Ordinance & Application Checklist Types I-IV & V

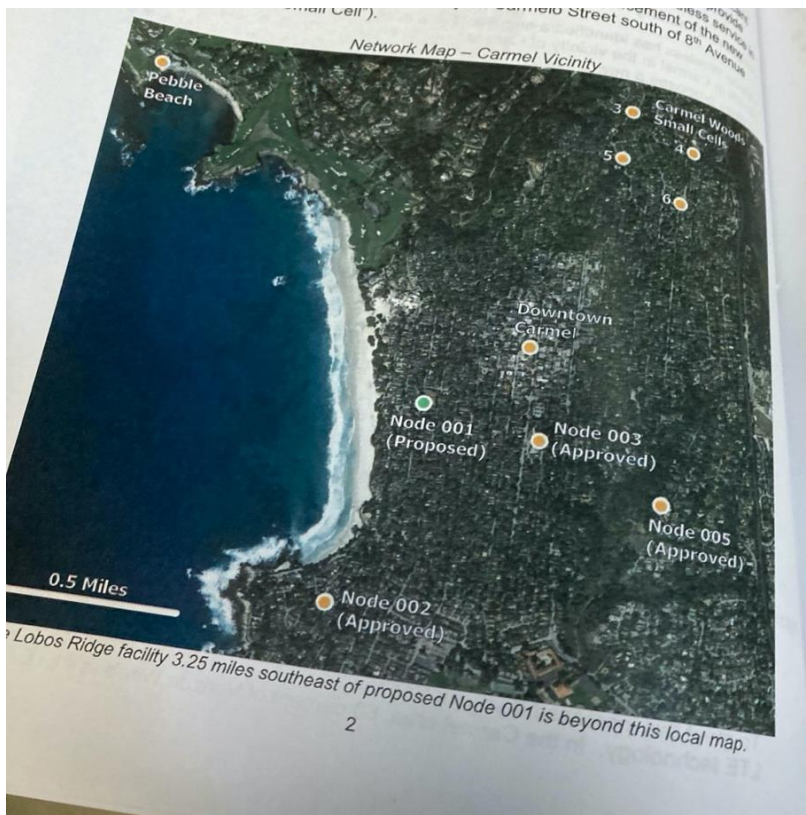
Solution: Specify applicants to plot existing and predicted **co-location opportunities in a geographic radius of 45 miles from the city as co-location opportunities to provide service** to the area proposed, as least intrusive means before adding a new wireless facility in Carmel. All results and data together with a report that describes how and when and how far away the applicant conducted such test(s),” so that the Planning Commission can determine the full-range of co-location opportunities a carrier has available to provide to existing and predicted facilities already in Carmel.

Expanded Reasoning: The City is only one mile square with no industrial zones. It is reasonable to request applicant to provide co-locations opportunities outside the city limits which could serve the area proposed as least intrusive alternatives before proposing a new wireless facility within city limits in the city’s least compatible areas. Written justification alone of alternative siting location analysis is not substantial evidence to determine least intrusive means to provide service.

Application P. 12 For effective prohibition claims, the applicant is asked to show **current and predicted service coverage** in the area for all active frequencies. The average mobile phone can connect to a wireless facility 45 miles away to receive signal. Telecom carriers have many different MHz bands to provide service including 700 MHz, 800 MHz, 1900 MHz, and 2100 MHz and more. These band options need to be reviewed and considered by the city to determine the least intrusive alternatives an identified carrier can provide service before locating new cell towers within our community.

During the Verizon proposal for a macro tower in Carmelo-by-the-Sea in the R-1 Carmelo Street neighborhood location, **Verizon's submitted a vicinity map with co-location opportunities outside the city limits** up to 3.25 miles in their application proposal, which included macro towers on nearby Lobos Ridge (3.25 miles south) and South Pebble Beach (approx. 1.9 miles north). These were immediate co-location opportunities which should have been analyzed by our Planning Commission as least intrusive means before installing a new wireless facility. At the same time, a macro tower had already been approved at the Barnyard Shopping Center (less than 1.5 miles east) which was another feasible co-location opportunity. Co-location opportunities must be explored up to 45 miles away to bring service to any city. In fact, AT & T has a repeater at Junipero & 7th in Carmel-by-the-Sea and co-locates to a macro tower on Mount Toro (29 miles away) to provide all of its service needs to our city. The fact that wireless service can be provided to a mobile phone up to 45 miles away, sets a justifiable distance for applicants to map all facilities and their current and predicted signal network capabilities as available co-location opportunities to provide coverage to Carmel-by-the-Sea.

- a. Here is a vicinity map Verizon submitted for the Carmelo Street R-1 location proposal pointing out the viable co-location opportunities within the city and the vicinity and **outside city limits** up to 3.25 miles away. The co-location map of opportunities to provide coverage to the city could have also been expanded to 45 miles away.
- b.



List of Verizon Cell Tower locations in the CBTS Vicinity:

- NW corner of map: Pebble Beach Facility (provides coverage to our area of south Carmel according to Verizon's maps in 11/10/21 attorney letter to city attachments)

- Node 002 approved: Carmel Point [Mo. Co.]

San Antonio & Valley View
200 yards from city limits

(Not in service yet)

Node 001 (Proposed) [CBTS]

Carmelo Street (La Playa hotel)

- Node 003 (Approved) Sunset Center [CBTS]

San Carlos & Ninth
1600 steps from Carmelo proposal

(Not in service yet)

Node 005 (Approved) [Mo. Co.]

Hatton Road, near Mission Trail Park
200 yards from city limits

(Not in service yet)

- Downtown Carmel (operational) [CBTS] operational

Doud Arcade Building: Ocean & San Carlos

Barnyard, (Approved) [Not shown on this map] [Mo. Co.]

East side of Highway One, north of Rio Road

1.5 miles from city limits

(Not in service yet)

Carmel Woods: 4 Small cells (operational) [Mo. Co.]

(All operational)

3. Camino del Monte

5. Camino del Monte

4. Carpenter St.

6. Carpenter St.

Lobos Ridge [Mo. Co.]

"3.25 miles southeast of proposed node 001" according to Verizon"

3 miles southeast of city limits

(14) Weakness: The city draft is missing critical “definitions” from the Campanelli ordinance to give full explanation, distinction, and clarity necessary in this document.

Section: This section is in the Wireless Ordinance, under 17.46.020 Definitions (p.4-12)

Solution: In the wireless ordinance, include the following critical definitions from the Campanelli ordinance to give full explanation, distinction, and clarity necessary in this document.

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.

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.

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.

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.

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 WIRELESS FACILITY (SWF)

It is important to have this definition because staff and applicant consistently referred to the proposed Carmelo Street location as a small wireless facility (swf) when it was not, hoping no one would notice. This definition is difficult to find and understand by the general public.

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 excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1).

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.

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*.