

Council Agenda Report

To: Mayor Uhring and Honorable Members of the City Council

Prepared by: Adrian Fernandez, Assistant Planning Director
Tyler Eaton, Senior Planner

Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: June 7, 2024 Meeting date: June 24, 2024

Subject: Zoning Text Amendment No. 16-005 and Local Coastal Program Amendment No. 16-007 – Amendments to Chapter 12.02 (Wireless Facilities in Public Right-of-Way) and Chapter 17.46 (Wireless Telecommunications Antennas and Facilities) of the Malibu Municipal Code, and Sections 2.2 and 3.16, Chapter 13 and Appendix 1 (Table B Permitted Uses) of the Local Coastal Program Local Implementation Plan to modify regulations, procedures, and application requirements for the installation of wireless communications facilities

RECOMMENDED ACTION:

- 1) After the City Attorney reads the title, introduce on first reading Ordinance No. 518 (Attachment 1) determining the proposed code amendments are exempt from the California Environmental Quality Act (CEQA), approving amendments to Malibu Municipal Code Chapter 12.02 (Wireless Facilities in Public Right-of-Way) to modify regulations, procedures, and application requirements for the installation of wireless communications facilities and repealing Ordinance Nos. 477 and 477U;
- 2) After the City Attorney reads the title, introduce on first reading Ordinance No. 519 (Attachment 2) determining the proposed code amendments are exempt from the CEQA, approving the California Coastal Commission suggested modifications to Local Coastal Program Amendment (LCPA) No. 16-007, an amendment to the Local Coastal Program (LCP) to modify regulations, procedures, and application requirements for the installation of wireless communications facilities and

coronally amendments to Malibu Municipal Code (MMC) Chapter 17.46 (Wireless Telecommunications Antennas and Facilities) and repealing Ordinance No. 484.

- 3) Direct staff to schedule second reading and adoption of Ordinance Nos. 518 and 519 for the July 8, 2024 Regular City Council meeting;
- 4) Adopt Resolution No. 24-34 (Attachment 3) determining the proposed amendments are exempt from the CEQA, adopting Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless Communication Facilities in the Public Right-of-Way and repealing Resolution No. 20-65;
- 5) Adopt Resolution No. 24-35 (Attachments 4) determining the proposed amendments are exempt from the CEQA, adopting Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless Communication Facilities on Land Other than Public Right-of-Way and repealing Resolution No. 21-17; and
- 6) Direct staff to submit the LCPA to the California Coastal Commission (CCC) for certification.

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

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

OVERVIEW:

On February 7, 2024, the CCC held a public hearing and conditionally certified the LCPA, subject to modifications as outlined in the CCC letter, dated 8, 2024 (Attachment 9). Final CCC certification of the LCPA requires formal adoption of the suggested modifications by the Council.

The City has three options before it regarding the LCPA:

- A. Adopt Ordinance No. 519 accepting the LCPA as conditionally certified by the CCC and the MMC corollary amendments. Should the Council take this action it is anticipated that the CCC Executive Director will report the Council's action to the CCC at the next regularly scheduled meeting and certification of the LCPA, ZTA and ZMA will be final.
- B. Take no action or reject the modifications. If the Council takes no action, the certification with suggested modifications will expire six months from the date of the CCC's action and the LCP and MMC will not be amended. Rejection of the modifications will similarly result in the LCP not being amended.

- C. Take action to modify the LCPA. If the Council chooses to modify what the CCC has conditionally certified, the Council's action would be treated as a resubmittal and the LCP amendment process would resume as a new application to the CCC.

Staff's recommendation is to take action (A), accepting the CCC's modifications. Should the Council take this action, Staff also recommends taking the additional actions described in the "RECOMMENDED ACTION" section above which will harmonize the relationship between the LCP, the City's ROW Wireless Ordinance (MMC Chapter 12.XX) and the City's Non-ROW Ordinance as well as its wireless design standards.

Outside the LCP, the regulations, procedures, and application requirements for the installation of wireless communications facilities are included in two titles of the MMC; 1) Streets, Sidewalks and Public Places (Title 12) for facilities in the public ROW; and 2) Zoning (Title 17) for facilities outside the public ROW. Similarly, two separate resolutions were adopted for the engineering, design and location standards, conditions of approval and basic application requirements for facilities, respectively, in the public ROW and outside the public ROW.

The regulations for wireless facilities in the public ROW were adopted first on April 26, 2021 through a resolution and simultaneously approved via urgency and non-urgency ordinances, while the ordinance and resolution for wireless facilities outside the public ROW were adopted several months later. Now that the CCC has completed its review, Staff proposes to accept the CCC's proposed modifications so that these provisions of the LCP become enforceable, while simultaneously proposing changes to the MMC to improve consistency between the City's ROW and non-ROW wireless regulations as requested by City residents. The attached updated Ordinances and Resolutions reflect this update.

Mr. Scott McCollough, an attorney representing a group of Malibu citizens whom City staff has worked with as it developed the City's wireless ordinances, has provided feedback on the regulations for wireless facilities outside the public ROW. He refers to the below proposed change as the "fix". The "fix" would edit the resolution for wireless facilities not in the public ROW, Section 5 (Location Standards for All Facilities), as redlined below:

7. The City expressly designates residential zones as disallowed locations. An application other than an eligible facility request seeking to place a wireless facility in a residential zone must demonstrate need through clear and convincing evidence and that there is no technically feasible alternative.

This is a change to the resolution defining non-ROW design standards only and does not result in any further revisions to the LCP or zoning code. This revision has been added to Resolution No. 24-xx. The ordinances show track changes to illustrate to the reader

what changes are proposed compared to the original ordinances. The 2024 resolutions would replace the existing resolutions, Nos. 20-65 (ROW) and 21-17 (Non-ROW).

BACKGROUND:

In 2016, the Council directed staff to update the Wireless Telecommunication Facility Ordinance which was codified in MMC Chapter 17.46 and Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 3.16. The Ordinance updates attempt to address issues that residents, City staff, and others have identified related to the process of proposing and siting new facilities and upgrading existing facilities in the City. The code updates are also necessary to address changes in federal and state law that have occurred since the adoption of the original ordinance in 2003.

On December 9, 2020, the Council adopted non-urgency and urgency ordinances (Nos. 477 and 477U) regulating placement of wireless facilities in the public right-of-way and a resolution (No. 20-65) establishing design and development standards and standard permit conditions for wireless facilities in the public right-of-way. The ordinance was codified into MMC Title 12 (Street, Sidewalks and Public Places). The City followed this action by initiating amendments to MMC Chapter 17.46, LIP Section 3.16 and LIP Chapter 13, to update the regulations and permitting process for WCFs on land other than public right-of-way.

On December 16, 2020, the City hosted a Wireless Update Workshop to discuss and receive comments regarding the City's existing wireless regulations (codified in MMC Chapter 17.46), relevant regulatory documents, and federal and State law. After the public workshop, a draft of the ordinance was developed. Prior to publication of the draft ordinance, the City staff met with Mr. McCullough as well as the Center for Municipal Solutions (CMS) (the City's wireless consultant), and the City Attorney's office.

On March 1, 2021, the Planning Commission held a public hearing on the draft ordinance and resolution during which written and oral comments from the public and carriers such as Verizon were received and considered.

The proposed changes are a comprehensive approach to addressing the wireless facilities in the City. The City Council adopted an advocacy plan to commit resources toward the goal of decreasing federal and State interference with local control over matters of direct impact on the health, safety, and welfare of the residents of Malibu.

ANALYSIS:

1. Ordinance and Resolution Features

Requiring a Wireless Permit (WP), Wireless Right-of-Way (WRP) Permit and stricter design standards. The ordinance would amend MMC Chapters 12.02 (Wireless Facilities in the Rights-of-Way) and 17.46 (Wireless Telecommunications

Antennas and Facilities) and establish the requirement to obtain a WP or WRP for all wireless communications facility installations. It also provides, among other regulations, permit and review procedures as well as operation and maintenance standards. WPs and WRPs are split into two categories (i.e., Type 1 and Type 2). A Type 1 WP is required for facilities that are subject to a more compressed review timeline and less discretion (eligible facility requests, small cell facilities, and collocations to existing facilities) while Type 2 is required for all other facilities. These proposals would provide a robust review and are designed to meet the shot clock requirements.

Ability to amend more efficiently. To maintain flexibility in this constantly evolving area and ensure that the City is obtaining the most useful information available, the ordinances authorize the City to publish application requirements on a separate form that can be amended administratively, as needed. The information collected can include demonstrating compliance with FCC standards and fire safety standards.

Local Coastal Program Amendment

The proposed amendments introduce the language from the City's wireless ordinances (for both ROW and non-ROW ordinances) into the LCP, and also introduces changes to LIP Chapter 13 in light of new federal and State law and to ensure compliance with the shot clock requirements. These include a coastal development permit exemption for eligible facilities requests, a de minimis waiver for small cell facilities and an administrative coastal development permit for all other wireless communications facilities. Other amendments include coastal development permit exemptions for the replacement of utility poles when required for public safety and for temporary wireless facilities required for facilities that are damaged or destroyed as a result of a natural disaster. The exemption for the replacement of utility poles would permit the replacement of existing poles that are deteriorated and/or overburdened and need to be replaced to meet current CPUC safety standards.

Summary of Proposed Changes:

LCPA (LIP Chapter 3.16)

- Definitions added in LIP Section 2.2 referencing updated language applicable to wireless facilities;
- LIP Section 3.16.2 permit requirements language changed from WPs and WRPs to coastal development permit (CDP) for LIP consistency;
- Modified general standards language in LIP Section 3.16.4 per CCC comments;
- Added design standards from Resolution Nos. 20-65 and 21-17 into LIP Section 3.16;
- Waiver language modified per CCC comments;
- Removed public notice requirements. Will remain in effect through MMC ordinance. CCC wants City to rely on existing LIP/CDP noticing requirements.
- Removed findings. Will remain in effect through MMC ordinance. CCC wants City to rely on existing LIP findings as applicable.

- Removed proposed CDP exemption language related to eligible facilities requests and minor utility pole modifications per CCC comments.
- Added minor modifications and relocations of utility poles when needed for new wireless facilities and temporary wireless facilities on wheels to the De Minimis Waiver section, LIP Section 13.4.11; and
- Removed exemption for a temporary wireless facility on wheels in the Temporary Event section of the LIP, Section 13.4.9.

Non-ROW MMC Ordinance (Chapter 17.46)

- Added definitions consistent with LPCA;
- Amended general standards for wireless facilities consistent with LPCA; and
- Amended Waiver language consistent with LPCA.

Non-Row Resolution

- Added the “fix” as described above to Section 5.

ROW MMC Ordinance (Chapter 12.02)

- Added definitions consistent with LPCA and Non-ROW ordinance;
- Created type 1 and type 2 permits consistent with Non-ROW ordinance;
- Created Type 1 approval authority via Planning Director and type 2 approval authority via Planning Commission;
- Created type 1 and type 2 appeal process consistent with Non-ROW ordinance;
- General standard language made consistent with LPCA and Non-ROW ordinance;
- Waiver language made consistent with LPCA and Non-ROW ordinance;
- Removed two findings to be consistent with Non-ROW ordinance; and
- Modified eligible facilities findings for approval to make them consistent with Non-ROW ordinance.

ROW Resolution

- Modified Section 8(B)(2)(a) for designs on wood utility poles to read, “*Side-mounted wireless facilities shall be of the smallest size technically feasible and shall not project from the pole more than 36 inches. A greater projection from the pole may be allowed if required by another agency for safety purposes.*” Previous language was 30 inches, but 36 inches is minimum distance required by Socal Edison for their utility poles. Socal Edison owns the majority of poles within the City’s public ROW.
- Added Section 11, application requirements consistent with the Non-ROW resolution.

ENVIRONMENTAL REVIEW: Pursuant to Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This application is for an amendment to the LCP, which must be certified by the California Coastal Commission (CCC) before it takes effect. LIP Section 1 .3.1 states that the provisions of the LCP take precedence over any conflict between the LCP and the City’s Zoning Ordinance.

The Ordinances and Resolutions are also not a project within the meaning of CEQA Guidelines Section 15378, because they have no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance and Resolution do not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance and Resolution were a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance and Resolution are exempt from CEQA on multiple grounds. First, the Ordinance and Resolution are exempt from CEQA because the City Council's adoption of the Ordinances and Resolution are covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance and Resolution will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with the Ordinance and Resolution, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. In fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance and Resolution are interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land).

PUBLIC NOTICE: On May 30, 2024, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation within the City of Malibu and mailed to all interested parties (Attachment 11).

ATTACHMENTS:

1. Ordinance No. 518
2. Ordinance No. 519
3. Resolution No. 24-34
4. Resolution No. 24-35
5. Ordinance Nos. 477 and 477U adopted by the City Council on December 9, 2020
6. Ordinance No. 484 adopted by the City Council on April 26, 2021
7. Resolution No. 20-65 adopted by the City Council on December 9, 2020
8. Resolution No. 21-17 adopted by the City Council on April 12, 2021
9. CCC letter and suggested modifications dated February 8, 2024
10. List of Recommendations from Mr. Scott McCollough
11. Notice of Public Hearing

The CCC Staff Report for the February 7, 2024 meeting can be found at:
<https://www.coastal.ca.gov/meetings/agenda/#/2024/2>

ORDINANCE NO. 518

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU DETERMINING THE PROPOSED CODE AMENDMENTS ARE EXCEPT FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT, APPROVING AMENDMENTS TO MALIBU MUNICIPAL CODE CHAPTER 12.02 (WIRELESS FACILITIES IN PUBLIC RIGHT-OF-WAY) TO MODIFY REGULATIONS, PROCEDURES, AND APPLICATION REQUIREMENTS FOR THE INSTALLATION OF WIRELESS COMMUNICATIONS FACILITIES AND REPEALING ORDINANCE NOS. 477 AND 477U

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

SECTION 1. Findings

A. The City's public rights-of-way are a valuable resource, and the regulation of wireless installations in the public rights-of-way is necessary to protect and preserve aesthetics in the community;

B. Wireless carriers have submitted applications to install wireless facilities to be located within the public rights-of-way, but more recently carriers have begun to submit much larger numbers of such applications;

C. The City of Malibu is designated as a Very High Fire Hazard Severity Zone. The City was devastated by major fires in 2007 and 2018 due to power pole failures. In each instance the utility structures supported wireless facilities that either initiated or significantly contributed to the ignition. The 2018 Woolsey Fire, which affected Malibu and other parts of Los Angeles County, consumed over 96,000 acres, destroyed at least 1,643 structures, killed three people, and prompted the evacuation of more than 295,000 people. It was one of several fires in California that ignited on the same day. Malibu has still not recovered. The 2007 fire burned 3,836 acres, 36 vehicles and 14 structures, including Castle Kashan and the Malibu Presbyterian Church, and damaged 19 other structures. It is essential that wireless facilities be engineered to prevent fire and withstand fire events as much as possible, and at least in a manner comparable to other commercial facilities with extensive, complicated electronics and wiring and flammable, sometimes hazardous and toxic, materials on site;

D. Cities retain the authority to over decisions regarding the placement, construction, and modification of personal wireless service facilities, subject to those matters where that authority has been limited or removed by state or federal law;

E. The unrestricted installation of personal wireless service facilities is contrary to the City's efforts to stabilize economic and social aspects of neighborhood environments, to satisfy health, safety and aesthetic objectives, to maintain property values by not degrading the visual and economic value of adjoining properties, especially in residential areas, and to promote family environments and a rural residential community character within the City to the maximum extent allowed by law. The City intends to exercise its powers to protect its citizens, its right to exercise all available power and right over its own property and regulate the use and occupation of that property, and to regulate public right-of-way use to the maximum extent allowed by law, while nonetheless respecting and adhering to the law as it may be and may change as the result of judicial review, potential state or federal statutory changes or valid rule amendments by the FCC.

F. To protect the public safety and welfare, and consistent with the City's General Plan Section 5.0, it is necessary and appropriate to provide for certain standards and regulations relating to the location, placement, engineering, design, construction and maintenance of wireless facilities within the City's public rights-of-way, and providing for the enforcement of these standards and regulations, consistent with federal and state law limitations on that authority;

G. Applications for wireless facilities to be located within the City's public right-of-way were previously processed under the provisions of Chapter 17 (Zoning) of the City's Municipal Code but those provisions were adopted at a time most wireless facilities were being installed on macro sites on land, not in public rights-of-way. Since the City Council last amended the portions of its Municipal Code related to wireless communication facility installations, prior to its most recent amendment which this amendment provides minor adjustments to, significant changes in federal laws that affect local authority over wireless communication facilities deployments in public rights-of-way have occurred, including, but not limited to, the following recent developments:

- On August 2, 2018, the Federal Communications Commission ("FCC") adopted a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, 33 FCC Red. 7705 (rel. Aug. 3, 2018) (the "August Order"), that, among other things, contained a declaratory ruling prohibiting express and de facto moratoria for all personal wireless services, telecommunications services and their related facilities under 47 U.S.C. § 253(a) and directed the Wireless Telecommunications Bureau and Wireline Competition Bureau to hear and resolve all complaints on an expedited basis. The declaratory ruling in the August Order was made effective upon release of the August Order which occurred on August 3, 2018; and
- On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, 33 FCC Red. 9088 (rel. Sep. 27, 2018) (the "September Order"), which, among many other things, created new shorter "shot clocks" for small wireless facilities (as defined in the September Order), shortened existing "shot clock" regulations to require local public agencies to do more in less time, established a national standard for an effective prohibition related to small wireless facilities and provided that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition. The September Order went into effect in part on January 14, 2019, and in part on April 15, 2019;
- On August 12, 2020, a three-judge panel of the Ninth Circuit Court of Appeals upheld the August Order and significant portions of the September Order, including the shorter shot clocks and remedies for failing to meet a shot clock;
- On October 22, 2020, the Ninth Circuit Court of Appeals denied a petition for *en banc* review of the above-referenced panel's decision;
- On June 9 and October 27, 2020, the FCC adopted Declaratory Orders and Reports and Orders providing clarifications and/or rule changes relating to the short shot clock, deemed granted remedy and qualifying criteria for "eligible facilities requests" which are

applications for modifications to existing wireless facilities which must be approved by local authorities according to federal law;

H. In light of the FCC Orders and related court decisions, the City deems it to be necessary and appropriate to enact additional standards and regulations, consistent with federal and state law limitations on that authority; and

I. If not adequately regulated, the installation of wireless facilities within the public rights-of-way can pose a threat to the public health, safety, and welfare, including disturbance to the public rights-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; public right-of-way use conflicts and incompatibilities including excessive height or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of wireless facilities, including the associated pedestals, meters, equipment and power generators; reduce property values and/or frustrate Malibu's longstanding efforts to have a rustic, residential and welcoming look and feel and a comfortable, safe community, all of which may negatively impact the City and its citizens.

SECTION 2. Amendments

A. Title 12 of the Malibu Municipal Code is hereby amended as follows:

CHAPTER 12.02 WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Section 12.02.010. Purpose.

The purpose of this Chapter is to establish a process for managing, and uniform standards for acting upon, requests for the placement of wireless facilities within the public rights-of-way of the City consistent with the City's obligation to promote the public health, safety, and welfare, to manage the public rights-of-way, and to ensure that the public is not incommoded by the use of the public rights-of-way for the placement of wireless facilities. The City recognizes the role of personal wireless facilities to provide personal wireless service to the residents and businesses within the City. No provision of this Ordinance shall be interpreted in a manner that violates state or federal law.

Section 12.02.020. Definitions.

The abbreviations, phrases, terms and words used in this Chapter will have the following meanings assigned to them unless context indicates otherwise. Undefined phrases, terms or words in this policy will have their ordinary meanings.

The definitions in this policy shall control over conflicting definitions for the same or similar abbreviations, phrases, terms or words as may be defined in the Malibu Municipal Code Chapter 17.02 and Section 17.46.040.

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

"Applicant" A person filing an application for placement or modification of a wireless facility in the public right-of-way.

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

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

"Eligible Facilities Request or EFR" shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, as defined by FCC regulations (47 C.F.R. Section 1.6100), involving:

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

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

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

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

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

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

(iv) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site

boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;

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

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in (i) through (iv).

"FCC" The Federal Communications Commission or its lawful successor.

"Municipal Infrastructure" City-owned or controlled property structures, objects, and equipment in the ROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the ROW.

"Permittee" any person or entity granted a wireless ROW permit pursuant to this Chapter.

"Personal Wireless Services" shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

"Personal Wireless Services Facility" means a wireless facility used for the provision of personal wireless services.

"Professional Engineer" (PE) is as defined by Business and Professions Code Section 6701, and shall be interpreted to refer to the specific appropriate engineering branch in issue as defined in Sections 6702 through 6703 and "supervision of the construction of engineering structures" as defined in Section 6703.1.

"Public Right-of-Way, or ROW" means any public street, public way or public place within the City limits, either owned by the City or dedicated to the public for the purpose of travel and which the City has the responsibility to maintain or manage. The term includes all or any part of the entire width of right-of-way, and above and below the same, whether or not such entire area is actually used for travel purposes.

"Small Cell Facility" shall have the same meaning as "small wireless facility" in 47 C.F.R. 1.6002(1), or any successor provision (which is a personal wireless services facility that meets the following conditions ~~that, solely for convenience, have been set forth below~~):

(1) The facility-

- (i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or
- (ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or
- (iii) does not extend an existing structure on which it ~~are~~is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;
- (5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and
- (6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b). "Support "Support

Structure" Any structure capable of supporting a base station.

"Underground areas" Those areas where there are no electrical facilities or facilities of a local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

"Utility Pole" A structure in the ROW designed to support electric, telephone and similar utility lines. For the avoidance of doubt, any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities is not a utility pole.

"Wireless ROW Permit or WRP" A permit issued pursuant to this Chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the ROW; and the modification of any existing support structure to which the wireless facility is proposed to be attached.

"Wireless Facility, or Facility" The transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s).

"Wireless Infrastructure Provider" A person that owns, controls, operates or manages a wireless facility or portion thereof within the ROW.

"Wireless Regulations" Those regulations adopted pursuant to Section 12.02.050 and implementing the provisions of this Chapter.

"Wireless Service Provider" An entity that provides personal wireless services to end users.

Section 12.02.030. Scope.

A. **In general.** There shall be a type of permit entitled a "Wireless ROW Permit (WRP)," which shall be subject to all of the requirements of this Chapter. Unless exempted, every person who desires to place a wireless facility in the public rights-of-way or modify an existing wireless facility in the public rights-of-way must obtain a wireless ROW permit authorizing the placement or modification in accordance with this Chapter. Except for small cell facilities, facilities qualifying as eligible facilities requests, or any other type of wireless facility expressly allowed in the public right-of-way by state or

federal law, no other wireless facilities shall be permitted pursuant to this Chapter. ~~The WRP shall be obtained in one of the following ways, based on facility type:~~

- ~~I. Type 1: The installation or modification of a facility that qualifies as a small cell facility, or eligible facilities request, or any other type of wireless facility expressly allowed in the public right-of-way by state or federal law; or~~
- ~~II. Type 2: (a) the installation or modification of all wireless facilities that do not qualify as Type I; and (b) any WRP application that includes a waiver request pursuant to MMC Section 12.02.050(C).~~

B. Exemptions. This Chapter does not apply to:

- (1) The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.
- (2) Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing functional facilities.

C. Other applicable requirements. In addition to the WRP required herein, the placement and operation of a wireless facility in the public rights-of-way requires the persons who will own or control those facilities to obtain all permits required by Chapter 12.04 (Highway Permits) and other applicable law, and to comply with applicable law, including, but not limited to, applicable law governing radio frequency (RF) emissions and the Americans with Disabilities Act (ADA) and electrical and fire codes. If an applicant meets the requirements of this Chapter and obtains a wireless ROW permit, then the applicant does not need to obtain a site plan review permit or conditional use permit pursuant to Malibu Municipal Code Sections 17.46.020 and 17.46.030.

D. Pre-existing Facilities in the ROW. Any permitted wireless facility already existing in the ROW as of the date of this Chapter's adoption shall remain subject to the standards and conditions of the City Code in effect prior to this Chapter, unless and until a renewal of such facility's then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the City Code under which it was previously reviewed.

E. Public use. Except as otherwise provided by California law, any use of the public right-of-way authorized pursuant to this Chapter will be subordinate to the City's use and use by the public.

Section 12.02.040. Administration.

A. Reviewing Authority. ~~For Type 1 applications, the Planning Director or their designee ("Director") is the reviewing authority responsible for taking action on the application. For Type 2 applications, the Planning Commission is the reviewing authority and will hold a public hearing to take action on the application. As part of the administration of this Chapter, the Director is responsible for the following: The Planning Director or his/her designee ("Director") is responsible for administering this Chapter. As part of the administration of this Chapter, the Director is responsible for the following:~~

- (1) Implement standards governing the placement and modification of wireless facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
- (2) Implement acceptable engineering design and development standards for wireless facilities in the public rights-of-way, taking into account the zoning districts adjacent to the public rights-of-way;
- (3) Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this Chapter;
- (4) Collect, as a condition of the completeness of any application, any fee established by this Chapter;
- (5) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
- (6) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
- (7) Require, as part of, and as a condition of completeness of any application, timely notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;
- (8) Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
- (9) Take such other steps as may be required to timely act upon applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

B. Appeals.

1. Type 1 Applications.

- a. ~~(1)~~ Any person adversely affected by a decision of the Director pursuant to this Chapter may request an administrative hearing to appeal the Director's decision. In order to request a hearing, the person shall submit to the City Clerk in the manner directed in the Director's decision notice a fully completed request for administrative hearing form along with a full amount of the appeal fee set by the City Council (by way of check or money order). The request for administrative hearing shall be incomplete if it does not include the appeal fee in the full amount ~~deposit in the full amount of the appeal fee. The deposit will be retained in a noninterest bearing account until the matter is resolved. The appeal fee shall be refunded to the appellant if their appeal is granted.~~
- b. ~~(2)~~ Appeals must be filed within five (5) business days of the mailing of decision notice of the Director, unless a different time period is specified by the Director in such notice. The Director may extend the time period for filing an appeal for due cause but an extension may not be granted where such extension would result in approval of the application by operation of law.
- c. ~~(3)~~ If a timely and complete request for hearing is not submitted, the Director's decision shall be deemed final.
- d. ~~(4)~~ If a timely and complete request for hearing is submitted, the City Manager shall appoint an administrative hearing officer ~~or, if designated by action of the City Council, two members of the Planning Commission and a member of the~~

City Council ("Hearing Officer") to conduct the administrative hearing. The Hearing Officer shall decide the issues de novo^a. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. The appellant and the applicant shall have the opportunity to present evidence in support of their case.

e. ~~(5)~~ Any administrative hearing shall be conducted so that a timely written decision may be issued in accordance with applicable law.

f. ~~(6)~~ The hearing officer's decision shall be in writing, shall explain the basis for the decision, and shall be served upon the applicant, and upon the appellant (if different) by first class mail, to the address stated on the request for hearing form. and the written decision of the Hearing Officer will be the final decision of the City effective on the date of mailing.

2. **Type 2 Applications.**

a. Any person adversely affected by a decision of the Planning Commission pursuant to this Chapter may request a public hearing to appeal the Planning Commission's decision to the City Council. In order to request a hearing, the person shall submit to the City Clerk in the manner directed in the Planning Commission's decision notice a fully completed request for a public hearing form along with the full amount of the appeal fee set by the City Council (by way of check or money order). The request for a public hearing shall be incomplete if it does not include the deposit in the full amount of the appeal fee. The deposit will be retained in a noninterest bearing account until the matter is resolved. The appeal fee shall be refunded to the appellant if their appeal is granted.

b. Appeals must be filed within ten (10) calendar days of the mailing of decision notice of the Planning Commission, unless a different time period is specified by the City in such notice. The City may extend the time period for filing an appeal for due cause, but an extension may not be granted where such extension would result in approval of the application by operation of law.

c. If a timely and complete request for hearing is not submitted, the Planning Commission's decision shall be deemed final.

d. Any public hearing shall be conducted so that a timely written decision may be issued in accordance with applicable law. The City Council's review shall be de novo; it may receive new evidence and is not bound by the previous record.

e. The City Council's decision shall be in writing, shall explain the basis for the decision, and shall be served upon the applicant, and upon the appellant (if different) by first class mail, to the address stated on the request for hearing form. The written decision of the City Council will be the final decision of the City effective on the date of mailing.

Section 12.02.050. ~~General~~ Standards for Wireless Facilities in the Public Rights-of- Way.

A. **Generally.** Wireless facilities in the ROW shall meet the minimum requirements set forth in this ~~Chapter Ordinance and the wireless regulations~~, in addition to the requirements of any other applicable law. Compliance with one or more of the development, engineering, design and location standards of this Section may be waived on a case-by-case basis pursuant to section 12.02.050(C) below.

~~B. **Regulations.** The wireless regulations and decisions on applications for placement of wireless facilities in the ROW shall, at a minimum, ensure that the requirements of this section are satisfied, unless a waiver is granted by the Director or Hearing Officer pursuant to Section 12.02.050(CE).~~

~~C. —~~

~~D. **Minimum Standards.** Wireless facilities shall be installed and modified in a manner that does not incommode the public use of the ROW, in that it minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights of way, makes facilities stealth by using concealment elements, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights of way; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public or cause personal or economic harm, interfere with the primary uses of the rights of way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the rights of way.~~

B. Engineering Design and Location Standards. All applicants shall engineer, design and locate the wireless facilities in accordance with the standards and wireless regulations set forth separately through the resolution adopted by the City Council.

C. Waivers of Development Standards. Requests for waivers from any ~~requirement~~ development standards of this Chapter shall be made in writing to the Director.

- ~~a. The Director or Hearing Officer may grant a request for waiver. A waiver may be requested: (a) to avoid a denial of an application that would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations; or (b) if compliance with a development standard would be technically infeasible; or (c) if the particular engineering, design, or location proposed involves only minor non-compliance with a development standard. only if it is demonstrated through clear and convincing evidence that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored so that the requirements of this Chapter are waived only to the minimum extent required to avoid the prohibition or violation.~~
- b. All waivers approved pursuant to this subsection shall only be granted on a case-by-case basis based on substantial evidence if the decision-maker affirmatively finds (as applicable): (a) for a waiver requested under 1(a), that denial based on strict adherence to the standard would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, and the standard is waived only to the minimum extent required to avoid the prohibition or violation; (b) for a waiver requested under 1(b), that compliance with a standard of this Section 2-4 would be technically infeasible and the proposed wireless facility complies with the requirements of this Section to the greatest extent technically feasible; (c) for a waiver requested under 1(c), that such non-compliance is minor but either results in no increase in visual harms to the community or provides other benefits, and failure to adhere to the

standard in the specific instance will not increase the visibility of the facility and will not decrease public safety, and will not result in greater impact to coastal resources including sensitive habitat, coastal waters, and public access.

Section 12.02.060. Applications.

A. Applicants shall submit applications on the forms and in the manner approved by the Planning Director. In addition to providing all required fees, all wireless communications facility carriers or providers shall provide the information required by a separate application form published, and updated from time to time, by the City. If no such form is available, then the applicant must submit all documents, information, and any other materials necessary to allow the City to make required findings and ensure that the proposed facility will comply with applicable laws and not endanger the public health, safety, or welfare. The Director may waive certain submittal requirements if prohibited by applicable law or require additional information based on the characteristics of specific projects. ~~Submission. Unless the wireless regulations provide otherwise, applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to an application, or responses to requests for information regarding an application to the Planning Department.~~

B. **Pre-application meeting.** Prior to filing an application for a WRP, applicant is encouraged to schedule a voluntary pre-application meeting with the Director to discuss the proposed facility, the requirements of this Chapter, and any potential impacts of the proposed facility. Conducting a voluntary pre-application meeting shall not initiate any applicable "shot clock."

C. Public Notice.

(1) Within seven (7) calendar days after an application is submitted to the City, the applicant shall: (1) post notice at the proposed project site in a location near to and visible from the ROW and (2) provide the City with evidence that such notice has been posted. The applicant shall maintain and replace the posted notice as necessary during the entire application review process until the Director acts on the application and all appeals have been exhausted. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for at least 180 calendar days. The posted notice shall be at minimum 17 inches wide by 11 inches tall. The posted notice shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, pedestrians or other users in the ROW. The City encourages applicants to consult with the Planning Department on placement locations to avoid any potential hazards.

(2) Within five (5) business days from the date on which an application is determined to be complete, the Director shall notify in writing of the filing of the application property owners and residents of all property within a one thousand (1,000) foot radius of the proposed project, but in no event fewer than the owners and occupants often (10) developed properties. The purpose of the notice is to inform the surrounding property owners and residents of the filing of the application and provide an opportunity for comment on the application prior to the Director's decision. The notice shall describe the request, provide a map showing the specific location of the proposed project, describe the review

process and timeframes, indicate how to contact the applicant and case planner assigned to the application, and the City-assigned application identifier.

D. **Content.** An applicant shall submit an application on the form approved by the Director, which may be updated from time-to-time, but in any event shall require the submission of all required fee(s), documents, information, and any other materials necessary to allow the Director to make required findings and ensure that the proposed facility will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare. If no form has been approved, applications must contain all information listed in any applicable City council resolution and as necessary to show that applicant is entitled to the WRP requested and must specify whether the applicant believes state or federal law requires action on the application within a specified time period.

E. **Fees.** Application fee(s) shall be required to be submitted with any application for a wireless ROW permit and with any request for appeal of a Director's decision. At the time of this Ordinance's adoption, the application and appeal fees are set forth in the Planning Department Fees in the City's Fiscal Year 2020-2021 Citywide Fee Schedule, which may be amended from time to time. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WRP unless paid as a refundable deposit. Simultaneously with an appeal request, an affected resident may submit a request for waiver of appeal fees based on a showing of undue financial burden. If the request for waiver is granted, no fee shall apply. If the request for waiver is denied, the affected resident shall submit payment of the fee within three (3) days after notice of the waiver request has been denied. Failure to timely submit the fee will result in dismissal of the appeal.

F. **Incompleteness.** Applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If an application is incomplete, the Director may notify the applicant in writing, and specifying the material omitted from the application. A failure to notify the applicant of any defect or omission does not relieve the applicant of its burden of proof on the merits and the City reserves the right to deny the application if all necessary information was not provided by the applicant.

G. **Denials Without Prejudice/Extensions.** To promote efficient review and timely decisions, if the applicant fails to tender a substantive response to the Director within 90 calendar days after the Director deems the application incomplete in a written notice to the applicant, the Director may, in the Director's discretion, deny the application without prejudice. However, if the applicant submits a written request to the Director prior to the 90th day that shows good cause to grant an extension, the Director may instead grant a written extension for up to an additional 30 calendar days for the applicant to tender a substantive response.

Section 12.02.070. Findings; Decisions; Consultants.

A. Findings Required for Approval.

- (1) Except for eligible facilities requests, the Director or Hearing Officer, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - (i) The facility is not detrimental to the public health, safety and welfare, **and will not pose an undue fire risk;**

- (ii) The facility complies with this Chapter and all applicable design and development standards;
 - (iii) The facility meets applicable requirements and standards of state and federal law;
 - ~~(iv) The application is complete and provides all information required by this Chapter; and~~
 - ~~(v) The applicant has satisfied the burden of proving full compliance with all procedural and substantive requirements in this Chapter.~~
- (2) For eligible facilities requests, the Director or Hearing Officer, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
- (i) That the application qualifies as an eligible facilities request in that:
 - a. The proposed colocation or modification meets each and every one of the applicable criteria for an eligible facilities request stated in 47 C.F.R. 1.6100(b)(3)-(9), ~~or any successor provisions~~, after application of the definitions in 47 C.F.R. 1.6100(b). The director shall make an express finding for each criterion ~~that applies and for any criterion found not to apply the director shall make independent findings justifying the determination that a criterion does not apply;~~
 - b. The ~~existing~~ **proposed** facility complies with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in 47 C.F.R. 1.6100(b)(7)(i) through (iv), ~~or any successor provisions~~; and
 - c. That the proposed facility will comply with all generally-applicable laws, ~~including generally applicable building, structural, electrical and safety codes, noise control ordinances, and other laws codifying objective standards reasonably related to health and safety.~~

B. Decisions. Decisions on an application by the Director or Hearing Officer shall be in writing and include the reasons for the decision.

C. Independent Consultants. The Director or Hearing Officer, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise and appropriate credentials in telecommunications and/or electrical and fire safety in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, engineering analysis, or compliance with FCC radio frequency emissions limits.

Section 12.02.080. **Standard Conditions of Approval.**

~~A.~~ Each wireless right-of-way permit approved pursuant to this Chapter shall be subject to the conditions of approval in the Resolution that adopted the Engineering, Design and Location Standards, and Conditions of Approval for Wireless Communications Facility in the Public Right-of-Way. If no conditions are imposed in the WRP or if the application is deemed approved by operation of law, then

~~the standard permit conditions of approval in such Resolution shall apply to that permit. **Generally.** In addition to any supplemental conditions imposed by the Director or Hearing Officer, as the case may be, all permits under this Chapter shall be subject to the conditions in the design standards and standard conditions of approval resolution adopted by the City Council, unless modified by the Director or Hearing Officer.~~

Section 12.02.090. Breach; Termination of Permit.

A. **For breach.** A WRP may be revoked for failure to comply with the conditions of the permit or applicable law or if the permittee becomes ineligible for franchise rights under state law or if the permittee's FCC authorization to operate wireless facilities and/or provide wireless service is terminated for any reason. Upon revocation, the wireless facility must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.

B. **For installation without a permit.** A wireless facility or its modification installed after the effective date of this Ordinance without a WRP (except for those exempted from, or not subject to, this Chapter) must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with enforcement of this provision and removal shall be paid by entities who own or control any part of the wireless facility.

C. **Violations.** In addition to any criminal, civil or other legal remedy established by law that may be pursued to address violations of the Municipal Code, violations of any provision of this chapter or the regulations adopted by this Chapter are subject to the administrative penalty provisions of Chapter 1.10.

Section 12.02.100. Nondiscrimination. In establishing the rights, obligations and conditions set forth in this Chapter, it is the intent of the City to treat each applicant or public right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the ROW.

B. Subsection A of Section 1.10.040 of Chapter 1.10 (Administrative Citations and Penalties) of Title 1 (General Provisions) of the Malibu Municipal Code is hereby amended to read as follows:

- A. In addition to any criminal, civil or other legal remedy established by this code or other law that may be pursued to address violations of the municipal code or the City's Local Coastal Program Local Implementation Plan, violation of the City's Local Coastal Program Local Implementation Plan (or any condition of any permit or license approved pursuant to any provision of the City's Local Coastal Program Local Implementation Plan) to the extent allowed by law, and the violations described in the municipal code titles,

chapters and sections listed below are subject to the administrative penalty procedures and other provisions of this chapter:

1. Chapter 5.04: Business Licenses Generally;
2. Chapter 5.20: Motion Pictures, Television and Photographic Productions;
3. Chapter 5.46: Prohibition of Price Gouging;
4. Chapter 8.04: Health Code Adopted;
5. Chapter 8.12: Fire Code Adopted;
6. Chapter 8.24: Noise;
7. Chapter 8.32: Solid Waste and Recyclable Materials;
8. Chapter 9.08: Offenses Against Property;
9. Chapter 9.20: Water Conservation;
10. Chapter 9.24: Ban on Expanded Polystyrene Food Packaging;
11. Chapter 9.28: Ban on Plastic Shopping Bags;
12. Chapter 9.33: Share On-Demand Personal Mobility Devices;
13. Chapter 9.38: Valet Attendant Safety Requirements;
14. Chapter 9.40: Ban of On-Site Self-Regenerating Water Softeners and Regulating Previously Installed Self-Regenerating Water Softeners
15. Chapter 10.18: Oversize Vehicles;
16. Chapter 12.02: Wireless Facilities in Public Right of Way
17. Chapter 13.04: Storm Water Management and Discharge Control
18. Chapter 13.60: Recycled Water Requirements;
19. Chapter 15.04: Building Code Adopted;
20. Chapter 15.08: Electrical Code Adopted;
21. Chapter 15.12: Plumbing Code Adopted;
22. Chapter 15.16: Mechanical Code Adopted;
23. Title 17: Zoning.

SECTION 3. Environmental Review.

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (CEQA) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or

conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles within five working days of the passage and adoption of the Ordinance.

SECTION 4. Pending Applications All applications for wireless facilities in the public rights-of-way or for modifications to existing wireless facilities in the public rights-of-way which were not subject to final action by City prior to the effective date of this Ordinance shall be subject to and comply with all provisions of this Chapter, and any design and placement standards adopted by the City Council by resolution, to the fullest extent permitted by applicable law.

SECTION 5. Severability If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 6. The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 24th day of June 2024.

STEVE UHRING, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

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

TREVOR RUSIN, Interim City Attorney

ORDINANCE NO. 519

AN ORDINANCE OF THE CITY OF MALIBU DETERMINING THE PROPOSED CODE AMENDMENTS ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, APPROVING THE CALIFORNIA COASTAL COMMISSION SUGGESTED MODIFICATIONS TO LOCAL COASTAL PROGRAM AMENDMENT (LCPA) NO. 16-007 SPECIFICALLY LOCAL IMPLEMENTATION PLAN SECTIONS 2.2 AND 3.16, CHAPTER 13 AND APPENDIX 1 (TABLE B PERMITTED USES) (LOCAL COASTAL PROGRAM AMENDMENT NO. 16-007) AND CORONALLY AMENDMENTS TO MALIBU MUNICIPAL CODE (MMC) CHAPTER 17.46 (WIRELESS TELECOMMUNICATIONS ANTENNAS AND FACILITIES) SPECIFICALLY SECTIONS 17.62.040(A)(6), 17.08.040(O), 17.18.030(E), 17.22.040(M), 17.30.030(O), 17.32.030(A), 17.36.030(B), 17.38.030(B), 17.38.030(C), 17.18.020(E), 17.22.020(O), 17.24.020(A), 17.26.020(A), 17.28.020(A), 17.30.020(A), 17.34.020(B), AND 17.36.020(C) (ZONING TEXT AMENDMENT NO. 16-005), AN AMENDMENT TO THE LOCAL COASTAL PROGRAM TO MODIFY REGULATIONS, PROCEDURES, AND APPLICATION REQUIREMENTS FOR THE INSTALLATION OF WIRELESS COMMUNICATIONS FACILITIES, AND REPEALING ORDINANCE NO. 484

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

SECTION 1. Recitals.

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

B. The City of Malibu is designated as a Very High Fire Hazard Severity Zone. The City was devastated by major fires in 2007 and 2018 due to power pole failures. In the case of the 2007 fire, wireless communications facilities contributed to the overburdened power pole. The 2018 Woolsey Fire, which affected Malibu and other parts of Los Angeles County, consumed over 96,000 acres, destroyed at least 1,643 structures, killed three people, and prompted the evacuation of more than 295,000 people. It was one of several fires in California that ignited on the same day. Malibu has still not recovered. The 2007 fire burned 3,836 acres, 36 vehicles and 14 structures, including Castle Kashan and the Malibu Presbyterian Church, and damaged 19 other structures. It is essential that wireless communications facilities be engineered to prevent fire and withstand fire events as much as possible, and at least in a manner comparable to other commercial facilities with extensive, complicated electronics and wiring and flammable, sometimes hazardous and toxic, materials on site.

C. Cities retain the authority over decisions regarding the placement, construction, and modification of personal wireless service facilities, subject to those matters where that authority has been limited or removed by state or federal law.

D. The unrestricted installation of personal wireless service facilities is contrary to the City's efforts to stabilize economic and social aspects of neighborhood environments, to satisfy

health, safety and aesthetic objectives, to maintain property values by not degrading the visual and economic value of adjoining properties, especially in residential areas, and to promote family environments and a rural residential community character within the City to the maximum extent allowed by law. The City should exercise its powers to protect its citizens and its right to exercise all available power and right over its own property and regulate the use and occupation of that property, while nonetheless respecting and adhering to the law as it may be and may change as the result of judicial review, potential state or federal statutory changes or valid rule amendments by the Federal Communications Commission (FCC).

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

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

- On August 2, 2018, the FCC adopted a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, 33 FCC Red. 7705 (rel. Aug. 3, 2018) (the "August Order"), that, among other things, contained a declaratory ruling prohibiting express and de facto moratoria for all personal wireless services, telecommunications services and their related facilities under 47 U.S.C. § 253(a) and directed the Wireless Telecommunications Bureau and Wireline Competition Bureau to hear and resolve all complaints on an expedited basis. The declaratory ruling in the August Order was made effective upon release of the August Order which occurred on August 3, 2018;
- On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, 33 FCC Red. 9088 (rel. Sep. 27, 2018) (the "September Order"), which, among many other things, created new shorter "shot clocks" for small wireless facilities (as defined in the September Order), shortened existing "shot clock" regulations to require local public agencies to do more in less time, established a national standard for an effective prohibition related to small wireless facilities and provided that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition. The September Order went into effect in part on January 14, 2019, and in part on April 15, 2019;
- On August 12, 2020, a three-judge panel of the Ninth Circuit Court of Appeals upheld the August Order and significant portions of the September Order, including the shorter shot clocks and remedies for failing to meet a shot clock;

- On October 22, 2020, the Ninth Circuit Court of Appeals denied a petition for *en banc* review of the above-referenced panel's decision;
- On June 9 and October 27, 2020, the FCC adopted Declaratory Orders and Reports and Orders providing clarifications and/or rule changes relating to the short shot clock, deemed granted remedy and qualifying criteria for "eligible facilities requests" which are applications for modifications to existing wireless communications facilities which must be approved by local authorities according to federal law;
- In April, 2018 and January, 2021 the FCC adopted Declaratory Rulings preempting municipal ordinances in Philadelphia and Chicago that regulated satellite dishes by prohibiting placement of satellite dishes in locations visible to adjacent streets, imposing installer certification and imposing removal requirements, under the over-the-air reception devices ("OTARD") rule; and
- On January 7, 2021 the FCC adopted a Report and Order amending the OTARD rule to now allow fixed wireless providers to install hub or relay antennas on one property that can provide service to nearby properties so long as the antenna serves a customer on whose premises it is located.

G. In light of the FCC Orders and related court decisions, the City deems it to be necessary and appropriate to enact additional standards and regulations, consistent with federal and state law limitations on that authority.

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

I. If not adequately regulated, the installation of wireless communications facilities within the City can pose a threat to the public health, safety, and welfare; traffic and pedestrian safety hazards due to the unsafe location and placement of wireless communications facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; creation of visual and aesthetic blights and potential safety concerns arising from improper design or excessive size, heights, noise, or lack of camouflaging of wireless communications facilities, including the associated pedestals, meters, equipment and power generators; reduce property values and/or frustrate Malibu's longstanding effort to have a rustic, residential and welcoming look and feel and a comfortable, safe community, all of which may negatively impact the City and its citizens.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. Environmental Review.

Pursuant to Public Resources Code Section 21080.9, the California Environmental Quality Act (CEQA) does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This application is for an amendment to the LCP, which must be certified by the CCC before it takes effect. LCP Local Implementation Plan (LIP) Section 1.3.1 states that the provisions of the LCP take precedence over any conflict between the LCP and the City's Zoning Ordinance. In order to prevent an inconsistency between the LCP and the City's Zoning Ordinance, if the LCP amendment is approved, the City must also approve the corollary amendment to the Zoning Ordinance. This amendment is necessary for the preparation and adoption of the LCPA and because they are entirely dependent on, related to, and duplicative of, the exempt activity, they are subject to the same CEQA exemption.

This Ordinance is not a project within the meaning of CEQA Guidelines Section 15378, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance was a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt because the City Council's adoption of the Ordinance would be covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance would not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless communications facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct a preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless communications facilities on a particular site, the installation would be exempt from CEQA review in accordance with State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The City Council, therefore, determines that the proposed ordinance is exempt from CEQA.

SECTION 3. Zoning Text Amendment and Findings.

A. The subject ZTA is consistent with the objectives, policies, general land uses and programs specified in the General Plan. The proposed amendment serves to enhance the Malibu General Plan Mission Statement, protect public safety and preserve Malibu's natural and cultural resources. The following General Plan policies and implementation measures would be advanced as part of this Ordinance:

- Policy 1.1.2: The City shall minimize the risk of loss from fire.
- Policy 1.1.3: The City shall reduce the amount of non-essential toxic and hazardous substances.
- Implementation Measure 2: Work with other agencies to ensure effective and efficient fire suppression, prevention and rescue services.

- Implementation Measure 11: Develop guidelines and standards for all new and remodel structures to utilize fire-resistant building materials and designs, and, if feasible, to be sited to minimize fire hazards.
- Implementation Measure 19: Regulate the transport, storage and use of toxic and hazardous materials.

B. The City Council held a public hearing, reviewed the subject ZTA for compliance with the City of Malibu General Plan, MMC and LCP, and finds that the proposed ZTA is consistent with the same and hereby amends the Malibu Municipal Code as set forth in Exhibit A.

SECTION 4. Local Coastal Program Amendment and Findings. Based on evidence in the whole record, the City Council hereby finds that the proposed LCPA meets the requirements of and is in compliance with the policies and requirements of Chapter 3 of the California Coastal Act as follows and hereby amends the LCP local implantation plan as set forth in Exhibit B:

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

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

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

SECTION 5. Effective Date In accordance with California Government Code section 36937, this Ordinance shall become effective on the 30th day following its passage and adoption, except for the amendment to the Local Coastal Program. The LCPA is subject to certification by the California Coastal Commission and shall become effective after certification.

SECTION 6. Pending Applications All applications for wireless facilities on land other than public ROW or for modifications to existing wireless facilities in the public rights-of-way which were not subject to final action by City prior to the effective date of this Ordinance shall be subject to and comply with all provisions of this Chapter, and any design and placement standards adopted by the City Council by resolution, to the fullest extent permitted by applicable law.

SECTION 7. Severability If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining

section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 8. The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 24th day of June 2024.

STEVE UHRING, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

Date: _____

APPROVED AS TO FORM:

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

TREVOR RUSIN, Interim City Attorney

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

Exhibit A

A. Strike the following MMC Sections: 17.62.040(A)(6), 17.08.040(0), 17.18.030(E), 17.22.040(M), 17.30.030(0), 17.32.030(A), 17.36.030(B), 17.38.030(B), 17.38.030(C), 17.18.020(E), 17.22.020(0), 17.24.020(A), 17.26.020(A), 17.28.020(A), 17.30.020(A), 17.34.020(B), 17.36.020(C).

B. MMC Chapter 17.46 is amended as follows:

CHAPTER 17.46 WIRELESS COMMUNICATIONS FACILITIES

17.46.010 Purpose and objectives.

A. Purpose. The purpose and intent of this Chapter is to provide a uniform and comprehensive set of standards for the development, siting and installation of wireless communication facilities and antennas, other than those exempt under Section 17.46.020(B). The regulations contained herein are designed to protect and promote the public health, safety and community welfare and the aesthetic quality and value of the City as set forth within the goals, objectives and policies of the general plan, while at the same time providing for managed development of wireless communications infrastructure.

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

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

17.46.020 Scope.

A. There shall be a type of permit entitled a "Wireless Permit (WP)," which shall be subject to all of the requirements of this Chapter. Unless exempted, every person who desires to place or modify a wireless communications facility must obtain a WP authorizing the placement or modification in accordance with this Chapter. The WP shall be obtained in one of the following ways, based on facility type:

- I. Type I: The installation or modification of a facility that qualifies as a small cell facility, or eligible facilities request, or collocation of a non-small cell facility; or
2. Type 2: (a) the installation or modification of all wireless facilities that do not qualify as Type I; and (b) any WP application that includes a waiver request pursuant to MMC Section 17.46.060(C).

B. Exemptions. Installation of the following antennas and/or appurtenant equipment which comply with all applicable requirements and standards pertaining to radio frequency (RF) emissions are not required to obtain a Wireless Permit:

1. Antennas designed to receive video programming signals from direct broadcast satellite (DBS) services, residential fixed wireless communications, multi-channel multi-point distribution providers (MMD) or television broadcast stations in all zoning districts are exempted, provided that all of the following conditions are met:
 - a. The antenna will be accessory to an existing use and measures thirty-nine (39) inches (one meter) or less in diameter.
 - b. The antenna will be installed in a location where it is not readily visible from the public right-of-way.
 - c. The antenna will not be located within a required setback area, driveway or parking space.
2. Amateur radio antenna (including ham and short wave) provided the antenna is the minimum height necessary to be effective and does not exceed the maximum base building height for the zoning district in which it is located by more than fifteen (15) feet.
3. Communications facilities exempt from the provisions of this chapter by operation of state or federal law.
4. Wireless communication facilities in the public right-of-way and subject to the requirements of Chapter 12.02.
5. The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.
6. Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing functional facilities.

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

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

17.46.030 Administration.

A. Reviewing Authority. For Type 1 applications, the Planning Director or their designee ("Director") is the reviewing authority responsible for taking action on the application. For Type 2 applications, the Planning Commission is the reviewing authority and will hold a public hearing to take action on the application.

B. Heightened Review. Type 1 applications other than eligible facilities requests proposing installations in the following areas shall automatically be processed as Type 2

applications and subject to heightened review: all Residential, Planned Development, and Mobilehome Zoning Districts.

C. Applications subject to heightened review must meet the findings required in MMC Section 17.46.110(A) and (B). Applications qualifying as eligible facilities requests must meet the findings in MMC 17.46.110(C). All other Applications must meet the findings required in Section 17.46.110(A).

D. As part of the administration of this Chapter and in addition to authority granted pursuant to other provisions of this Title 17, the Director may:

1. Extend or shorten deadlines where necessary to be consistent with state and federal laws and regulations;
2. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued; and
3. Take such other steps as may be required to timely act upon applications for placement of wireless communications facilities, including entering into agreements to mutually extend the time for action on an application.

E. Appeals.

1. Type 1 Applications.

a. Any person adversely affected by a decision of the Director pursuant to this Chapter may request an administrative hearing to appeal the Director's decision. In order to request a hearing, the person shall submit to the City Clerk in the manner directed in the Director's decision notice a fully completed request for administrative hearing form along with a full amount of the appeal fee set by the City Council (by way of check or money order). The request for administrative hearing shall be incomplete if it does not include the appeal fee in the full amount.

b. Appeals must be filed within ten (10) calendar days of the mailing of decision notice of the Director, unless a different time period is specified by the Director in such notice. The Director may extend the time period for filing an appeal for due cause, but an extension may not be granted where such extension would result in approval of the application by operation of law. If a timely and complete request for hearing is not submitted, the Director's decision shall be deemed final.

c. If a timely and complete request for hearing is submitted, the City Manager shall appoint an administrative hearing officer or, if designated by action of the City Council, two members of the Planning Commission and a member of the City Council ("Hearing Officer") to conduct the administrative hearing. The Hearing Officer shall decide the issues de novo. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. The appellant and the applicant shall have the opportunity to present evidence in support of their case.

d. Any administrative hearing shall be conducted so that a timely written decision may be issued in accordance with applicable law.

e. The hearing officer's decision shall be in writing, shall explain the basis for the decision, and shall be served upon the applicant, and upon the appellant (if different) by first class mail, to the address stated on the request for hearing form.

and the written decision of the Hearing Officer will be the final decision of the City effective on the date of mailing.

2. Type 2 Applications.

a. Any person adversely affected by a decision of the Planning Commission pursuant to this Chapter may request a public hearing to appeal the Planning Commission's decision to the City Council. In order to request a hearing, the person shall submit to the City Clerk in the manner directed in the Planning Commission's decision notice a fully completed request for a public hearing form along with the full amount of the appeal fee set by the City Council (by way of check or money order). The request for a public hearing shall be incomplete if it does not include the deposit in the full amount of the appeal fee. The deposit will be retained in a noninterest bearing account until the matter is resolved. The appeal fee shall be refunded to the appellant if their appeal is granted.

b. Appeals must be filed within ten (10) calendar days of the mailing of decision notice of the Planning Commission, unless a different time period is specified by the City in such notice. The City may extend the time period for filing an appeal for due cause, but an extension may not be granted where such extension would result in approval of the application by operation of law.

c. If a timely and complete request for hearing is not submitted, the Planning Commission's decision shall be deemed final.

d. Any public hearing shall be conducted so that a timely written decision may be issued in accordance with applicable law. The City Council's review shall be de novo; it may receive new evidence and is not bound by the previous record.

e. The City Council's decision shall be in writing, shall explain the basis for the decision, and shall be served upon the applicant, and upon the appellant (if different) by first class mail, to the address stated on the request for hearing form. The written decision of the City Council will be the final decision of the City effective on the date of mailing.

17.46.040 Definitions.

"Antenna" means a typically metallic device used for radiating or receiving radio waves. "Antenna, building mounted sites" means antennas which are located and/or mounted on an existing building's exterior walls.

"Antenna, Roof-Mounted" means an antenna, and its associated support structure, that is attached to a roof of a building or similar structure.

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

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

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

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

"Eligible Facilities Request or EFR" shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, as defined by FCC regulations (47 C.F.R. Section 1.6100), involving:

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

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

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

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

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

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

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

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

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in (i) through (iv).

"FCC" is the Federal Communications Commission or its lawful successor.

"Personal Wireless Services" shall have the same meaning as set forth in 47 U.S.C. Section 332(C)(7)(C)(i).

"Personal Wireless Services Facility" means a wireless communications facility used for the provision of personal wireless services.

"Person Adversely Affected" means the applicant, or owners/occupants who reside within a 1,000-foot radius of the project property.

"Public Right-of-Way, or ROW" means any public street, public way or public place within the City limits, either owned by the City or dedicated to the public for the purpose of travel and which the City has the responsibility to maintain or manage. The term includes all or any part of the entire width of right-of-way, and above and below the same, whether or not such entire area is actually used for travel purposes.

"Small Cell Facility" shall have the same meaning as "small wireless facility" in 47 C.F.R. 1.6002(1), or any successor provision (which is a personal wireless services facility that meets the following conditions ~~that, solely for convenience, have been set forth below~~):

(1) The facility-

(i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47

C.F.R. Section 1.1320(d), or

(ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or

(iii) does not extend an existing structure on which ~~it is~~are located to a height of more than 50

feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;

(5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and

(6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).

"Support Structure" Any structure capable of supporting a base station and/or antenna.

"Stealth facility" (or "stealth facilities") means a wireless communications facility designed to look like something other than a wireless tower or base station.

"Wireless communications facilities" means the wiring, cables, electronic equipment, transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s).

17.46.050 Health and safety.

A. No wireless communications facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health, safety or welfare. All wireless communications facilities shall be designed by qualified, licensed persons to provide the maximum protection that is technically feasible to prevent electrical and fire hazards. All wireless facilities should be proactively monitored and maintained to continue and, if possible, improve the safety design.

B. No facility or combination of facilities shall produce at any time power densities or exposure levels in any general population area that exceed the applicable FCC standards for radiofrequency (RF) emissions.

17.46.060 Standards for Wireless Communications Facilities.

A. Generally. Wireless communications facilities, except qualifying eligible facilities requests, shall meet the minimum requirements set forth in this Chapter, in addition to the requirements of any other applicable law. Compliance with one or more of the development, engineering, design and location standards of this Section may be waived on a case-by-case basis pursuant to section 17.46.060(C) below.

B. Engineering, Design, and Location Standards. The City Council may adopt by resolution the Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless Communications Facilities on Land Other than Public Right-of-Way. All applications shall comply with the engineering, design and location standards for wireless communications facilities set forth in this ChapterOrdinance and such Resolution, as amended.

C. Waivers of Development Standards. Requests for waivers from any requirement development standard of this Chapter or the standards and wireless regulations set forth in the City Council resolution shall be made in writing to the Director.

1. A waiver may be requested: (1a) to avoid a denial of an application that would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations; or (2b) if compliance with a development standard would be technically infeasible; or (c) if the particular engineering, design, or location proposed involves only minor non-compliance with a development standard for the technical or design reasons specified in the Resolution described in Section 17.46.060(C), as amended. A request for waiver may be granted only if it is demonstrated through clear and convincing evidence that the standard for the waiver has been met.
2. All waivers approved pursuant to this subsection shall only be granted on a case-by-case basis based on substantial evidence if the decision-maker affirmatively finds (as applicable): (a) for a waiver requested under 1(a), that denial based on strict adherence to the standard would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or

regulations, and the standard is waived only to the minimum extent required to avoid the prohibition or violation; (b) for a waiver requested under 1(b), that compliance with a standard would be technically infeasible and the proposed wireless facility complies with the requirements to the greatest extent technically feasible; (c) for a waiver requested under 1(c), that such non-compliance is minor but either results in no increase in visual harms to the community or provides other benefits, and failure to adhere to the standard in the specific instance will not increase the visibility of the facility and will not decrease public safety, and will not result in greater impact to coastal resources including sensitive habitat, coastal waters, and public access. ~~only on a case-by-case basis, and (2) narrowly tailored so that the requirements of this Chapter or the standards in the City Council resolution are waived only to the minimum extent required to address the request.~~

17.46.070 Standard conditions of approval.

Each wireless permit approved pursuant to this Chapter shall be subject to the conditions of approval in the Resolution that adopted the Engineering, Design and Location Standards, and Conditions of Approval for Wireless Communications Facility on Land Other than Public Right-of-Way. If no conditions are imposed in the WP or if the application is deemed approved by operation of law, then the standard permit conditions of approval in such Resolution shall apply to that permit.

17.46.080 Minimum application requirements.

A. Applicants shall submit applications on the forms and in the manner approved by the Planning Director. In addition to providing all required fees, all wireless communications facility carriers or providers shall provide the information required by a separate application form published, and updated from time to time, by the City. If no such form is available, then the applicant must submit all documents, information, and any other materials necessary to allow the City to make required findings and ensure that the proposed facility will comply with applicable laws and not endanger the public health, safety, or welfare. The Director may waive certain submittal requirements if prohibited by applicable law or require additional information based on the characteristics of specific projects.

B. Pre-application meeting. Prior to filing an application to install or modify a wireless communications facility subject to this Chapter, the applicant is encouraged to schedule a voluntary pre-application meeting with the Planning Department to discuss the proposed facility, the requirements of this Chapter, and any potential impacts of the proposed facility. Conducting a voluntary pre-application meeting shall not initiate any applicable "shot clock."

C. Public Notice. In addition to any other noticing requirements:

1. Within seven (7) calendar days after an application is submitted to the City, the applicant shall: (1) post notice at the proposed project site in a location near to and visible to the public and (2) provide the City with evidence that such notice has been posted. The applicant shall maintain and replace the posted notice as necessary during the entire

application review process until the Director or Planning Commission, as applicable, acts on the application and all appeals have been exhausted. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for at least 180 calendar days. The posted notice shall be at minimum 17 inches wide by 11 inches tall. The posted notice shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, or pedestrians. The City encourages applicants to consult with the Planning Department on placement locations to avoid any potential hazards.

2. Within five (5) business days from the date on which an application is determined to be complete, the Director shall notify in writing of the filing of the application property owners and residents of all property within a one thousand (1,000) foot radius of the proposed project, but in no event fewer than the owners and occupants often (10) developed properties. The purpose of the notice is to inform the surrounding property owners and residents of the filing of the application and provide an opportunity for comment on the application prior to the approving authority's decision. The notice shall describe the request, provide a map showing the specific location of the proposed project, describe the review process and timeframes, indicate how to contact the applicant and case planner assigned to the application, and the City-assigned application identifier.

D. Fire Department Review. After submittal by the applicant, the applicable application materials shall be transmitted to the Fire Department for its review and any recommended conditions.

17.46.110 Findings for Approval.

A. For all wireless communications facilities subject to Chapter 17.46, other than eligible facilities requests, the approving authority shall approve the proposed project provided it makes the following findings:

1. The facility is not detrimental to the public health, safety, and welfare and will not pose an undue fire risk;
2. The facility complies with Chapter 17.46 and all applicable design and development standards; and
3. The facility ~~meets applicable requirements and standards of~~ ~~complies with~~ state and federal law.

For all Type 2 applications pursuant to Section 17.46.020(A)(2), other than eligible facilities requests, that are proposed to be located in a residential, planned development or mobilehome zoning district, the approving authority shall also make the following finding:

4. The facility could not feasibly be located within any other zoning district in the City.
- B. All eligible facilities requests subject to Chapter 17.46 must be approved on the basis of the application and other materials or evidence provided in review thereof provided the approving authority makes the following findings:
1. The proposed colocation or modification meets each and every one of the applicable criteria for an eligible facilities request stated in 47 C.F.R. 1.6100(b)(3)-(9), or any successor provisions, after application of the definitions in 47 C.F.R. 1.6100(b). The approving authority shall make an express finding for each criterion;

2. The proposed facility complies with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment,

provided this limitation only applies to any modification that would not exceed the thresholds identified in 47 C.F.R. 1.6100(b)(7)(i) through (iv), or any successor provisions; and

3. That the proposed facility will comply with all generally applicable laws, including generally applicable building, structural, electrical and safety codes, noise control ordinances, and other laws codifying objective standards reasonably related to health and safety.

17.46.120 Permit review, renewal and revocation procedure.

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

B. At any time, the Planning Director may initiate proceedings to hold a public hearing before Planning Commission to revoke a Wireless Permit issued pursuant to this Chapter. Notice of such a hearing shall be the same as that required for a new WP. Grounds for revocation shall be limited to a finding that (1) the owner or operator has abandoned the facility, (2) the facility is no longer in compliance with either the general requirements or design standards of this title in effect at the time of approval, (3) the facility no longer complies with the conditions of approval and the owner or operator has failed to bring the facility into compliance within ninety (90) days after the Director sends a notice requiring the facility to be brought into compliance, (4) the facility does not comply with applicable FCC or FAA regulations, including those related to RF emissions, (5) the WP was obtained in a fraudulent manner, or (6) if the Director determines that the facility poses a threat to the public health, safety, or welfare or is creating a nuisance.

Exhibit B

LIP Section 2.2 is amended as follows:

2.2. WIRELESS COMMUNICATIONS DEFINITIONS

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

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

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

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

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

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

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

ELIGIBLE FACILITIES REQUEST or EFR - ~~shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.~~ Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, as defined by FCC regulations (47 C.F.R. Section 1.6100), involving:

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

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

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

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or

base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

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

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

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

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

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in (i) through (iv).

FCC - is the Federal Communications Commission or its lawful successor.

MUNICIPAL INFRASTRUCTURE - City-owned or controlled property structures, objects, and equipment in the ROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the ROW.

~~PERMITTEE—Any person or entity granted a wireless ROW permit pursuant to this Chapter.~~

PERSONAL WIRELESS SERVICES - shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

PERSONAL WIRELESS SERVICES FACILITY - A wireless communications facility used for the provision of personal wireless services.

PROFESSIONAL ENGINEER or PE - is as defined by Business and Professions Code Section 6701, and shall be interpreted to refer to the specific appropriate engineering branch in issue as defined in Sections 6702 through 6703 and “supervision of the construction of engineering structures” as defined in Section 6703.1.

PUBLIC RIGHT-OF-WAY, OR ROW - Any public street, public way or public place within the City limits, either owned by the City or dedicated to the public for the purpose of travel and which the City has the responsibility to maintain or manage. The term includes all or any part of the entire

width of right-of-way, and above and below the same, whether or not such entire area is actually used for travel purposes.

SMALL CELL FACILITY - shall have the same meaning as “small wireless facility” in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions ~~that, solely for convenience, have been set forth below~~):

(1) The facility—

(i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or

(ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or

(iii) does not extend an existing structure on which ~~it is~~^{are} located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;

(5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x);
and

(6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).

SUPPORT STRUCTURE - Any structure capable of supporting a base station and/or antenna.

STEALTH FACILITY - A wireless communications facility designed to look like something other than a wireless tower or base station.

UNDERGROUND AREAS - Those areas where there are no electrical facilities or facilities of a local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

UTILITY POLE - A structure in the ROW designed to support electric, telephone and similar utility lines. For the avoidance of doubt, any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities is not a utility pole.

~~WIRELESS ROW PERMIT OR WRP—A permit issued pursuant to this Chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the ROW; and the modification of any existing support structure to which the wireless facility is proposed to be attached.~~

WIRELESS COMMUNICATIONS FACILITIES - The wiring, cables, electronic equipment, transmitters, antenna structures and other types of installations used for the provision of wireless

services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s).

LIP Section 3.16 is repealed and replaced with the following:

3.16. WIRELESS COMMUNICATIONS FACILITIES

3.16.1 Purpose and objectives

A. Purpose. The purpose and intent of this Section is to provide a uniform and comprehensive set of standards for the development, siting and installation of wireless communication facilities and antennas, ~~other than those exempt under Section 3.16.2(C).~~ The regulations contained herein are designed to protect and promote the public health, safety and community welfare and the aesthetic quality and value of the City as set forth within the goals, objectives and policies of the General Plan and Local Coastal Program, while at the same time providing for managed development of wireless communications infrastructure.

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

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

3.16.2 ~~Wireless~~ Permit Requirements

A. ~~Unless exempted, e~~Every person who desires to place a wireless communications facility in the public rights-of-way or modify an existing wireless facility in the public rights-of-way must obtain a ~~Wireless ROW Permit (WRP)~~Coastal Development Permit pursuant to Chapter 12.02 of the Malibu Municipal Code authorizing the placement or modification, unless the requirement for a Coastal Development Permit is exempt or waived pursuant to Section 13.4. Additionally, a Wireless ROW (WRP) is required pursuant to the Malibu Municipal Code where shown in LIP Table B (Permitted Uses). ~~Except for small cell facilities, eligible facilities requests, or any other type of wireless facility expressly allowed in the public right of way by state or federal law.~~

1. ~~Exemptions. Installation of the following antennas and/or appurtenant equipment which comply with all applicable requirements and standards pertaining to radio frequency (RF) emissions are not required to obtain a WRP:~~
 - a. ~~The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.~~
 - b. ~~Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer~~

~~than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing functional facilities.~~

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

1. Type 1: The installation or modification of a facility that qualifies as a small cell facility, or eligible facilities request, or collocation of a non-small cell facility; or
2. Type 2: (a) the installation or modification of all wireless facilities that do not qualify as Type 1; and (b) any ~~WP~~ application that includes a waiver of development standards request.
3. Exemptions. Installation of the following antennas and/or appurtenant equipment which comply with all applicable requirements and standards pertaining to radio frequency (RF) emissions are not required to obtain a ~~WP~~Coastal Development Permit:

- a. Antennas designed to receive video programming signals from direct broadcast satellite (DBS) services, residential fixed wireless communications, multi-channel multi-point distribution providers (MMD) or television broadcast stations in all zoning districts are ~~exempted~~, provided that all of the following conditions are met:
 - i. The antenna will be accessory to an existing use and measures thirty-nine (39) inches (one meter) or less in diameter.
 - ii. The antenna will be installed in a location where it is not readily visible from the public right-of-way.
 - iii. The antenna will not be located within a required setback area, driveway or parking space.
- b. Amateur radio antenna (including ham and short wave) provided the antenna is the minimum height necessary to be effective and does not exceed the maximum base building height for the zoning district in which it is located by more than fifteen (15) feet.
- c. Communications facilities exempt from the provisions of this Section by operation of state or federal law.
- ~~d. The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.~~
- ~~e. Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing functional facilities.~~

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

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

E. Public Use. Except as otherwise provided by California law, any use of the public right-of-way authorized pursuant to this chapter will be subordinate to the City's use and use by the public.

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

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

3.16.3 Health and safety

A. No wireless communications facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health, safety or welfare. All wireless communications facilities shall be designed by qualified, licensed persons to provide the maximum protection that is technically feasible to prevent electrical and fire hazards. All wireless facilities should be proactively monitored and maintained to continue and, if possible, improve the safety design.

B. No facility or combination of facilities shall produce at any time power densities or exposure levels in any general population area that exceed the applicable FCC standards for radiofrequency (RF) emissions.

3.16.4 ~~General~~ Standards for Wireless Communications Facilities

- A. A. Generally. Wireless communications facilities, except qualifying eligible facilities requests, shall meet the minimum requirements set forth in this Section and all applicable provisions of the LCP, in addition to the requirements of any other applicable law., ~~unless (1) a waiver is required~~ Compliance with one or more of the development standards of this Section may be waived on a case-by-case basis pursuant to section 17.46.060(C) below, to avoid a denial of an application that would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations; or (2) for the technical or design reasons specified in the Design and Location Standards and Conditions of Approval for Wireless Communications Facilities in the Public Right of Way and Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless Communications Facilities on Land Other than Public Right of Way adopted by separate resolutions and as amended. Waivers shall only

~~be granted on a case-by-case basis, and shall be narrowly tailored so that the requirements are waived only to the minimum extent required to address the request~~

~~B. — Wireless communications facilities shall be installed and modified in a manner that does not interfere with the use of public or private property or the use of the public right-of-way, in that it minimizes risks to public safety, avoids aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way, makes facilities stealth by using concealment elements, and otherwise maintains the integrity and character of the neighborhoods in which the facilities are located and does not impede views; ensures that installations are subject to periodic review to minimize the intrusion on public rights-of-way and public and private property; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public or cause personal or economic harm, interfere with the primary uses of public or private property or the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate facilities or public property.~~

~~CB. Engineering, Design, and Location Standards. All applications shall comply with the following engineering, design and location standards for wireless communications facilities set forth in this Chapter and the Design and Location Standards and Conditions of Approval for Wireless Communications Facilities in the Public Right-of-Way and Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless Communications Facilities on Land Other than Public Right-of-Way adopted by separate resolutions and as amended.~~

1. All Wireless Communications Facilities.

A. All wireless facilities shall be engineered and designed to minimize the visual impact by means of placement, screening, camouflaging, painting and texturing and to be compatible with existing architectural elements, building materials and other site characteristics. The applicant shall use the smallest and least visible antenna possible to accomplish the facility's objectives. All antennas and support structures shall be painted and/or textured to achieve architectural compatibility with the structures for which they are attached and/or located.

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

B. The materials used shall be non-reflective and non-flammable. Cabinet doors must be designed to stay securely closed, and openings in all facilities shall be shielded or made the smallest size feasible to protect against fire and wind-blown embers.

C. The pole, or other support structure, and all equipment shall be designed to withstand forces from seismic events.

D. All connections between various components of the facility, power lines, and conduit shall be designed in a manner to protect against damage by a natural disaster, a vehicular accident, an act of vandalism or similar external forces.

E. Stealth. Wireless facilities shall be stealth. Stealth elements and techniques should be used to blend the facility with surrounding materials and colors of the support structure and make the facility appear to be something other than a wireless facility. Stealth elements include, but are not limited to, the following:

1. Radio frequency (RF) transparent screening or shrouds;
2. Matching the color of the existing support structure by painting, coating, or otherwise coloring the wireless facility, equipment, mounting brackets, and cabling;
3. Placing cables and wires inside the pole or beneath conduit of the smallest size possible;
4. Minimizing the size of the site;
5. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site; and
6. Using paint of durable quality.

F. Co-location. The use of existing infrastructure is preferred. Wireless facilities shall be collocated on existing poles or other facilities when possible. No permittee shall restrict access to an existing antenna location if required to co-locate by the City and if possible to do so.

G. Minimum Height. All antennas shall be located such that: (1) any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half feet below the transmitting surface; and (2) no person at ground level will be exposed to an exposure level that is higher than allowed by the FCC's general population exposure rules.

H. Fire Safety Standards and Process.

1. All wireless facilities designs shall include:
 - a. a power shut off, such as by means of rapid entry Knox or similar type systems shall be installed;
 - b. surge protection devices capable of mitigating a direct or partial direct lightning discharge; and
 - c. surge protection devices capable of mitigating significant electrical disturbances that may enter the facility via conductive cables.
2. After submittal by the applicant, the applicable application materials shall be transmitted to the Fire Department for its review and any recommended conditions.

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

A. Strand-mounted Facilities. Strand-mounted facilities are encouraged. The facilities must be stealth and of the smallest size that is technically feasible to reduce aesthetic impacts.

B. Pole-Mounted Facilities.

1. Facilities on Streetlight Poles

- a. Stealth. The facility shall be engineered, designed, painted, coated, and otherwise made to maintain the look of a streetlight pole rather than a wireless facility, tower, or base station.
- b. Antennas and RRUs. Antennas shall be top-mounted in a shroud, and RRUs and other equipment shall be placed underground. If RRUs and equipment cannot be underground, then they shall be placed within the shroud with the antenna. RRUs attached to the side of the pole or ground-mounted are discouraged, but if they are required due to technical reasons, they should use the smallest RRU volume possible and be stacked vertically and close together with minimal distance from the pole.
- c. Dimensions. Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume. Pole-top wireless facilities, including shroud, shall be no more than 60 inches in height and 14.5 inches in diameter.
- d. Cables and Wiring. All cables and wiring must be within the pole.

2. Facilities on Wood Utility Poles.

- a. Stealth. The facility shall be engineered, designed, painted, coated, and otherwise made to maintain the look of a utility pole rather than a wireless facility, tower, or base station.
- b. Antennas. The preferred mounting type for wireless facilities on wood utility poles is side-mounting.
 - i. Side-mounted Facilities. Antennas and RRUs shall be midpole mounted (i.e., mid-pole mounted) in a shroud. If RRUs are attached to the side of the pole, the facility should use the smallest RRU volume possible, and the RRUs should be stacked vertically and close together with minimal distance from the pole.
 - (1) Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume.
 - (2) Side-mounted wireless facilities shall be of the smallest size technically feasible and shall not project from the pole more than 30 inches. The diameter of the shroud shall be no greater than the diameter of the pole or 14.5 inches, whichever is less. Side-mounted facilities shall only extend out on one side of the pole.
 - ii. Top-mounted Facilities. Antennas and RRUs shall be top-mounted in a shroud. Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume. Pole-top wireless facilities, including shroud, shall be no more than 72 inches in height and 14.5 inches in diameter.

3. Cables and Wiring. All cables and wiring must be within the conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.

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

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

D. New (Non-Replacement) Poles.

1. Waiver of Development Standard Required. New poles are prohibited, unless a waiver of development standard is approved by the City pursuant to Section 3.16.4(C) below to prevent a prohibition of service.
2. Design. New poles (including antenna) shall have a maximum height of 28 feet and a maximum diameter of 14 inches, and any base enclosure shall not exceed 24 inches in width or height. If existing poles are present in the surrounding area, then the new pole shall be designed to resemble the existing poles in appearance, color, materials, and distribution pattern/spacing.
3. New wooden poles are prohibited, unless required to match existing poles in the area surrounding the proposed installation site.
4. Cables and Wiring. All cables and wiring on non-wood poles must be within the pole. All cables and wiring on wood poles must be within the conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.
5. Antennas and RRUs. Antennas and RRUs shall be contained within the pole and its base or underground.
6. Stealth. The facility must be stealth.

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

A. Facade-Mounted Equipment. Facade-mounted antennas and equipment shall be architecturally integrated into the building, or other support structure, design and otherwise made as unobtrusive as possible so that the facility does not appear to be a wireless facility. Antennas and equipment should be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Facade-mounted facilities shall generally not extend more than eighteen (18) inches out from and

may not project above the building face. Facade-mounted wireless telecommunication facilities shall not exceed twenty-eight (28) feet in height above the ground. However, antenna elements, mounted flush on the facade of an existing structure that exceeds twenty-eight (28) feet, may have a height equal to the height of the building.

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

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

~~DC.~~ Waiver of Development Standards. Requests for waivers from any ~~requirement~~ development standard of this Section 13.6.4 ~~or the standards and wireless regulations set forth in the City Council resolution~~ shall be made in writing to the Director as part of the CDP application.

1. A waiver may be requested ~~+(1)~~ (a) to avoid a denial of an application that would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations; or (b) if compliance with a development standard would be technically infeasible; or (c) if the particular engineering, design, or location proposed involves only minor non-compliance with a development standard; ~~or (2) for the technical or design reasons specified in the Resolution described in Section 17.46.060(C), as amended. A request for waiver may be granted only if it is demonstrated through clear and convincing evidence that the standard for the waiver has been met.~~ Waivers shall comply with requirements for processing of coastal development permits and appeals consistent with the LCP.
2. All waivers approved pursuant to this subsection shall only be granted on a case-by-case basis based on substantial evidence if the decision-maker affirmatively finds (as applicable): (a) for a waiver requested under 1(a), that denial based on strict adherence to the standard would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, and the standard is waived only to the minimum extent required to avoid the prohibition or violation; (b) for a waiver requested under 1(b), that compliance with a standard of this Section 13.6.4 would be technically infeasible and the proposed wireless facility complies with the requirements of this Section to the greatest extent technically feasible; (c) for a waiver requested under 1(c), that such non-compliance is minor but either results in no increase in visual harms to the community or provides other benefits, and failure to adhere to the standard in the specific instance will not increase the visibility of the facility and will not decrease public safety, and will not result in greater impact to coastal resources including sensitive habitat, coastal waters, and public access. ~~(1) granted only on a case-by-case basis, and (2) narrowly tailored so that the requirements of this Section or the standards in the City Council resolution are waived only to the minimum extent required to address the request.~~

3.16.5 Standard conditions of approval

~~Each WRP and WF approved pursuant to this Section shall be subject, respectively, to the conditions of approval in the Design and Location Standards and Conditions of Approval for Wireless Communications Facilities in the Public Right of Way and Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless Communications Facilities on Land Other than Public Right of Way adopted by separate resolutions and as amended. If no conditions are imposed in the WRP or WP if the application is deemed approved by operation of law, then the standard permit conditions of approval in the respective Resolution shall apply to that permit.~~

3.16.6 ~~Minimum application requirements~~

~~A. Applicants shall submit applications on the forms and in the manner approved by the Planning Director. In addition to providing all required fees, all wireless communications facility carriers or providers shall provide the information required by a separate application form published, and updated from time to time, by the City. If no such form is available, then the applicant must submit all documents, information, and any other materials necessary to allow the City to make required findings and ensure that the proposed facility will comply with applicable laws and not endanger the public health, safety, or welfare. The Director may waive certain submittal requirements or require additional information based on the characteristics of specific projects.~~

~~B. Public Notice. In addition to any other noticing requirements:~~

~~1. Within seven (7) calendar days after an application is submitted to the City, the applicant shall: (1) post notice at the proposed project site in a location near to and visible to the public and (2) provide the City with evidence that such notice has been posted. The applicant shall maintain and replace the posted notice as necessary during the entire application review process until the Director or Planning Commission, as applicable, acts on the application and all appeals have been exhausted. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for at least 180 calendar days. The posted notice shall be at minimum 17 inches wide by 11 inches tall. The posted notice shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, or pedestrians. The City encourages applicants to consult with the Planning Department on placement locations to avoid any potential hazards.~~

~~2. Within five (5) business days from the date on which an application is determined to be complete, the Director shall notify in writing of the filing of the application property owners and residents of all property within a one thousand (1,000) foot radius of the proposed project, but in no event fewer than the owners and occupants of ten (10) developed properties. The purpose of the notice is to inform the surrounding property owners and residents of the filing of the application and provide an opportunity for comment on the application prior to the approving authority's decision. The notice shall describe the request, provide a map showing the specific location of the proposed project, describe the review process and timeframes, indicate how to contact the applicant and case planner assigned to the application, and the City assigned application identifier.~~

~~C. Fire Department Review. After submittal by the applicant, the applicable application materials shall be transmitted to the Fire Department for its review and any recommended conditions.~~

3.16.7 Permit review, renewal and revocation procedure

A. The City finds that the technology associated with communications equipment is subject to rapid changes and upgrades as a result of industry competition and customer demands, and anticipates that communications antennas and related equipment with reduced visual impacts will be available from time to time with comparable or improved coverage and capacity capabilities. There may also be advancements and enhancements with regard to design, practice, operations and structural safety. The city further finds that it is in the interest of the public health, safety, and

welfare that communications providers be required to replace older facilities with newer equipment of equal or greater capabilities, reduced visual impacts safety enhancements as technological improvements become available. Therefore, any modifications, other than eligible facilities requests, requested to an existing facility that has been issued a ~~WRP or WP permit~~ shall permit the Planning Director to review the carrier's existing facility to determine whether requiring updates to concealment elements and screening techniques that reduce visual impacts is appropriate if technically feasible, and the Planning Director may require such updates as a condition of approval of such modification.

~~3.16.7 Findings~~

~~A. — A Wireless ROW Permit, other than eligible facilities requests, shall be approved on the basis of the application and other materials or evidence provided in review thereof provided the approving authority makes the following findings:~~

- ~~1. — The facility is not detrimental to the public health, safety, and welfare;~~
- ~~2. — The facility complies with Malibu Municipal Code Chapter 12.02 and all applicable design and development standards;~~
- ~~3. — The facility meets applicable requirements and standards of state and federal law;~~
- ~~4. — The application is complete and provides all information required by Malibu Municipal Code Chapter 12.02; and~~
- ~~5. — The applicant has satisfied the burden of proving full compliance with all procedural and substantive requirements in Malibu Municipal Code Chapter 12.02.~~

~~B. — A Wireless Permits, other than eligible facility requests, shall be approved on the basis of the application and other materials or evidence provided in review thereof provided the approving authority makes the following findings:~~

- ~~1. — The facility is not detrimental to the public health, safety, and welfare and will not pose an undue fire risk;~~
- ~~2. — The facility complies with Chapter 17.46 of the Malibu Municipal Code and all applicable design and development standards; and~~
- ~~3. — The facility complies with state and federal law.~~

~~For all Type 2 applications pursuant to Section 3.16.2(B)(2), other than eligible facilities requests, the approving authority must also make the following finding:~~

- ~~4. — The facility is proposed to be located in a residential, planned development or mobilehome zoning district, that the facility could not feasibly be located within any other district in the City.~~

~~C. — All Wireless ROW Permits and Wireless Permits that qualify as eligible facilities requests shall be approved on the basis of the application and other materials or evidence provided in review thereof provided the approving authority makes the following findings:~~

- ~~1. — The proposed colocation or modification meets each and every one of the applicable criteria for an eligible facilities request stated in 47 C.F.R. 1.6100(b)(3)–(9), after application of the definitions in 47 C.F.R. 1.6100(b). The approving authority shall make an express finding for each criterion that applies and for any criterion found not to apply the approving authority shall make independent findings justifying the determination that a criterion does not apply;~~
- ~~2. — The existing facility complies with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a~~

~~manner that would not exceed the thresholds identified in 47 C.F.R. 1.6100(b)(7)(i) through (iv), or any successor provisions; and~~

~~3. That the proposed facility will comply with all generally applicable laws, including generally applicable building, structural, electrical and safety codes, noise control ordinances, and other laws codifying objective standards reasonably related to health and safety.~~

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

Replace LIP Section 13.4.11 to read as follows:

~~13.4.11 Wireless Communications Facilities and Utility Pole Exemptions:~~

~~1. Pursuant to Section 6409 of the federal Spectrum Act (47 U.S.C Section 1455) and its implementing regulations (47 C.F.R. Section 1.6100), as amended, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall be allowed. The terms used in this subsection shall have the meaning ascribed to them in 47 C.F.R. Section 1.6100(b) or any successor provisions.~~

~~2. The replacement, minor relocation and modifications (including minor increase in height) of existing utility poles to comply with California Public Utility Code requirements. The exemption does not apply when the project has a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands or public views to the ocean. This exemption does not apply when the height of a replacement utility pole would allow a new facility to be added to the pole, such as the installation of a new wireless communications facility.~~

Add section 13.4.112 to read as follows (moving the content previously in Section 13.4.11 to this new section, with the addition of the underlined text below):

13.4.112 General Requirements for De Minimis Waiver

A. General Requirements for De Minimis Waiver.

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

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

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

3. New wireless communications facilities that qualify as small cell facilities ~~that comply with the design standards set forth in the Design and Location Standards for Wireless Communications Facilities in the Public Right of Way and Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless~~

~~Communications Facilities on Land Other than Public Right of Way adopted by separate resolutions and as amended.~~

~~4. The replacement, minor relocation and modifications (including minor increase in height) of existing utility poles to comply with California Public Utility Code requirements when the height of a replacement utility pole would not allow a new facility to be added to the pole, such as the installation of a new wireless communications facility.~~

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

B. Findings for and Reporting of De Minimis Waivers.

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

1. That the ~~OWTS or driveway/road improvements have~~ development has no potential for adverse effects, either individually or cumulatively, on coastal resources.
2. That the ~~OWTS or driveway/road improvements are~~ development is consistent with the certified Malibu Local Coastal Program, including the resource protection policies, as applicable.
3. If an OWTS is to be relocated on the lot, that the director, in consultation with the environmental health administrator, has determined the relocation is necessary to better protect coastal resources.
4. If driveway/road improvements are proposed, that: (a) they are in the same general alignment as the existing road; (b) they are not located in environmentally sensitive habitat area (ESHA); (c) they do not remove or encroach within the protected zone of native trees; and (d) they do not adversely impact visual resources.
5. That the development is not in a location where an action on the development would be appealable to the coastal commission (See Chapter 2 – Definitions).

C. Reporting De Minimis Waiver.

1. At the time the application is submitted for filing, the applicant must post, at a conspicuous place as close to the site as possible that is easily accessible by the public and approved by the city, notice, on a form approved by the city, that an application for a de minimis waiver has been submitted to the city. Such notice shall contain a general description of the nature of the proposed development.
2. The planning director shall issue a notice of determination on the application which shall be reported to the planning commission. The notice of determination shall be provided to all known interested parties, including the executive director of the

coastal commission, at least ten (10) days prior to the waiver determination being reported to the planning commission.

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

D. Waiver Expiration.

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

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

7. Wireless communication facilities ~~other than eligible facility requests or small cell facilities that do not meet the criteria for an exemption or a de minimis waiver.~~

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

13.4.9 ~~Exemption for~~ Temporary Event and Structure

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

Amend Appendix 1 TABLE B PERMITTED USES:

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

RESOLUTION NO. 24-34

A RESOLUTION OF THE CITY OF MALIBU DETERMINING THE PROPOSED AMENDMENTS ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING ENGINEERING, DESIGN AND LOCATION STANDARDS, CONDITIONS OF APPROVAL AND BASIC APPLICATION REQUIREMENTS FOR WIRELESS COMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND REPEALING RESOLUTION NO. 20-65

The City Council of the City of Malibu does hereby find, resolve and order as follows:

SECTION 1. Recitals

A. Chapter 12.02 of the Malibu Municipal Code governs the permitting, installation, and regulation of personal wireless services facilities in the City's public right-of-way (ROW);

B. Section 12.02.050(D) provides that "[a]ll applicants shall engineer, design and locate the wireless facilities in accordance with the standards and wireless regulations set forth separately though the resolution adopted by the City Council;"

C. The City's public rights-of-way are a uniquely valuable public resource, closely linked with the City's character, making the regulation of wireless installations in the public rights-of-way necessary to protect and preserve the aesthetics in the community;

D. Being authorized to do so, the City wishes to establish engineering, design and development standards applicable to wireless installations in the public rights-of-way;

E. The City also wishes to set standard conditions of approval applicable to wireless ROW permits; and

F. On December 9, 2020, the City Council conducted a duly noticed public hearing and received testimony from City staff and all interested parties regarding the engineering, design and development standards. The City Council adopted Resolution No. 20-65.

G. On January 22, 2024, the City Council reviewed the California Coastal Commission (CCC) draft suggested modifications to the relevant amendment to the Local Coastal Program (LCP) and directed staff not to object to them.

H. On February 7, 2024, the CCC held a public hearing and conditionally certified the Local Coastal Program Amendment (LCPA), subject to modifications. Final CCC certification of the LCPA requires formal adoption of the suggested modifications by the Council.

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

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

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

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

M. On June 24, 2024, the City Council conducted a duly noticed public hearing and received testimony from City staff and all interested parties regarding the engineering, design and development standards.

SECTION 2. Purpose The purpose of this document is to (1) establish design and location standards (Standards) for wireless facilities in the public right-of-way (ROW) within the City; and (2) set standard conditions of approval for Wireless ROW Permits (WRPs).

SECTION 3. Definitions For the purposes of these Standards, the definitions set forth in Malibu Municipal Code (MMC) Section 12.02.020 are incorporated by reference into this Resolution and in addition the following definitions apply:

- A. “Park” A parcel, parcels of land or a portion of a parcel intended for active public recreation uses. Parks may include sports fields, playgrounds community buildings and unique or specialized activity areas. Land dedicated for open space and trails are not considered parks for the purposes of this Chapter.
- B. “Playground” A portion of land used for and equipped with public facilities for recreation specially by children. A playground includes the sand or rubberized floor around the apparatus.
- C. “Pole-mounted facility” means a wireless facility that is, or is proposed to be, attached to or contained in a pole.
- D. “School” any building, campus or sports field which is designed, constructed or used for education, instruction or school sports, whether public or private, in any branch of knowledge.
- E. “Stealth facility” (or “stealth facilities”) means a wireless facility designed to look like something other than a wireless tower or base station.

SECTION 4. General Standards for all Facilities. The following standards shall apply to all wireless facilities in the ROW:

- A. All wireless facilities shall be engineered and designed to minimize the visual impact by means of placement, screening, camouflaging, painting and texturing and to be compatible with existing architectural elements, building materials and other site characteristics. The applicant shall use the smallest and least visible antenna possible to accomplish the facility’s objectives. All antennas and support structures shall be painted and/or

textured to achieve architectural compatibility with the structures for which they are attached and/or located.

- B. Prohibition of Generators. Permanent generators are prohibited.
- C. General Orders. All installations shall comply with applicable California Public Utilities Commission (“CPUC”) General Orders, including, but not limited to General Order 95, and, if stricter, the pole owner’s safety standards. None of the engineering or design standards are meant to conflict with or cause a violation of CPUC General Orders. Accordingly, the Standards can be adjusted on a case-by-case basis if it is demonstrated that adjustment is necessary to ensure compliance with CPUC rules on safety.
- D. Electric Service. The permittee shall request that the permittee’s electric service provider apply flat-rate billing for any proposed electric service, wireless smart metering or other alternative metering option that would obviate the need for an above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded “smart meter” that shall not exceed the width of the pole; provided, however that such smart meter shall be placed at least ten (10) feet above ground level. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet, but the Director shall not approve a separate ground-mounted electric meter pedestal unless (1) the separate ground-mounted meter pedestal would be placed off the sidewalk and (2) the applicant demonstrates with clear and convincing evidence that all other alternatives for the electric meter are not available. All support equipment located within cabinets, shelters, or similar structures shall be screened from public view to the maximum extent feasible. Undergrounding of support equipment is required wherever practicable.
- E. Security. All equipment and facilities shall be installed in a manner to avoid being an attractive nuisance and to prevent unauthorized access, climbing, and graffiti.
- F. Safety. All wireless facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the public use of the ROW; impede the flow of vehicular or pedestrian traffic; impair the primary use and purpose of poles/signs/traffic signals or other infrastructure; interfere with outdoor dining areas or emergency facilities; or otherwise obstruct the accessibility of the ROW. Further, all wireless facilities and associated equipment shall comply with Americans with Disabilities Act (ADA) requirements.
- G. Fire and Electrical Safety Standards. All wireless facilities shall contain:
 - 1. A power shut off readily accessible to fire service personnel for emergencies;

2. Surge protection for lightning discharge or other significant electrical disturbances;
 3. Signage as required by the permit conditions, the National Electric Code or the Los Angeles County Fire Department Chief or his or her designee; and
 4. Instructions for first responders to de-energize the equipment.
- H. The facility must at all times comply with all applicable health requirements and standards pertaining to radio frequency emissions.
- I. All antennas shall meet the minimum siting distances to habitable structures required for compliance with FCC regulations and standards governing the environmental effects of radio frequency emissions.
- J. Noise. Wireless facilities and equipment must comply with the City's noise ordinance in MMC 8.24, or any successor provisions, and be designed to prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.
- K. Lighting. Lighting of antenna structures and their electrical support equipment is prohibited, except as required by any order or regulation of the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA) and except for manually operated emergency lights for use when official operating personnel are on site.
- L. Signs. No facility may display any signage or advertisement unless it is expressly allowed by this paragraph or required by law or a permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the owner's unique site number and a local or toll-free telephone number to contact the facility owner's operations center.
- M. Landscaping. Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. In addition to any landscaping used for concealment or screening purposes, the applicant shall replace any existing landscaping displaced during construction or installation of the applicant's facility. The applicant's landscaping plan shall be subject to the City's review and approval but shall, at a minimum, match the existing landscaping and foliage surrounding the installation site consistent with MMC Section 17.53.090. The permittee shall ensure that any vegetation allowed to remain in place under the Fire Code, including vegetation provided for screening, is properly maintained and watered.

- N. All antennas shall be located such that any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half feet below the transmitting surface.

SECTION 5. Location Standards for All Facilities The location standards for all wireless facilities, other than those that qualify as eligible facilities requests, in the ROW are as follows:

- A. Spacing. Wireless facilities located adjacent to any residential zone district, except for those facilities placed on utility poles located along Pacific Coast Highway or other major arterial roadways as depicted in Figure CI-1 of the City's General Plan, shall not be located within one thousand (1,000) feet of any other wireless facility, unless a finding is made, based on technical evidence acceptable to the Planning Director, as appropriate, showing a clear need for the facility and that no technically feasible alternative site exists. This provision does not apply to wireless facilities located adjacent to any commercial zone district.
- B. Location preference for wireless facilities should be given to the following:
1. Installations along major arterial roadways as depicted in Figure CI-1 of the City's General Plan.
 2. Facilities attached to existing utility poles or street lights, or sited adjacent to existing structures not used for human habitation or school grounds or to playgrounds or parks. Whenever possible, facilities shall be located on and/or inside existing structures.
 3. Sites that are not highly visible from adjacent roadways and do not obstruct views of impressive scenes off the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines.
 4. Unless otherwise indicated in this title, no wireless facility shall be installed on an exposed ridgeline unless the facility blends with the surrounding existing natural and man-made environment and a finding is made that no other location is technically feasible.
- C. Discouraged Locations/Zones.
1. Wireless facilities that are within 250 feet from the property line of an open space or recreational area.
 2. Wireless facilities that are less than five hundred (500) feet from school grounds, playgrounds or parks.
 3. Wireless facilities that are less than four hundred fifty (450) feet from any other existing wireless facility within or adjacent to any residential zone district, except for those facilities placed on utility

poles located along Pacific Coast Highway or other major arterial roadways as depicted in Figure CI-1 of the City's General Plan.

- D. Placements shall not be in front of dwelling units or schools.

SECTION 6. Undergrounding Standards for All Facilities With regard to undergrounding wireless facilities, the following standards apply:

- A. Equipment, including remote radio units (RRUs) that cannot be placed with the antenna in the shroud, must be placed underground, subject to Section 7(B) below. Vaults and pull boxes shall be installed flush to grade.
- B. Ground-mounted equipment is prohibited unless required for technical reasons.
 - 1. If required, ground-mounted wireless facilities shall be located near existing structures or trees at similar heights for screening purposes. The equipment shall be enclosed in cabinets, sized only for the necessary equipment. Further, if ground mounted, the antennas, equipment, cabinet and support structure shall be painted, textured, landscaped or otherwise camouflaged as much as possible to integrate the structure into the environment. Colors and materials for facilities shall be non-reflective and chosen to minimize visibility. As such, ground-mounted equipment shall be stealth.
 - 2. The ground-mounted equipment must not obstruct ocean views.
 - 3. Not more than one ground-mounted antenna shall be permitted on each site.

SECTION 7. Engineering and Design Standards for all Facilities The general design standards for wireless facilities in the ROW are as follows:

- A. Basic Requirements. The proposed wireless facility and its supporting structure (if needed) shall be limited to the minimum size necessary to serve the defined service objectives of the wireless service provider or providers that will be using the facility, except where a larger facility has superior concealment elements.
- B. Materials. The materials used shall be non-reflective and non-flammable.
- C. Cabinet doors must be designed to stay securely closed, and openings in all facilities shall be shielded or made the smallest size feasible to protect against fire and wind-blown embers.
- D. The pole, or other support structure, and all equipment shall be designed to withstand forces from seismic events. To that end, all wireless facility sites must be built to the applicable standards of Hardening Requirements

including but not limited to APCO ANSI 2.106.1–2019, or their replacements. The communications tower, pole or structure when fully loaded with antennas, transmitters, and other equipment and camouflaging shall be designed as determined by the Building Official. All equipment mounting racks and equipment used shall be anchored in such a manner that such a quake will not tip them over, throw the equipment off its shelves, or otherwise act to damage it.

- E. All connections between various components of the facility, power lines, and conduit shall be designed in a manner to protect against damage by a natural disaster, a vehicular accident, an act of vandalism or similar external forces.
- F. Stealth. The wireless facility shall be stealth. Stealth elements and techniques should be used to blend the facility with surrounding materials and colors of the support structure and make the facility appear to be something other than a wireless facility. Stealth elements include, but are not limited to, the following:
 - 1. Radio frequency (RF) transparent screening or shrouds;
 - 2. Matching the color of the existing support structure by painting, coating, or otherwise coloring the wireless facility, equipment, mounting brackets, and cabling;
 - 3. Placing cables and wires inside the pole or beneath conduit of the smallest size possible;
 - 4. Minimizing the size of the site;
 - 5. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site; and
 - 6. Using paint of durable quality.
 - 7. Built with weather-resistant materials while permitting weathered treatment for aesthetic reasons and to avoid reflective material.
- G. Curb Setback Requirements. New or replacement poles shall be a minimum of 18 inches from the face of the curb.
- H. Collocation. The City has a preference for the use of existing infrastructure. Wireless facilities shall be collocated on existing poles or other facilities when possible. No permittee shall restrict access to an existing antenna location if required to collocate by the City and if possible to do so.
- I. Minimum Height. All antennas shall be located such that: (1) any person walking adjacent to the transmitting surface of the antenna will be walking

on a grade that is a minimum of eight and one-half feet below the transmitting surface; and (2) no person at ground level will be exposed to an exposure level that is higher than allowed by the FCC's general population exposure rules.

- J. Strand-mounted Facilities. Strand-mounted facilities are encouraged. The facilities must be stealth and of the smallest size that is technically feasible to reduce aesthetic impacts.

SECTION 8. Engineering and Design Standards for Pole-Mounted Facilities In addition to the generally applicable standards set forth above, the design standards for pole-mounted facilities in the ROW are as follows:

A. Facilities on Streetlight Poles.

1. Stealth. The facility shall be engineered, designed, painted, coated, and otherwise made to maintain the look of a streetlight pole rather than a wireless facility, tower, or base station.
2. Antennas and RRUs. Antennas shall be top-mounted in a shroud, and RRUs and other equipment shall be placed underground. If RRUs and equipment cannot be underground, then they shall be placed within the shroud with the antenna. RRUs attached to the side of the pole or ground-mounted are discouraged, but if they are required due to technical reasons, they should use the smallest RRU volume possible and be stacked vertically and close together with minimal distance from the pole.
3. Dimensions. Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume. Pole-top wireless facilities, including shroud, shall be no more than 60 inches in height and 14.5 inches in diameter.
4. Cables and Wiring. All cables and wiring must be within the pole.

B. Facilities on Wood Utility Poles.

1. Stealth. The facility shall be engineered, designed, painted, coated, and otherwise made to maintain the look of a utility pole rather than a wireless facility, tower, or base station.
2. Antennas. The preferred mounting type for wireless facilities on wood utility poles is side-mounting.
 - a. Side-mounted Facilities. Antennas and RRUs shall be mid-pole mounted (i.e., mid-pole mounted) in a shroud. If RRUs are attached to the side of the pole, the facility should use the smallest RRU volume possible, and the

RRUs should be stacked vertically and close together with minimal distance from the pole.

- (1) Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume.
- (2) Side-mounted wireless facilities shall be of the smallest size technically feasible and shall not project from the pole more than 36 inches. A greater projection from the pole may be allowed if required by another agency for safety purposes. The diameter of the shroud shall be no greater than the diameter of the pole or 14.5 inches, whichever is less. Side-mounted facilities shall only extend out on one side of the pole.

b. Top-mounted Facilities. Antennas and RRUs shall be top-mounted in a shroud.

- (1) Dimensions. Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume.
 - (a) Pole-top wireless facilities, including shroud, shall be no more than 72 inches in height and 14.5 inches in diameter.

3. Cables and Wiring. All cables and wiring must be within the conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.

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

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

4. Stealth. The facility should be stealth, as defined above in Section 3(E).

D. New (Non-Replacement) Poles.

1. Waiver Required. New poles are prohibited, unless a waiver is approved by the City to prevent a prohibition of service.
2. Design. New poles (including antenna) shall have a maximum height of 28 feet and a maximum diameter of 14 inches, and any base enclosure shall not exceed 24 inches in width or height. If existing poles are present in the surrounding area, then the new pole shall be designed to resemble the existing poles in appearance, color, materials, and distribution pattern/spacing.
3. New wooden poles are prohibited, unless required to match existing poles in the area surrounding the proposed installation site.
4. Cables and Wiring. All cables and wiring on non-wood poles must be within the pole. All cables and wiring on wood poles must be within the conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.
5. Antennas and RRUs. Antennas and RRUs shall be contained within the pole and its base or underground.
6. Stealth. The facility must be stealth, as defined above in Section 3(E).

SECTION 9. Waivers to These Standards

- A. A waiver may be granted to one or more of these Standards in the following circumstances:
 1. Pursuant to MMC Section 12.02.050(C), if an applicant demonstrates in writing with clear and convincing evidence that: (a) denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations; or (b) if compliance with a development standard would be technically infeasible; or (c) if the particular engineering, design, or location proposed involves only minor non-compliance with a development standard.
 2. All waivers approved pursuant to MMC Section 12.02.050(E) shall only be (1) granted on a case-by-case basis based on substantial evidence if the decision-maker affirmatively finds (as applicable): (a) for a waiver requested under 1(a), that denial based on strict

adherence to the standard would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, and the standard is waived only to the minimum extent required to avoid the prohibition or violation; (b) for a waiver requested under 1(b), that compliance with a standard of these Sections 3-7 would be technically infeasible and the proposed wireless facility complies with the requirements of these Sections to the greatest extent technically feasible; (c) for a waiver requested under 1(c), that such non-compliance is minor but either results in no increase in visual harms to the community or provides other benefits, and failure to adhere to the standard in the specific instance will not increase the visibility of the facility and will not decrease public safety, and will not result in greater impact to coastal resources including sensitive habitat, coastal waters, and public access.

- B. Factors to be addressed in a feasibility study requesting an exception to undergrounding requirements based on feasibility shall include but are not limited to construction impacts (including duration and extent of excavation and soil disturbance); traffic and pedestrian impacts (including impediments to access during construction and maintenance, or permanent impediments due to the nature of particular equipment); operational challenge (such as water, heat, or maintenance complications affecting network reliability); noise impacts (such as venting and pumping which may be required in some instances); cost impacts; aesthetic considerations; and permanent impacts to the integrity and future capacity of public ROW.
- C. Waivers may only be requested at the time an application is initially submitted for a WRP. The request must include both the specific provision(s) from which the waiver is sought and the basis of the request, including all supporting evidence on which the applicant relies. Any request for waiver after the Director has deemed an application complete constitutes a material change to the proposed wireless facility and shall be considered a new application. A request for waiver from one or more requirements does not relieve the applicant from compliance with all other applicable provisions of law or of these Standards.

SECTION 10. Standard Conditions of Approval for Permits Under MMC Chapter 12.02

- A. **Generally.** In addition to any supplemental conditions imposed by the Director of Planning or the Hearing Officer, as the case may be, all permits under MMC Chapter 12.02 shall be subject to the following conditions, unless modified by the approving authority:
 - 1. The permittee, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions

concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project or seeks to hold the City liable in whole or in part as a result of the engineering, design, construction or operation of the facility. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

2. The permittee shall be strictly liable for interference caused by its facilities with city communications systems. The permittee shall be responsible for costs for determining the source of the interference, all costs associated with eliminating the interference (including but not limited to filtering, installing cavities, installing directional antennas, powering down systems, and engineering analysis), and all costs arising from third party claims against the city attributable to the interference.
3. Subsequent submittals for this project shall be in substantial compliance with the plans date-stamped received by the Planning Department on _____. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the agenda report for this project. In the event the project plans conflict with any condition of approval, the condition shall take precedence and revised plans shall be submitted and approved by the Planning Director prior to the Environmental Sustainability Department for plan check.
4. The permit and rights conferred in this approval shall not be effective until the permittee signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 30 days of this decision or prior to issuance of any wireless ROW, building, electrical or encroachment permit.
5. The applicant shall digitally submit a complete set of plans, including the items required in Condition No. 5 to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.
6. This Notice of Decision (including the signed and notarized Acceptance of Conditions Affidavit) shall be copied in its entirety and placed directly onto a separate plan sheet(s) to be included in the development plans prior to submitting any development permits from the City of Malibu Environmental Sustainability Department and encroachment permit.

7. A WRP shall be valid for a period of ten (10) years from issuance, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such wireless ROW permit shall automatically expire, unless an extension or renewal has been granted. A person holding a WRP must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.
8. The installation and construction authorized by a WRP shall be completed within three (3) years after its approval, or it will expire without further action by the City unless prior to the three (3) years the applicant submit an extension request and the City, in its sole discretion, grants a time extension for due cause. The installation and construction authorized by a wireless ROW permit shall conclude, including any necessary post-installation repairs and/or restoration to the ROW, within thirty (30) days following the day construction commenced. The permittee must provide written notice to City within ten (10) days after completing construction, and may not begin operations until all City and Fire Department (if applicable) inspections have been completed and the project is found to be consistent with the permit. The expiration date shall be suspended until an appeal and/or litigation regarding the subject permit is resolved.
9. The Planning Director may grant up to four one-year extensions of the timeline, in Condition 7 above, for completing the installation and construction authorized by a WRP, if the Planning Director finds that the conditions, including but not limited to changes in the wireless ordinance under which the WRP approval was issued, have not significantly changed.
10. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
11. All structures shall conform to the requirements of the Environmental Sustainability Department, City Public Works Department, FCC and Los Angeles County Fire Department requirements, as applicable. Notwithstanding this review, all

required permits, including but not limited to an encroachment permit from the City, shall be secured.

12. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the MMC. An application with all required materials and fees shall be required.

Cultural Resources

13. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required pursuant to MMC Section 17.54.040(D)(4)(b).
14. If human bone is discovered, the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. These procedures require notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Wireless Facility Conditions

15. All antennas shall meet the minimum siting distances to public/uncontrolled areas required for compliance with the FCC regulations and standards governing the environmental effects of radio frequency emissions. Permittee shall keep up-to-date on current information from the FCC in regards to maximum permissible radio frequency exposure levels. In the event that the FCC changes its guidelines for human exposure to radio frequency, permittee shall, within 30 days after any such change, submit to the Planning Director a report prepared by a qualified engineer that demonstrates actual compliance with such changed guidelines. The Director may, at permittee's sole cost, retain an independent consultant to evaluate the compliance report and any potential modifications to the permit necessary to conform to the FCC's guidelines. Failure to submit the compliance report required under this condition, or failure to maintain compliance with the FCC's

guidelines for human exposure to radio frequency at all times shall constitute grounds for permit revocation.

16. All antennas shall be located so that any person walking adjacent to the transmitting surface of the antenna will be walking on a grade, which is a minimum of eight and one-half feet below the transmitting surface.
17. All antennas, equipment, and support structures shall be engineered and designed to prevent unauthorized climbing.
18. The wireless facility shall be erected, operated, and maintained in compliance with the general requirements set forth in the Standards and any specific requirements in the permit.
19. The antenna and electrical support equipment shall, at all times, be operated in a manner that conforms to the applicable health and safety standards, including those referenced in MMC Chapter 12.02 and this Resolution.
20. Wireless facilities and equipment must comply with the City's noise ordinance in MMC 8.24, or any successor provisions, and prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.
21. The installation of a permanent onsite generator and/or other equipment is prohibited. The Planning Director's approval is required if a generator is to be placed onsite for temporary or permanent use.
22. All pole-mounted equipment associated with the application shall be located no lower than eight feet above grade or ground level on the utility pole.
23. The City or its designee may enter onto the facility area to inspect the facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case, shall notify permittee within 24 hours of doing so.
24. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that

testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.

25. Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of five million dollars (\$5,000,000) per occurrence for bodily injury and property damage and six million dollars (\$6,000,000) general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. A true and correct copy of the policy of insurance shall constitute proof of insurance required by this Subsection. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy. Failure to maintain insurance consistent with this Condition shall automatically void the permit, and the permittee shall immediately deenergize and remove the facility from operation. The policy shall not have a pollution or other exclusion which excludes injuries or damages from EMF/Rf exposures.
26. Prior to issuance of a wireless encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to the cost of physically removing the facility and all related facilities and equipment on the site, based on the higher of two contractor's quotes for removal that are provided by the permittee. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.
27. Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a WRP, the permittee shall provide the City with

documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way or City utility easement to be affected by permittee's facilities.

28. The permission granted by a WRP shall not in any event constitute an easement on or an encumbrance against the ROW. No right, title, or interest (including franchise interest) in the ROW, or any part thereof, shall vest or accrue in permittee by reason of a WRP or the issuance of any other permit or exercise of any privilege given thereby.
29. No possessory interest is created by a WRP. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, permittee acknowledges that City has given to permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a WRP may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this WRP.
30. If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on municipal infrastructure. This permit is not a substitute for such agreement.
31. For all facilities located within the ROW, the permittee shall remove or relocate, at its expense and without expense to the City, any or all of its facilities when such removal or relocation is deemed necessary by the City by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way.
32. If a facility is not operated for a continuous period of three (3) months, the WRP and any other permit or approval therefore shall be deemed abandoned and terminated automatically, unless before the end of the three (3) month period (i) the Director has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation or the permittee has

notified the Director of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Director. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned but will not be effective for the entirety thereof until all users cease use thereof.

33. In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.
34. Interference with city communications systems and other governmental emergency systems is prohibited. Further, no permits issued pursuant to this chapter of the City Code establish any guarantee or warranty that Licensee's facility will be free from interference from City or third-party communication systems.

Construction

35. Installation hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No installation activities shall be permitted on Sundays and City-designated holidays. The restricted work hours described in this condition do not apply to emergency maintenance necessary to protect health or property. The City of Malibu may issue a Stop Work Order if permittee violates this condition. Construction activities shall be conducted in compliance with, and abide by, all applicable safety codes.
36. All sites must be designed and build to the standards of ANSI/APCO Public Safety Grade Site Hardening Requirements, also referred to as "APCO ANSI 2.106.1-2019".

37. Site Specific Conditions
38. In the event that the electric service provider does not currently offer an alternative metering option, the permittee shall remove the above-grade electric meter when such option becomes available. Prior to removing the above-grade electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
39. The permittee acknowledges that the City specifically includes conditions of approval related to (a) painting, coloring or finishing the equipment to match the pole; (b) undergrounding all equipment to the extent possible; and (c) installing equipment within shrouds, conduits and risers as concealment elements engineered and designed to integrate the wireless facility with the surrounding built and natural environment; and (d) specific structural, seismic, electrical, fire and operating/maintenance requirements. Any future modifications to the permittee's wireless facility must maintain or improve all concealment elements and safety precautions.
40. Before the permittee submits any applications for construction, encroachment, excavation or other required permits in connection with this permit, the permittee must incorporate a true and correct copy of this permit, all conditions associated with this permit and any approved photo simulations into the project plans (collectively, the "Approved Plans"). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans as determined by the Director or the Director's designee. Any substantial or material alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director's prior review and approval, who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
41. The permittee shall install and at all times maintain in good condition a "Network Operations Center Information" and "RF Caution" sign on the utility pole no less than three (3) feet below the antenna (measured from the top of the sign) and no less than nine (9) feet above the ground line (measured from the bottom of the sign). Signs required under this condition shall be installed so that a person can clearly see the sign as he or she approaches within three (3) feet of the antenna structure. If any person on or

within the public ROW is or may be exposed to emissions that exceed applicable FCC uncontrolled/general population limits at any time the sign shall expressly so state and provide instructions on how persons can avoid any such exposure. The sign shall also include the name(s) of the facility owner(s), equipment owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall not be lighted, unless applicable law, rule or regulation requires lighting. No signs or advertising devices other than required certification, warning, required seals or signage, other signage required by law, this Chapter, any City or applicable state code or the Los Angeles County Fire Department Chief or his or her designee shall be permitted. The sign shall be no larger than two (2) square feet.

42. The permittee shall ensure that all signage complies with FCC Office of Engineering and Technology Bulletin 65, CPUC General Order 95 or American National Standards Institute C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC.
43. In the event that the FCC changes any of radio frequency signage requirements that are applicable to the project site approved herein or ANSI Z535.1, ANSI Z535.2, and ANSI C95.2 standards that are applicable to the project site approved herein are changed, the permittee, within 30 days of each such change, at its own cost and expense, shall replace the signage at the project site to comply with the current standards.
44. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
45. All improvements, including foundations, and appurtenant ground wires, shall be removed from the property and the site restored to its original pre-installation conditions within 90 days of cessation of operation or abandonment of the facility.
46. Build-Out Conditions.
 - a. Permittee shall not commence any excavation, construction, installation or other work on the project site until and unless it demonstrates to the City Public Works Department that the project complies with all generally applicable laws, regulations, codes and other rules related to public health and safety, including without limitation all

applicable provisions in California Public Utilities Commission General Order 95 and MMC Chapters 8.12, 8.24 and 15.08.

- b. To the extent that the pole owner or any provision in the MMC or this resolution require greater or more restrictive standards than contained in California Public Utilities Commission General Order 95 if applicable, those standards shall control.
- 47. Permittee shall at all times maintain compliance with all applicable federal, State and local laws, regulations, ordinances and other rules, including Americans with Disabilities Act (ADA) requirements.
- 48. The permittee shall cooperate with all inspections. The City and its designees reserves the right to support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- 49. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Department at the time of permit issuance and within one business day of permittee's receipt of City staff's written request.
- 50. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
- 51. The site and the facility must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
- 52. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.

Prior to Operation

- 53. The applicant shall request a final Planning Department inspection and final building inspection by the City of Malibu Environmental Sustainability Department immediately after the wireless facility has been installed and prior to the commencement of services.
- 54. Within thirty (30) calendar days following the installation of any wireless facilities, the applicant shall provide to the Planning

Department with a field report prepared by a qualified engineer verifying that the unit has been inspected, tested, and is operating in compliance with FCC standards. Specifically, the on-site post-installation radiofrequency (RF) emissions testing must demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety guidelines for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit. Such report and documentation shall include the make and model (or other identifying information) of the unit tested, the date and time of the inspection, a certification that the unit is properly installed and working within applicable FCC limits, and a specific notation of the distance from the transmitter at which the emissions are equal to or less than the uncontrolled/general population limit.

55. The operation of the approved facility shall commence no later than one (1) month after the City completes its post-installation inspection of the facility, any issues with the facility are resolved, and the City receives the RF testing report required in the condition of approval above, or the wireless ROW permit will expire without further action by the City.

Fixed Conditions

56. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.

Eligible Facilities Requests

In addition to all of the other conditions of approval placed on a WRP, all permits for an eligible facilities request under MMC Chapter 12.02 shall be subject to the following additional conditions, unless modified by the approving authority:

57. Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
58. The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

59. The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

Small Cell Facilities

In addition to the other conditions of approval placed on a WRP, all permits for a small cell facility under MMC Chapter 12.02 shall be subject to the following additional condition, unless modified by the approving authority:

60. The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

SECTION 11. Basic Application Requirements for Permits Under MMC Chapter 12.02.

- A. Generally. In addition to providing all required fees, all wireless telecommunication facility applicants shall provide the information required by a separate application form published, and updated from time to time, by the City. If no such form is available, then the applicant must submit all documents, information, and any other materials necessary to allow the City to make required findings and ensure that the proposed facility will comply with applicable laws and not endanger the public health, safety, or welfare. Such information may include:
1. Contact information for:
 - a. Applicant and their representatives
 - b. Owner of proposed wireless communications facility
 - c. If different from facility owner, the identity of the person or entity responsible for operating the proposed wireless facility
 - d. The property owner or owner of the structure on which the proposed wireless facility would be installed
 - e. Names, addresses, telephone numbers, and email addresses of anyone acting on behalf of the applicant with regard to the application;
 - f. The name, address and phone number of all persons that prepared or assisted in preparing the application and any required reports;
 - g. The postal address, parcel number, or utility pole identifier of the property;
 - h. The location of the schools, playgrounds and parks within 500 feet of the project site;
 - i. Local contact person for emergencies

2. Purpose of new wireless communications facility or amendment
3. Type of Application (Select all that apply)
 - a. Eligible Facilities Request
 - b. Small Cell – Collocation
 - c. Small Cell – New Structure
 - d. Collocation (Non-Small Cell)
 - e. All Other Wireless Communications Facilities
 - f. Permit Renewal
 - g. Waiver
4. Letter of authorization signed by the property owner authorizing the applicant to submit and process the application, including executed copies of any leases, letters of agency, or proof of ownership, of private property involved in the project.
5. Authorizations, and Licenses
6. Provide previous approvals, if applicable, and Certificate of Completion. Site inspection fees may apply if a final inspection was never requested
7. Identify all other required permits and approvals for the subject facility.
8. Electrical and Structural Safety Information. The following engineering documents prepared under the responsible charge of and sealed by a California licensed Professional Engineer must be included in the application:
 - a. A short circuit and coordination study (“SCCS”) calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
 - b. A one-line diagram of the electrical system;
 - c. Voltage Drop & Load Flow Study;
 - d. Load Calculation;
 - e. Panel Directories;
 - f. A plot plan showing the location of the mounting structure including address, or structure designation, or GPS location on the front sheet;
 - g. A plot plan showing the location of the service disconnecting means; and
 - h. An elevation drawing of the equipment and the service disconnecting means.
9. Structural Safety Information. The structural/civil engineering documents prepared under the responsible charge of and sealed by a California licensed professional civil engineer.
 - a. Photo simulations, from at least three different angles, showing the pole and streetscape before and after

-
- installation. In some cases, more than three different angles may be required;
- b. The azimuth, size and center-line height location of all proposed and existing antenna(s) on the supporting structure;
 - c. The number, type and model of the antenna(s) that will be used with a copy of the specification sheet;
 - d. The make, model, type and manufacturer of any tower involved and a design plan stating the tower's capacity to accommodate multiple users;
 - e. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - (1) A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - (2) A site plan describing the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - (3) A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - (4) A depiction of all existing and proposed utility runs and points of contact.
 - (5) A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
 - f. Detailed map with locations of the poles or other property on which equipment is to be located, including specific pole identification number, if applicable, and the areas it will service;
 - g. Description as to why the desired location is superior to other similar locations, from a community perspective, including, but not limited to:
 - (1) Proximity to residential buildings and descriptions of efforts to prevent any blocking of views of impressive scenes; and
 - (2) Written documentation demonstrating a good faith effort to locate the proposed facility in the least intrusive location in accordance with the location requirements of this Resolution.
 - h. A description in writing and a visual rendering demonstrating effective screening of all ground-mounted or roof-mounted equipment of the facility from view.

- i. Color-coded carrier-generated RF Coverage (propagation) maps, at a scale no smaller than 1 inch (1”) to a quarter (1/4) mile with all appropriate legends, showing the coverage for the highest and lowest frequencies to be used by the facility. Frequencies are to be stated numerically, not qualitatively. Provide a represented value in dB of each colors it specifically represents.
- j. If the project involves, modifies or will use an existing facility or structure, a description of the type of structure (e.g., guyed, self-supporting lattice or monopole), and a report on the physical condition of the facility certified by a professional engineer licensed in the state of California.
- k. If the application is for a new tower, clear and convincing technical evidence by a carrier or wireless service provider justifying the total height of the proposed facility and the need for such to the exclusion of all reasonable alternatives. Evidence in the form of propagation studies must include all modeling data and assumptions used to produce the studies at the requested height and should take into consideration the ability to collocate other carriers in the future.
- l. A siting analysis which identifies other feasible locations within or outside the City which could serve the area intended to be served by the facility, unless the applicant provides compelling technical reasons for providing fewer than the minimum.
- m. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, in that it will not cause members of the general public to be exposed to RF levels that exceed the emissions levels deemed safe by the FCC. A copy of the fully completed FCC form “A Local Government Official’s Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A” titled “Optional Checklist for Determination of Whether a Facility is Categorically Excluded” for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of “effective radiated power.”
- n. A statement detailing the frequency, modulation and class of service of radio or other transmitting equipment;
- o. A copy of the FCC license applicable for the intended use of the proposed facilities;

-
- p. A HazMat Business Plan for all new generators, and any storage and/or use of hazardous materials during the project, to include:
 - i. A list of toxic substances that may develop during arcing or fire that may impede fire suppression efforts;
 - ii. A list of hazards that may develop during arcing or fire that may impede fire suppression efforts;
 - q. A demolition plan, if applicable.
 - r. A written statement of the applicant's willingness to allow other carriers to co-locate on the proposed personal wireless service facility where technically and economically feasible and aesthetically desirable, subject to the qualification that colocation should not occur when public exposures from the resulting higher cumulative sources would exceed FCC limits.
 - s. Such other information as the Director shall establish.
 - t. A statement signed by a person with legal authority to bind the applicant attesting under penalty of perjury to the accuracy of the information provided in the application. If attester not an authorized employee of the applicant, then the attester must demonstrate that it is an authorized agent of the applicant, with lawful Power of Attorney from the applicant.

SECTION 12. Environmental Review

This Resolution is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (CEQA) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Resolution does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Resolution is a "project" within the meaning of State CEQA Guidelines section 15378, the Resolution is exempt from CEQA on multiple grounds. First, the Resolution is exempt CEQA because the City Council's adoption of the Resolution is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Resolution will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Resolution, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Resolution is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land).

SECTION 13. This Resolution will become effective immediately upon adoption.

SECTION 14. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 24th day of June 2024.

STEVE UHRING, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

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

TREVOR RUSIN, Interim City Attorney

RESOLUTION NO. 24-35

A RESOLUTION OF THE CITY OF MALIBU DETERMINING THE PROPOSED AMENDMENTS ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING ENGINEERING, DESIGN AND LOCATION STANDARDS, CONDITIONS OF APPROVAL AND BASIC APPLICATION REQUIREMENTS FOR WIRELESS COMMUNICATIONS FACILITIES ON LAND OTHER THAN PUBLIC RIGHT-OF-WAY AND REPEALING RESOLUTION NO. 21-17

The City Council of the City of Malibu does hereby find, resolve and order as follows:

SECTION 1. Recitals

A. Malibu Municipal Code (MMC) Chapter 17.46 governs the permitting, installation, and regulation of wireless communications facilities in the City, other than those in the public right-of-way, which are subject to MMC Chapter 12.02.

B. Section 17.46.060(D) provides that “[a]ll applicants shall engineer, design and locate the wireless communications facilities in accordance with the standards and wireless regulations set forth separately though the resolution adopted by the City Council.”

C. Being authorized to do so, the City wishes to establish engineering, design and development standards applicable to wireless installations.

D. The City also wishes to set standard conditions of approval and basic application requirements applicable to wireless permits.

E. On April 12, 2021 the City Council conducted a duly noticed public hearing and received testimony from City staff and all interested parties regarding the and the standards, conditions and requirements.

F. On January 22, 2024, the City Council reviewed the California Coastal Commission (CCC) draft suggested modifications to the relevant amendment to the Local Coastal Program (LCP) and directed staff not to object to them.

G. On February 7, 2024, the CCC held a public hearing and conditionally certified the Local Coastal Program Amendment (LCPA), subject to modifications. Final CCC certification of the LCPA requires formal adoption of the suggested modifications by the Council.

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

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

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

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

L. On June 24, 2024, the City Council conducted a duly noticed public hearing and received testimony from City staff and all interested parties regarding the engineering, design and development standards.

SECTION 2. Purpose. The purpose of this document is to (1) establish design and location standards (Standards) for wireless communications facilities on land other than public right-of-way; (2) set standard conditions of approval for Wireless Permits (WPs); and (3) set basic application requirements for WPs.

SECTION 3. Definitions. For the purposes of these Standards, the definitions set forth in Malibu Municipal Code (MMC) Section 17.46.040 are incorporated by reference into this Resolution and in addition the following definitions apply:

- A. “Park” A parcel, parcels of land or a portion of a parcel intended for active public recreation uses. Parks may include sports fields, playgrounds community buildings and unique or specialized activity areas. Land dedicated for open space and trails are not considered parks for the purposes of this Chapter.
- B. “Playground” A portion of land used for and equipped with public facilities for recreation specially by children. A playground includes the sand or rubberized floor around the apparatus.
- C. “Pole-mounted facility” means a wireless communications facility that is, or is proposed to be, attached to or contained in a pole.
- D. “School” any building, campus or sports field which is designed, constructed or used for education, instruction or school sports, whether public or private, in any branch of knowledge.
- E. “Stealth facility” (or “stealth facilities”) means a wireless communications facility designed to look like something other than a wireless tower or base station.

SECTION 4. General Standards for all Facilities The following general requirements apply at all times to all wireless communications facilities located in all zoning districts:

- A. All wireless communications facilities shall be engineered and designed to minimize the visual impact by means of placement, screening, camouflaging, painting and texturing and to be compatible with existing

architectural elements, building materials and other site characteristics. The applicant shall use the smallest and least visible antenna possible to accomplish the facility's objectives. All antennas and support structures shall be painted and/or textured to achieve architectural compatibility with the structures for which they are attached and/or located.

- B. Each facility must comply with any and all applicable provisions of the Malibu Municipal Code, including but not limited to provisions of the California Building Code, California Electric Code, California Plumbing Code, California Mechanical Code, and California Fire Code, and any conditions of approval imposed as part of the approval process.
- C. Each facility must comply with any and all applicable regulations and standards promulgated or imposed by any state or federal agency, including, but not limited to, the Federal Communications Commission (FCC) and the Federal Aviation Administration (FAA). Further, all wireless communications facilities, associated equipment and services shall comply with Americans with Disabilities Act (ADA) requirements.
- D. Fire and Electrical Safety Standards. All wireless communications facilities shall contain:
 - 1. A power shut off readily accessible to fire service personnel for emergencies;
 - 2. Surge protection for lightning discharge or other significant electrical disturbances such as electrical disturbances that may enter the facility via conductive cables;
 - 3. Signage as required by the permit conditions, the National Electric Code or the Los Angeles County Fire Department Chief or their designee; and
 - 4. Instructions for first responders to de-energize the equipment.
- E. The facility must at all times comply with all applicable health requirements and standards pertaining to radio frequency emissions.
- F. All antennas shall meet the minimum siting distances to habitable structures required for compliance with FCC regulations and standards governing the environmental effects of radio frequency emissions.
- G. Noise. Wireless communications facilities and equipment must comply with the City's noise ordinance in MMC Chapter 8.24, or any successor provisions, and be designed to prevent noise and sound from being plainly

audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.

- H. Signs. No facility may display any signage or advertisement unless it is expressly allowed by this paragraph, necessary for stealth concealment purposes, or required by law or a permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the owner's unique site number and a local or toll-free telephone number to contact the facility owner's operations center.
- I. Landscaping. Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. In addition to any landscaping used for concealment or screening purposes, the applicant shall replace any existing landscaping displaced during construction or installation of the applicant's facility. The applicant's landscaping plan shall be subject to the City's review and approval but shall, at a minimum, match the existing landscaping and foliage surrounding the installation site consistent with MMC Section 17.53.090. The permittee shall ensure that any vegetation allowed to remain in place under the Fire Code, including vegetation provided for screening, is properly maintained and watered.
- J. All electrical support equipment located within cabinets, shelters, or similar structures shall be screened from public view. Roof-mounted electrical support equipment shall be discouraged. Ground-mounted electrical support equipment shall be encouraged. In addition, under grounding of support equipment is required wherever practicable.
- K. All antennas shall be located such that any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half feet below the transmitting surface.
- L. Lighting. Lighting of antenna structures and their electrical support equipment is prohibited, except as required by any order or regulation of the FCC or the FAA and except for manually operated emergency lights for use when official operating personnel are on site.
- M. A backup power supply must be required for all new wireless communications facilities to the extent allowed by law and in compliance with California Fire Code 1206.2.2.

SECTION 5. Location Standards for All Facilities The location standards for all wireless communications facilities, other than those that qualify as eligible facilities requests, are as follows:

- A. No wireless telecommunication facility shall be located within five hundred (500) feet of any school, playground, or park unless a finding is made, based on technical evidence acceptable to the reviewing authority showing a clear need for the facility and that no technically feasible alternative site exists. Except for facilities installed on the same pole or tower as an existing wireless telecommunication facility, wireless telecommunication facilities located within any residential zone district shall not be located within one thousand (1,000) feet of any other wireless communications facility, except from those facilities placed on utility poles along Pacific Coast Highway, unless a waiver is granted.
- B. All new freestanding wireless communications facilities and monopoles shall be set back a minimum distance of at least one hundred and twenty (120) percent of the height of the facility or monopole from any property line abutting a residentially zoned property. This minimum setback is not subject to the waivers allowed under Section 7 of this Resolution.
- C. Location preference for wireless communications facilities should be given to the following:
 - 1. Property designated non-residential (except for public open space and recreational vehicle park zoning districts), unless otherwise prohibited pursuant to this title.
 - 2. Facilities attached or sited adjacent to existing structures. Whenever possible, facilities shall be located on and/or inside existing structures. Appropriate types of existing structures may include, but are not limited to: buildings, water tanks, telephone poles and utility towers and poles, sign standards, light standards and roadway overpasses.
 - 3. Sites with minimum separation. Sites that are more than five hundred (500) feet from schools, playgrounds, and parks.
 - 4. Sites that are not highly visible from adjacent roadways.
 - 5. Unless otherwise indicated in MMC Chapter 17.46 or these Standards, no wireless facility shall be installed on an exposed ridgeline unless the facility blends with the surrounding existing natural and man-made environment and a finding is made that no other location is technically feasible.
 - 6. The City expressly designates public open space and recreational vehicle park zoning districts, parks and schools as the least appropriate possible locations, and the absolute last choices for siting.

7. The City expressly designates residential zones as disallowed locations. An application other than an eligible facility request seeking to place a wireless facility in a residential zone must demonstrate need through clear and convincing evidence and that there is no technically feasible alternative.

SECTION 6. Engineering and Design Standards for all Facilities The general design standards for wireless communications facilities subject to MMC Chapter 17.46 are as follows:

- A. Basic Requirements. The proposed wireless facility and its supporting structure (if needed) shall be limited to the minimum size necessary to serve the defined service objectives of the wireless service provider or providers that will be using the facility, except where a larger facility has superior concealment elements.
- B. Materials. The materials used shall be non-reflective and non-flammable.
- C. Cabinet doors and other openings must be designed to stay securely closed, and openings in all facilities shall be shielded or made the smallest size feasible to protect against fire and wind-blown embers.
- D. The tower, or other support structure, and all equipment shall be designed to withstand forces from seismic events. To that end, all wireless facility sites must be built to the applicable standards of Hardening Requirements including but not limited to APCO ANSI 2.106.1–2019, or their replacements. The communications tower, pole or structure when fully loaded with antennas, transmitters, and other equipment and camouflaging shall be designed as determined by the Building Official. All equipment mounting racks and equipment used shall be anchored in such a manner that such a quake will not tip them over, throw the equipment off its shelves, or otherwise act to damage it.
- E. All connections between various components of the facility, power lines, and conduit shall be designed in a manner to protect against damage by a natural disaster, a vehicular accident, an act of vandalism or similar external forces.
- F. Stealth. The wireless facility shall be stealth. Stealth elements and techniques should be used to blend the facility with surrounding materials and colors of the support structure and make the facility appear to be something other than a wireless facility. Stealth elements include, but are not limited to, the following:
 1. Radio frequency (RF) transparent screening or shrouds;

2. Matching the color of the existing support structure by painting, coating, or otherwise coloring the wireless facility, equipment, mounting brackets, and cabling;
 3. Placing cables and wires inside the pole or beneath conduit of the smallest size possible;
 4. Minimizing the size of the site;
 5. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site; and
 6. Using paint of durable quality.
 7. Built with weather-resistant materials while permitting weathered treatment for aesthetic reasons and to avoid reflective material.
- G. Minimum Height. All antennas shall be located such that: (1) any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half feet below the transmitting surface; and (2) no person at ground level will be exposed to an exposure level that is higher than allowed by the FCC's general population exposure rules.
- H. Facade-Mounted Equipment. Facade-mounted antennas and equipment shall be architecturally integrated into the building, or other support structure, design and otherwise made as unobtrusive as possible so that the facility does not appear to be a wireless facility. Antennas and equipment should be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Facade-mounted facilities shall generally not extend more than eighteen (18) inches out from and may not project above the building face. Façade-mounted wireless telecommunication facilities shall not exceed twenty-eight (28) feet in height above the ground. However, antenna elements, mounted flush on the facade of an existing structure that exceeds twenty-eight (28) feet, may have a height equal to the height of the building.
- I. Ground-Mounted Equipment. Outdoor ground-mounted equipment associated with base stations shall be avoided whenever feasible. In locations visible or accessible to the public, applicants shall conceal outdoor ground-mounted equipment, including ancillary power generation equipment, with opaque fences or landscape features that mimic the adjacent structure(s) (including, but not limited to, dumpster corrals and other accessory structures) and by painting, texturing, or otherwise concealing the facility as much as possible. Ground-mounted wireless communications facilities shall be located near existing structures or trees

at similar heights for screening purposes where feasible. Not more than one ground-mounted antenna, provided that licensed amateur radio station antennas consistent with MMC 17.46.020(B)(2), shall also be permitted on each site.

- J. **Roof-Mounted Facilities.** Roof-mounted antennas and necessary equipment shall be screened from above if visible from higher elevations. Rooftop-mounted wireless telecommunication facilities shall not exceed twenty-eight (28) feet in height or three (3) feet above the roof parapet from which they are attached, whichever is less restrictive. Associated roof-mounted equipment cabinets shall not extend more than three (3) feet above the roof from which it is attached and shall be set back a minimum of ten (10) feet from the edge of the roof. All roof-mounted equipment cabinets shall be located behind a mechanical screen wall. In the event that a roof parapet wall screens the equipment cabinets, a mechanical screen wall will not be required.
- K. **Freestanding Facilities.** Freestanding facilities requiring a new monopole or other new support structure shall be stealth facilities. Further, they shall be located as close as possible to existing above-ground utilities, such as electrical towers or utility poles (which are not scheduled for removal or under grounding for at least 18 months after the date of application), light poles, trees of comparable heights, and in areas where they will not detract from the appearance of the City.
 - 1. Freestanding wireless telecommunication facilities, including monopoles, shall not exceed twenty-eight (28) feet in height and shall not extend higher than the top of the ridgeline nearest the antenna. The height of a freestanding facility shall be measured from the natural undisturbed ground surface below the center of the base of the tower itself to the tip of the highest antenna or piece of equipment attached thereto.
 - 2. Aside from the antenna itself, no additional equipment may be visible. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the freestanding facility and shall be camouflaged or hidden to the fullest extent feasible without jeopardizing the physical integrity of the facility.
 - 3. Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.
 - 4. All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the

predominant visual background or existing architectural elements so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

5. Monopoles shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility.
- L. All wireless telecommunication facilities shall be designed to prevent unauthorized climbing and graffiti.
- M. Satellite dish or parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.
- N. Support equipment pads, cabinets, shelters and buildings require architectural, landscape, color, fencing, or other camouflage treatment to minimize visual impacts to the extent deemed necessary by the Planning Director. Landscaping screening should also be provided if irrigation water is available.
- O. No freestanding facility or ancillary support equipment may be located between the face of a building and a public street, bikeway, park or residence.

SECTION 7. Waivers of These Standards.

- A. A waiver of one or more of these Standards may be granted in the following circumstances:
 1. Pursuant to MMC Section 17.46.060(C), if an applicant demonstrates to the Planning Commission through clear and convincing evidence that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations; or (b) if compliance with a development standard would be technically infeasible; or (c) if the particular engineering, design, or location proposed involves only minor non-compliance with a development standard.
 2. All waivers approved pursuant to MMC Section 17.46.060(C) shall only be (1) granted only on a case-by-case basis based on substantial evidence if the decision-maker affirmatively finds (as applicable): (a) for a waiver requested under 1(a), that denial based on strict adherence to the standard would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless

services, or otherwise violate applicable laws or regulations, and the standard is waived only to the minimum extent required to avoid the prohibition or violation; (b) for a waiver requested under 1(b), that compliance with a standard of these Sections 4-6 would be technically infeasible and the proposed wireless facility complies with the requirements of this Section to the greatest extent technically feasible; (c) for a waiver requested under 1(c), that such non-compliance is minor but either results in no increase in visual harms to the community or provides other benefits, and failure to adhere to the standard in the specific instance will not increase the visibility of the facility and will not decrease public safety, and will not result in greater impact to coastal resources including sensitive habitat, coastal waters, and public access,

- B. Waivers may only be requested at the time an application is initially submitted for a discretionary permit. The request must include both the specific provision(s) from which waiver is sought and the basis of the request, including all supporting evidence on which the applicant relies. Any request for waiver after the City has deemed an application complete constitutes a material change to the proposed wireless facility and shall be considered a new application. A request for waiver from one or more requirements does not relieve the applicant from compliance with all other applicable provisions of law or of MMC Section 17.46.060.

SECTION 8. Standard Conditions of Approval for Permits Under MMC Chapter 17.46.

- A. **Generally.** In addition to any supplemental conditions imposed by the Planning Director or Planning Commission, as the case may be, all development permits or conditional use permits granted for wireless communications facilities subject to this Chapter 17.46 shall be subject to the following conditions, unless modified by the approving authority:
1. The permittee, and their successors in interest, shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commission, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project, or to hold the City liable in whole or in part as a result of the engineering, design, construction or operation of the facility. The City shall promptly notify the provider(s) of any such claim, action or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.
 2. The permittee shall be strictly liable for interference caused by its facilities with city communications systems. The permittee shall be responsible for costs for determining the source of the interference,

all costs associated with eliminating the interference (including but not limited to filtering, installing cavities, installing directional antennas, powering down systems, and engineering analysis), and all costs arising from third party claims against the city attributable to the interference.

3. Subsequent submittals for this project shall be in substantial compliance with the plans date-stamped received by the Planning Department on _____. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the agenda report for this project. In the event the project plans conflict with any condition of approval, the condition shall take precedence and revised plans shall be submitted and approved by the Planning Director prior to the Environmental Sustainability Department for plan check.
4. The permit and rights conferred in this approval shall not be effective until the permittee signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 30 days of this decision or prior to issuance of any development, conditional use, building, electrical or encroachment permit.
5. The applicant shall digitally submit a complete set of plans, including the items required in Condition No. 6 to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.
6. The Notice of Decision (including the signed and notarized Acceptance of Conditions Affidavit) shall be copied in its entirety and placed directly onto a separate plan sheet(s) to be included in the development plans prior to submitting any development permits from the City of Malibu Environmental Sustainability Department and encroachment permit.
7. A development permit or conditional use permit, as applicable, shall be valid for a period of ten (10) years from issuance, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such development or conditional use permit shall automatically expire, unless an extension or renewal has been granted. A person holding a development permit or conditional use permit must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support

structure owned by City, a utility, or another entity authorized to maintain a support structure need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.

8. The installation and construction authorized by a permit shall be completed within three (3) years after its approval, or it will expire without further action by the City unless prior to the three (3) years the applicant submit an extension request and the City, in its sole discretion, grants a time extension for due cause. The installation and construction authorized by a permit shall conclude, including any necessary post-installation repairs and/or restoration to the property, within thirty (30) days following the day construction commenced. The permittee must provide written notice to City within ten (10) days after completing construction, and may not begin operations until all City and Fire Department (if applicable) inspections have been completed and the project is found to be consistent with the permit. The expiration date shall be suspended until an appeal and/or litigation regarding the subject permit is resolved.
9. The Planning Director may grant up to four one-year extensions of the timeline, in Condition 7 above, for completing the installation and construction authorized by a development or condition use permit, if the Planning Director finds that the conditions, including but not limited to changes in the wireless ordinance under which the permit approval was issued, have not significantly changed.
10. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
11. All structures shall conform to the requirements of the Environmental Sustainability Department, City Public Works Department, FCC and Los Angeles County Fire Department requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from the City, shall be secured.
12. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in

compliance with the MMC. An application with all required materials and fees shall be required.

Cultural Resources

13. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required pursuant to MMC Section 17.54.040(D)(4)(b).
14. If human bone is discovered, the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. These procedures require notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Wireless Facility Conditions

15. All antennas shall meet the minimum siting distances to public/uncontrolled areas required for compliance with the FCC regulations and standards governing the environmental effects of radio frequency emissions. Permittee shall keep up-to-date on current information from the FCC in regards to maximum permissible radio frequency exposure levels. In the event that the FCC changes its guidelines for human exposure to radio frequency, permittee shall, within 30 days after any such change, submit to the Planning Director a report prepared by a qualified engineer that demonstrates actual compliance with such changed guidelines. The Director may, at permittee's sole cost, retain an independent consultant to evaluate the compliance report and any potential modifications to the permit necessary to conform to the FCC's guidelines. Failure to submit the compliance report required under this condition, or failure to maintain compliance with the FCC's guidelines for human exposure to radio frequency at all times shall constitute grounds for permit revocation.

16. All antennas shall be located so that any person walking adjacent to the transmitting surface of the antenna will be walking on a grade, which is a minimum of eight and one-half feet below the transmitting surface.
17. All antennas, equipment, and support structures shall be engineered and designed to prevent unauthorized climbing.
18. The wireless facility shall be erected, operated, and maintained in compliance with the general requirements set forth in the Standards and any specific requirements in the permit.
19. The antenna and electrical support equipment shall, at all times, be operated in a manner that conforms to the applicable health and safety standards, including those imposed by MMC Chapter 17.46 and this Resolution.
20. Wireless communications facilities and equipment must comply with the City's noise ordinance in MMC 8.24, or any successor provisions, and prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.
21. The Planning Director's approval is required if a generator is to be placed onsite for temporary or permanent use.
22. All non-ground-mounted equipment associated with the application shall be located no lower than eight feet above grade or ground level on the monopole or support structure.
23. The City or its designee may enter onto the facility area to inspect the facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case, shall notify permittee within 24 hours of doing so.
24. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.

25. Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of five million dollars (\$5,000,000) per occurrence for bodily injury and property damage and six million dollars (\$6,000,000) general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. A true and correct copy of the policy of insurance shall constitute proof of insurance required by this Subsection. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy. Failure to maintain insurance consistent with this Condition shall automatically void the permit, and the permittee shall immediately deenergize and remove the facility from operation. The policy shall not have a pollution or other exclusion which excludes injuries or damages from EMF/RF exposures.
26. Prior to issuance of a City permit or encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to the cost of physically removing the facility and all related facilities and equipment on the site, based on the higher of two contractor's quotes for removal that are provided by the permittee. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.
27. Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to any permit, the permittee shall provide the City with

documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property to be affected by permittee's facilities.

28. No possessory interest is created by a Wireless Permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, permittee acknowledges that City has given to permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a development or conditional use permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this development or conditional use permit.
29. If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on municipal infrastructure. This permit is not a substitute for such agreement.
30. If a facility is not operated for a continuous period of three (3) months, the Wireless Permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the three (3) month period (i) the Director has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation, or the permittee has notified the Director of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Director. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific

elements or parts thereof that were abandoned but will not be effective for the entirety thereof until all users cease use thereof.

31. In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City otherwise agrees, in its complete discretion, to waive said fees or any part thereof.
32. Interference with city communications systems and other governmental emergency systems is prohibited. Further, no permits issued pursuant to this chapter of the City Code establish any guarantee or warranty that Licensee's facility will be free from interference from City or third-party communication systems.

Construction

33. Installation hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No installation activities shall be permitted on Sundays and City-designated holidays. The restricted work hours described in this condition do not apply to emergency maintenance necessary to protect health or property. The City of Malibu may issue a Stop Work Order if permittee violates this condition. Construction activities shall be conducted in compliance with, and abide by, all applicable safety codes and permit conditions.
34. All sites must be designed and built to the standards of ANSI/APCO Public Safety Grade Site Hardening Requirements, also referred to as "APCO ANSI 2.106.1-2019".

Site Specific Conditions

35. In the event that the electric service provider does not currently offer an alternative metering option, the permittee shall remove the above-grade electric meter when such option becomes available. Prior to removing the above-grade electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.

36. The permittee acknowledges that the City specifically includes conditions of approval related to (a) painting, coloring or finishing the equipment to match the monopole or support structure; (b) undergrounding all equipment to the extent possible; (c) installing equipment within shrouds, conduits and risers as concealment elements engineered and designed to integrate the wireless facility with the surrounding built and natural environment; and (d) specific structural, seismic, electrical, fire and operating/maintenance requirements. Any future modifications to the permittee's wireless facility must maintain or improve all concealment elements and safety precautions.
37. Before the permittee submits any applications for construction, encroachment, excavation or other required permits in connection with this permit, the permittee must incorporate a true and correct copy of this permit, all conditions associated with this permit and any approved photo simulations into the project plans (collectively, the "Approved Plans"). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans as determined by the Director or the Director's designee. Any substantial or material alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director's prior review and approval, who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
38. The permittee shall install and at all times maintain in good condition a "Network Operations Center Information" and "RF Caution" sign on the utility pole no less than three (3) feet below the antenna (measured from the top of the sign) and no less than nine (9) feet above the ground line (measured from the bottom of the sign). Signs required under this condition shall be installed so that a person can clearly see the sign as he or she approaches within three (3) feet of the antenna structure. If any person on or within the property is or may be exposed to emissions that exceed applicable FCC uncontrolled/general population limits at any time the sign shall expressly so state, and provide instructions on how persons can avoid any such exposure. The sign shall also include the name(s) of the facility owner(s), equipment owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall not be lighted, unless

applicable law, rule or regulation requires lighting. No signs or advertising devices other than required certification, warning, required seals or signage, other signage required by law, this Chapter, any City or applicable state code or the Los Angeles County Fire Department Chief or his or her designee shall be permitted. The sign shall be no larger than two (2) square feet.

39. The permittee shall ensure that all signage complies with FCC Office of Engineering and Technology Bulletin 65, CPUC General Order 95 or American National Standards Institute C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC.
40. In the event that the FCC changes any of radio frequency signage requirements that are applicable to the project site approved herein or ANSI Z535.1, ANSI Z535.2, and ANSI C95.2 standards that are applicable to the project site approved herein are changed, the permittee, within 30 days of each such change, at its own cost and expense, shall replace the signage at the project site to comply with the current standards.
41. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
42. All improvements, including foundations, and appurtenant ground wires, shall be removed from the property and the site restored to its original pre-installation conditions within 90 days of cessation of operation or abandonment of the facility.
43. Build-Out Conditions.
 - a. Permittee shall not commence any excavation, construction, installation or other work on the project site until and unless it demonstrates to the City Public Works Department that the project complies with these Conditions along with all applicable laws, regulations, codes and other rules related to public health and safety, including without limitation all applicable provisions in California Public Utilities Commission General Order 95 and MMC Chapters 8.12, 8.24 and 15.08.
 - b. To the extent that a pole owner or any provision in the MMC or this resolution require greater or more restrictive

standards than California Public Utilities Commission General Order 95, if applicable, those standards shall control.

44. Permittee shall at all times maintain compliance with all applicable federal, State and local laws, regulations, ordinances and other rules, including Americans with Disabilities Act (ADA) requirements.
45. The permittee shall cooperate with all inspections. The City and its designees reserve the right to support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
46. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Department at the time of permit issuance and within one business day of permittee's receipt of City staff's written request.
47. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification and removal of the facility.
48. The site and the facility must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
49. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.

Prior to Operation

50. The applicant shall request a final Planning Department inspection and final building inspection by the City of Malibu Environmental Sustainability Department immediately after the wireless facility has been installed and prior to the commencement of services.
51. Within thirty (30) calendar days following the installation of any wireless communications facilities, the applicant shall provide to the Planning Department with a field report prepared by a qualified engineer verifying that the unit has been inspected, tested, and is operating in compliance with FCC standards. Specifically, the on-site post-installation radiofrequency (RF) emissions testing must

demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety guidelines for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit. Such report and documentation shall include the make and model (or other identifying information) of the unit tested, the date and time of the inspection, a certification that the unit is properly installed and working within applicable FCC limits, and a specific notation of the distance from the transmitter at which the emissions are equal to or less than the uncontrolled/general population limit.

52. The operation of the approved facility shall commence no later than one (1) month after the City completes its post-installation inspections of the facility, any issues with the facility are resolved, and the City receives the RF testing report required in the condition of approval above, or the development or conditional use permit will expire without further action by the City.

Fixed Conditions

53. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.

Eligible Facilities Requests

All permits for an eligible facilities requests under MMC Chapter 17.46 shall be subject to the following conditions and all of the other conditions of approval placed on a Wireless Permit, unless modified by the approving authority:

54. Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
55. The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

56. The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

Small Cell Facilities

In addition to the other conditions of approval placed on a Wireless Permit, all permits for a small cell facility under MMC Chapter 17.46 shall be subject to the following additional condition, unless modified by the approving authority:

57. The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

SECTION 9. Basic Application Requirements for Permits Under MMC Chapter 17.46.

- A. Generally. In addition to providing all required fees, all wireless telecommunication facility applicants shall provide the information required by a separate application form published, and updated from time to time, by the City. If no such form is available, then the applicant must submit all documents, information, and any other materials necessary to allow the City to make required findings and ensure that the proposed facility will comply with applicable laws and not endanger the public health, safety, or welfare. Such information may include:
1. Contact information for:
 - a. Applicant and their representatives
 - b. Owner of proposed wireless communications facility
 - c. If different from facility owner, the identity of the person or entity responsible for operating the proposed wireless facility
 - d. The property owner or owner of the structure on which the proposed wireless facility would be installed
 - e. Names, addresses, telephone numbers, and email addresses of anyone acting on behalf of the applicant with regard to the application;
 - f. The name, address and phone number of all persons that prepared or assisted in preparing the application and any required reports;
 - g. The postal address, parcel number, or utility pole identifier of the property;
 - h. The location of the schools, playgrounds and parks within 500 feet of the project site;

- i. Local contact person for emergencies
- j. Assessor's Parcel Number
- 2. Purpose of new wireless communications facility or amendment
- 3. Type of Application (Select all that apply)
 - a. Eligible Facilities Request
 - b. Small Cell – Collocation
 - c. Small Cell – New Structure
 - d. Collocation (Non-Small Cell)
 - e. All Other Wireless Communications Facilities
 - f. Permit Renewal
 - g. Waiver
- 4. Letter of authorization signed by the property owner authorizing the applicant to submit and process the application, including executed copies of any leases, letters of agency, or proof of ownership, of private property involved in the project.
- 5. Authorizations, and Licenses
- 6. Provide previous approvals, if applicable, and Certificate of Completion. Site inspection fees may apply if a final inspection was never requested
- 7. Identify all other required permits and approvals for the subject facility.
- 8. Electrical and Structural Safety Information. The following engineering documents prepared under the responsible charge of and sealed by a California licensed Professional Engineer must be included in the application:
 - a. A short circuit and coordination study ("SCCS") calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
 - b. A one-line diagram of the electrical system;
 - c. Voltage Drop & Load Flow Study;
 - d. Load Calculation;
 - e. Panel Directories;
 - f. A plot plan showing the location of the mounting structure including address, or structure designation, or GPS location on the front sheet;
 - g. A plot plan showing the location of the service disconnecting means; and
 - h. An elevation drawing of the equipment and the service disconnecting means.

9. Structural Safety Information. The structural/civil engineering documents prepared under the responsible charge of and sealed by a California licensed professional civil engineer.
- a. Photo simulations, from at least three different angles, showing the pole and streetscape before and after installation. In some cases, more than three different angles may be required;
 - b. The azimuth, size and center-line height location of all proposed and existing antenna(s) on the supporting structure;
 - c. The number, type and model of the antenna(s) that will be used with a copy of the specification sheet;
 - d. The make, model, type and manufacturer of any tower involved and a design plan stating the tower's capacity to accommodate multiple users;
 - e. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - (1) A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.
 - (2) A site plan describing the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - (3) A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - (4) A depiction of all existing and proposed utility runs and points of contact.
 - (5) A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
 - f. Detailed map with locations of the poles or other property on which equipment is to be located, including specific pole identification number, if applicable, and the areas it will service;
 - g. Description as to why the desired location is superior to other similar locations, from a community perspective, including, but not limited to:
 - (1) Proximity to residential buildings and descriptions of efforts to prevent any blocking of views of impressive scenes; and

- (2) Written documentation demonstrating a good faith effort to locate the proposed facility in the least intrusive location in accordance with the location requirements of this Resolution.
- h. A description in writing and a visual rendering demonstrating effective screening of all ground-mounted or roof-mounted equipment of the facility from view.
- i. Color-coded carrier-generated RF Coverage (propagation) maps, at a scale no smaller than 1 inch (1") to a quarter (1/4) mile with all appropriate legends, showing the coverage for the highest and lowest frequencies to be used by the facility. Frequencies are to be stated numerically, not qualitatively. Provide a represented value in dB of each colors it specifically represents.
- j. If the project involves, modifies or will use an existing facility or structure, a description of the type of structure (e.g., guyed, self-supporting lattice or monopole), and a report on the physical condition of the facility certified by a professional engineer licensed in the state of California.
- k. If the application is for a new tower, clear and convincing technical evidence by a carrier or wireless service provider justifying the total height of the proposed facility and the need for such to the exclusion of all reasonable alternatives. Evidence in the form of propagation studies must include all modeling data and assumptions used to produce the studies at the requested height and should take into consideration the ability to collocate other carriers in the future.
- l. A siting analysis which identifies other feasible locations within or outside the City which could serve the area intended to be served by the facility, unless the applicant provides compelling technical reasons for providing fewer than the minimum.
- m. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, in that it will not cause members of the general public to be exposed to RF levels that exceed the emissions levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the

application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of “effective radiated power.”

- n. A statement detailing the frequency, modulation and class of service of radio or other transmitting equipment;
- o. A copy of the FCC license applicable for the intended use of the proposed facilities;
- p. A HazMat Business Plan for all new generators, and any storage and/or use of hazardous materials during the project, to include:
 - i. A list of toxic substances that may develop during arcing or fire that may impede fire suppression efforts;
 - ii. A list of hazards that may develop during arcing or fire that may impede fire suppression efforts;
- q. A demolition plan, if applicable.
- r. A written statement of the applicant’s willingness to allow other carriers to co-locate on the proposed personal wireless service facility where technically and economically feasible and aesthetically desirable, subject to the qualification that colocation should not occur when public exposures from the resulting higher cumulative sources would exceed FCC limits.
- s. Such other information as the Director shall establish.
- t. A statement signed by a person with legal authority to bind the applicant attesting under penalty of perjury to the accuracy of the information provided in the application. If attester not an authorized employee of the applicant, then the attester must demonstrate that it is an authorized agent of the applicant, with lawful Power of Attorney from the applicant.

SECTION 10. Environmental Review

This Resolution is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (CEQA) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Resolution does not authorize any specific development or installation on any specific piece of property within the City’s boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Resolution is a “project” within the meaning of State CEQA Guidelines section 15378, the Resolution is exempt from CEQA on multiple grounds. First, the Resolution is exempt CEQA because the City Council’s adoption of the Resolution is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Resolution will not result in the actual installation of any facilities in the City. In order to install a facility in

accordance with this Resolution, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Resolution is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land).

SECTION 11. This Resolution will become effective immediately upon adoption.

SECTION 12. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 24th day of June 2024.

STEVE UHRING, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

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

TREVOR RUSIN, Interim City Attorney
(seal)

ORDINANCE NO. 477

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU TO AMEND MALIBU MUNICIPAL CODE TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) TO ADD CHAPTER 12.02 "WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY"; AMENDING CHAPTER 1.10 (ADMINISTRATIVE CITATIONS AND PENALTIES); AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

SECTION 1. Findings

A. The City's public rights-of-way are a valuable resource, and the regulation of wireless installations in the public rights-of-way is necessary to protect and preserve aesthetics in the community;

B. Wireless carriers have submitted applications to install wireless facilities to be located within the public rights-of-way, but more recently carriers have begun to submit much larger numbers of such applications;

C. The City of Malibu is designated as a Very High Fire Hazard Severity Zone. The City was devastated by major fires in 2007 and 2018 due to power pole failures. In each instance the utility structures supported wireless facilities that either initiated or significantly contributed to the ignition. The 2018 Woolsey Fire, which affected Malibu and other parts of Los Angeles County, consumed over 96,000 acres, destroyed at least 1,643 structures, killed three people, and prompted the evacuation of more than 295,000 people. It was one of several fires in California that ignited on the same day. Malibu has still not recovered. The 2007 fire burned 3,836 acres, 36 vehicles and 14 structures, including Castle Kashan and the Malibu Presbyterian Church, and damaged 19 other structures. It is essential that wireless facilities be engineered to prevent fire and withstand fire events as much as possible, and at least in a manner comparable to other commercial facilities with extensive, complicated electronics and wiring and flammable, sometimes hazardous and toxic, materials on site;

D. Cities retain the authority to over decisions regarding the placement, construction, and modification of personal wireless service facilities, subject to those matters where that authority has been limited or removed by state or federal law;

E. The unrestricted installation of personal wireless service facilities is contrary to the City's efforts to stabilize economic and social aspects of neighborhood environments, to satisfy health, safety and aesthetic objectives, to maintain property values by not degrading the visual and economic value of adjoining properties, especially in residential areas, and to promote family environments and a rural residential community character within the City to the maximum extent allowed by law. The City intends to exercise its powers to protect its citizens,

its right to exercise all available power and right over its own property and regulate the use and occupation of that property, and to regulate public right-of-way use to the maximum extent allowed by law, while nonetheless respecting and adhering to the law as it may be and may change as the result of judicial review, potential state or federal statutory changes or valid rule amendments by the FCC.

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

G. Applications for wireless facilities to be located within the City's public right-of-way have been processed under the provisions of Chapter 17 (Zoning) of the City's Municipal Code but those provisions were adopted at a time most wireless facilities were being installed on macro sites on land, not in public rights-of-way. Since the City Council last amended the portions of its Municipal Code related to wireless communication facility installations, significant changes in federal laws that affect local authority over wireless communication facilities deployments in public rights-of-way have occurred, including, but not limited to, the following recent developments:

- On August 2, 2018, the Federal Communications Commission ("FCC") adopted a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, 33 FCC Rcd. 7705 (rel. Aug. 3, 2018) (the "August Order"), that, among other things, contained a declaratory ruling prohibiting express and de facto moratoria for all personal wireless services, telecommunications services and their related facilities under 47 U.S.C. § 253(a) and directed the Wireless Telecommunications Bureau and Wireline Competition Bureau to hear and resolve all complaints on an expedited basis. The declaratory ruling in the August Order was made effective upon release of the August Order which occurred on August 3, 2018; and
- On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, 33 FCC Rcd. 9088 (rel. Sep. 27, 2018) (the "September Order"), which, among many other things, created new shorter "shot clocks" for small wireless facilities (as defined in the September Order), shortened existing "shot clock" regulations to require local public agencies to do more in less time, established a national standard for an effective prohibition related to small wireless facilities and provided that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition. The September Order went into effect in part on January 14, 2019, and in part on April 15, 2019;

- On August 12, 2020, a three-judge panel of the Ninth Circuit Court of Appeals upheld the August Order and significant portions of the September Order, including the shorter shot clocks and remedies for failing to meet a shot clock;
- On October 22, 2020, the Ninth Circuit Court of Appeals denied a petition for *en banc* review of the above-referenced panel's decision;
- On June 9 and October 27, 2020, the FCC adopted Declaratory Orders and Reports and Orders providing clarifications and/or rule changes relating to the short shot clock, deemed granted remedy and qualifying criteria for "eligible facilities requests" which are applications for modifications to existing wireless facilities which must be approved by local authorities according to federal law;

H. In light of the FCC Orders and related court decisions, the City deems it to be necessary and appropriate to enact additional standards and regulations, consistent with federal and state law limitations on that authority;

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

J. If not adequately regulated, the installation of wireless facilities within the public rights-of-way can pose a threat to the public health, safety, and welfare, including disturbance to the public rights-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; public right-of-way use conflicts and incompatibilities including excessive height or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of wireless facilities, including the associated pedestals, meters, equipment and power generators; reduce property values and/or frustrate Malibu's longstanding efforts to have a rustic, residential and welcoming look and feel and a comfortable, safe community, all of which may negatively impact the City and its citizens; and

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

SECTION 2. Amendments

A. Title 12 of the Malibu Municipal Code is hereby amended to add a new Chapter 12.02, entitled "Wireless Facilities in Public Rights-of-Way" as follows:

CHAPTER 12.02
WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Section 12.02.010. Purpose.

The purpose of this Chapter is to establish a process for managing, and uniform standards for acting upon, requests for the placement of wireless facilities within the public rights-of-way of the City consistent with the City's obligation to promote the public health, safety, and welfare, to manage the public rights-of-way, and to ensure that the public is not incommoded by the use of the public rights-of-way for the placement of wireless facilities. The City recognizes the role of personal wireless facilities to provide personal wireless service to the residents and businesses within the City. No provision of this Ordinance shall be interpreted in a manner that violates state or federal law.

Section 12.02.020. Definitions.

The abbreviations, phrases, terms and words used in this Chapter will have the following meanings assigned to them unless context indicates otherwise. Undefined phrases, terms or words in this policy will have their ordinary meanings.

The definitions in this policy shall control over conflicting definitions for the same or similar abbreviations, phrases, terms or words as may be defined in the Malibu Municipal Code Chapter 17.02 and Section 17.46.040.

“Application” A formal request, including all required and requested documentation and information, submitted by an applicant to the City for a wireless ROW permit.

“Applicant” A person filing an application for placement or modification of a wireless facility in the public right-of-way.

“Eligible Facilities Request or EFR” shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.

“FCC” The Federal Communications Commission or its lawful successor.

“Municipal Infrastructure” City-owned or controlled property structures, objects, and equipment in the ROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the ROW.

“Permittee” any person or entity granted a wireless ROW permit pursuant to this Chapter.

“Personal Wireless Services” shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

“Personal Wireless Services Facility” means a wireless facility used for the provision of personal wireless services.

“Professional Engineer” (PE) is as defined by Business and Professions Code Section 6701, and shall be interpreted to refer to the specific appropriate engineering branch in issue as defined in Sections 6702 through 6703 and “supervision of the construction of engineering structures” as defined in Section 6703.1.

“Public Right-of-Way, or ROW” means any public street, public way or public place within the City limits, either owned by the City or dedicated to the public for the purpose of travel and which the City has the responsibility to maintain or manage. The term includes all or any part of the entire width of right-of-way, and above and below the same, whether or not such entire area is actually used for travel purposes.

“Small Cell Facility” shall have the same meaning as “small wireless facility” in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):

(1) The facility—

- (i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or
- (ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or
- (iii) does not extend an existing structure on which it are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;

(5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and

(6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).

“Support Structure” Any structure capable of supporting a base station.

“Underground areas” Those areas where there are no electrical facilities or facilities of a local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

“Utility Pole” A structure in the ROW designed to support electric, telephone and similar utility lines. For the avoidance of doubt, any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities is not a utility pole.

“Wireless ROW Permit or WRP” A permit issued pursuant to this Chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the ROW; and the modification of any existing support structure to which the wireless facility is proposed to be attached.

“Wireless Facility, or Facility” The transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s).

“Wireless Infrastructure Provider” A person that owns, controls, operates or manages a wireless facility or portion thereof within the ROW.

“Wireless Regulations” Those regulations adopted pursuant to Section 12.02.050 and implementing the provisions of this Chapter.

“Wireless Service Provider” An entity that provides personal wireless services to end users.

Section 12.02.030. Scope.

A. **In general.** There shall be a type of permit entitled a “Wireless ROW Permit (WRP),” which shall be subject to all of the requirements of this Chapter. Unless exempted, every person who desires to place a wireless facility in the public rights-of-way or modify an existing wireless facility in the public rights-of-way must obtain a wireless ROW permit authorizing the placement or modification in accordance with this Chapter. Except for small cell facilities, facilities qualifying as eligible facilities requests, or any other type of wireless facility expressly allowed in the public right-of-way by state or federal law, no other wireless facilities shall be permitted pursuant to this Chapter.

B. **Exemptions.** This Chapter does not apply to:

- (1) The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.
- (2) Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing functional facilities.

C. **Other applicable requirements.** In addition to the WRP required herein, the placement and operation of a wireless facility in the public rights-of-way requires the persons who will own or control those facilities to obtain all permits required by Chapter 12.04 (Highway Permits) and

other applicable law, and to comply with applicable law, including, but not limited to, applicable law governing radio frequency (RF) emissions and the Americans with Disabilities Act (ADA) and electrical and fire codes. If an applicant meets the requirements of this Chapter and obtains a wireless ROW permit, then the applicant does not need to obtain a site plan review permit or conditional use permit pursuant to Malibu Municipal Code Sections 17.46.020 and 17.46.030.

D. Pre-existing Facilities in the ROW. Any permitted wireless facility already existing in the ROW as of the date of this Chapter's adoption shall remain subject to the standards and conditions of the City Code in effect prior to this Chapter, unless and until a renewal of such facility's then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the City Code under which it was previously reviewed.

E. Public use. Except as otherwise provided by California law, any use of the public right-of-way authorized pursuant to this Chapter will be subordinate to the City's use and use by the public.

Section 12.02.040. Administration.

A. Reviewing Authority. The Planning Director or his/her designee ("Director") is responsible for administering this Chapter. As part of the administration of this Chapter, the Director is responsible for the following:

- (1) Implement standards governing the placement and modification of wireless facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
- (2) Implement acceptable engineering design and development standards for wireless facilities in the public rights-of-way, taking into account the zoning districts adjacent to the public rights-of-way;
- (3) Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this Chapter;
- (4) Collect, as a condition of the completeness of any application, any fee established by this Chapter;
- (5) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
- (6) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
- (7) Require, as part of, and as a condition of completeness of any application, timely notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;

- (8) Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
- (9) Take such other steps as may be required to timely act upon applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

B. Appeals.

- (1) Any person adversely affected by a decision of the Director pursuant to this Chapter may request an administrative hearing to appeal the Director's decision. In order to request a hearing, the person shall submit to the City Clerk in the manner directed in the Director's decision notice a fully completed request for administrative hearing form along with a full amount of the appeal fee (by way of check or money order). The request for administrative hearing shall be incomplete if it does not include the deposit in the full amount of the appeal fee. The deposit will be retained in a noninterest bearing account until the matter is resolved. The appeal fee shall be refunded to the appellant if their appeal is granted.
- (2) Appeals must be filed within five (5) business days of the mailing of decision notice of the Director, unless a different time period is specified by the Director in such notice. The Director may extend the time period for filing an appeal for due cause but an extension may not be granted where such extension would result in approval of the application by operation of law.
- (3) If a timely and complete request for hearing is not submitted, the Director's decision shall be deemed final.
- (4) If a timely and complete request for hearing is submitted, the City Manager shall appoint to an administrative hearing officer ("Hearing Officer") to conduct the administrative hearing. The Hearing Officer may decide the issues *de novo*. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. The appellant and the applicant shall have the opportunity to present evidence in support of their case.
- (5) Any administrative hearing shall be conducted so that a timely written decision may be issued in accordance with applicable law.
- (6) The hearing officer's decision shall be in writing, shall explain the basis for the decision, and shall be served upon the applicant, and upon the appellant (if different) by first class mail, to the address stated on the request for hearing form. and the written decision of the Hearing Officer will be the final decision of the City effective on the date of mailing.

Section 12.02.050. General Standards for Wireless Facilities in the Public Rights-of-Way.

A. Generally. Wireless facilities in the ROW shall meet the minimum requirements set forth in this Ordinance and the wireless regulations, in addition to the requirements of any other applicable law.

B. Regulations. The wireless regulations and decisions on applications for placement of wireless facilities in the ROW shall, at a minimum, ensure that the requirements of this section are satisfied, unless a waiver is granted by the Director or Hearing Officer pursuant to Section 12.02.050(E).

C. Minimum Standards. Wireless facilities shall be installed and modified in a manner that does not incommode the public use of the ROW, in that it minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way, makes facilities stealth by using concealment elements, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights of way; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public or cause personal or economic harm, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the rights of way.

D. Engineering Design and Location Standards. All applicants shall engineer, design and locate the wireless facilities in accordance with the standards and wireless regulations set forth separately through the resolution adopted by the City Council.

E. Waivers. Requests for waivers from any requirement of this Chapter shall be made in writing to the Director. The Director or Hearing Officer may grant a request for waiver only if it is demonstrated through clear and convincing evidence that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored so that the requirements of this Chapter are waived only to the minimum extent required to avoid the prohibition or violation.

Section 12.02.060. Applications.

A. Submission. Unless the wireless regulations provide otherwise, applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to an application, or responses to requests for information regarding an application to the Planning Department.

B. Pre-application meeting. Prior to filing an application for a WRP, applicant is encouraged to schedule a voluntary pre-application meeting with the Director to discuss the proposed facility, the requirements of this Chapter, and any potential impacts of the proposed facility. Conducting a voluntary pre-application meeting shall not initiate any applicable "shot clock."

C. Public Notice.

- (1) Within seven (7) calendar days after an application is submitted to the City, the applicant shall: (1) post notice at the proposed project site in a location near to and visible from the ROW and (2) provide the City with evidence that such notice has been posted. The applicant shall maintain and replace the posted notice as necessary during the entire application review process until the Director acts on the application and all appeals have been exhausted. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for at least 180 calendar days. The posted notice shall be at minimum 17 inches wide by 11 inches tall. The posted notice shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, pedestrians or other users in the ROW. The City encourages applicants to consult with the Planning Department on placement locations to avoid any potential hazards.
- (2) Within five (5) business days from the date on which an application is determined to be complete, the Director shall notify in writing of the filing of the application property owners and residents of all property within a one thousand (1,000) foot radius of the proposed project, but in no event fewer than the owners and occupants of ten (10) developed properties. The purpose of the notice is to inform the surrounding property owners and residents of the filing of the application and provide an opportunity for comment on the application prior to the Director's decision. The notice shall describe the request, provide a map showing the specific location of the proposed project, describe the review process and timeframes, indicate how to contact the applicant and case planner assigned to the application, and the City-assigned application identifier.

D. Content. An applicant shall submit an application on the form approved by the Director, which may be updated from time-to-time, but in any event shall require the submission of all required fee(s), documents, information, and any other materials necessary to allow the Director to make required findings and ensure that the proposed facility will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare. If no form has been approved, applications must contain all information listed in any applicable City council resolution and as necessary to show that applicant is entitled to the WRP requested and must specify whether the applicant believes state or federal law requires action on the application within a specified time period.

E. Fees. Application fee(s) shall be required to be submitted with any application for a wireless ROW permit and with any request for appeal of a Director's decision. At the time of this Ordinance's adoption, the application and appeal fees are set forth in the Planning Department Fees in the City's Fiscal Year 2020-2021 Citywide Fee Schedule, which may be amended from time to time. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WRP unless paid as a refundable deposit.

Simultaneously with an appeal request, an affected resident may submit a request for waiver of appeal fees based on a showing of undue financial burden. If the request for waiver is granted, no fee shall apply. If the request for waiver is denied, the affected resident shall submit payment of the fee within three (3) days after notice of the waiver request has been denied. Failure to timely submit the fee will result in dismissal of the appeal.

F. **Incompleteness.** Applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If an application is incomplete, the Director may notify the applicant in writing, and specifying the material omitted from the application. A failure to notify the applicant of any defect or omission does not relieve the applicant of its burden of proof on the merits and the City reserves the right to deny the application if all necessary information was not provided by the applicant.

G. **Denials Without Prejudice/Extensions.** To promote efficient review and timely decisions, if the applicant fails to tender a substantive response to the Director within 90 calendar days after the Director deems the application incomplete in a written notice to the applicant, the Director may, in the Director's discretion, deny the application without prejudice. However, if the applicant submits a written request to the Director prior to the 90th day that shows good cause to grant an extension, the Director may instead grant a written extension for up to an additional 30 calendar days for the applicant to tender a substantive response.

Section 12.02.070. Findings; Decisions; Consultants.

A. Findings Required for Approval.

- (1) Except for eligible facilities requests, the Director or Hearing Officer, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - (i) The facility is not detrimental to the public health, safety, and welfare;
 - (ii) The facility complies with this Chapter and all applicable design and development standards;
 - (iii) The facility meets applicable requirements and standards of state and federal law;
 - (iv) The application is complete and provides all information required by this Chapter; and
 - (v) The applicant has satisfied the burden of proving full compliance with all procedural and substantive requirements in this Chapter.
- (2) For eligible facilities requests, the Director or Hearing Officer, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - (i) That the application qualifies as an eligible facilities request in that:
 - a. The proposed colocation or modification meets each and every one of the applicable criteria for an eligible facilities request stated in 47 C.F.R. 1.6100(b)(3)-(9), after application of the definitions in 47 C.F.R. 1.6100(b). The director shall make an express finding for each criterion that applies and for any criterion found not to apply the

director shall make independent findings justifying the determination that a criterion does not apply;

- b. The existing facility complies with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in 47 C.F.R. 1.6100(b)(7)(i) through (iv); and

- (ii) That the proposed facility will comply with all generally-applicable laws.

B. Decisions. Decisions on an application by the Director or Hearing Officer shall be in writing and include the reasons for the decision.

C. Independent Consultants. The Director or Hearing Officer, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise and appropriate credentials in telecommunications and/or electrical and fire safety in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, engineering analysis, or compliance with FCC radio frequency emissions limits.

Section 12.02.080. Conditions of Approval.

A. Generally. In addition to any supplemental conditions imposed by the Director or Hearing Officer, as the case may be, all permits under this Chapter shall be subject to the conditions in the design standards and standard conditions of approval resolution adopted by the City Council, unless modified by the Director or Hearing Officer.

Section 12.02.090. Breach; Termination of Permit.

A. For breach. A WRP may be revoked for failure to comply with the conditions of the permit or applicable law or if the permittee becomes ineligible for franchise rights under state law or if the permittee's FCC authorization to operate wireless facilities and/or provide wireless service is terminated for any reason. Upon revocation, the wireless facility must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.

B. For installation without a permit. A wireless facility or its modification installed after the effective date of this Ordinance without a WRP (except for those exempted from, or not subject to, this Chapter) must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted

by the City. All costs incurred by the City in connection with enforcement of this provision and removal shall be paid by entities who own or control any part of the wireless facility.

C. **Violations.** In addition to any criminal, civil or other legal remedy established by law that may be pursued to address violations of the Municipal Code, violations of any provision of this chapter or the regulations adopted by this Chapter are subject to the administrative penalty provisions of Chapter 1.10.

Section 12.02.100. Nondiscrimination. In establishing the rights, obligations and conditions set forth in this Chapter, it is the intent of the City to treat each applicant or public right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the ROW.

B. Subsection A of Section 1.10.040 of Chapter 1.10 (Administrative Citations and Penalties) of Title 1 (General Provisions) of the Malibu Municipal Code is hereby amended to read as follows:

- A. In addition to any criminal, civil or other legal remedy established by this code or other law that may be pursued to address violations of the municipal code or the City's Local Coastal Program Local Implementation Plan, violation of the City's Local Coastal Program Local Implementation Plan (or any condition of any permit or license approved pursuant to any provision of the City's Local Coastal Program Local Implementation Plan) to the extent allowed by law, and the violations described in the municipal code titles, chapters and sections listed below are subject to the administrative penalty procedures and other provisions of this chapter:
1. Chapter 5.04: Business Licenses Generally;
 2. Chapter 5.20: Motion Pictures, Television and Photographic Productions;
 3. Chapter 5.46: Prohibition of Price Gouging;
 4. Chapter 8.04: Health Code Adopted;
 5. Chapter 8.12: Fire Code Adopted;
 6. Chapter 8.24: Noise;
 7. Chapter 8.32: Solid Waste and Recyclable Materials;
 8. Chapter 9.08: Offenses Against Property;
 9. Chapter 9.20: Water Conservation;
 10. Chapter 9.24: Ban on Expanded Polystyrene Food Packaging;
 11. Chapter 9.28: Ban on Plastic Shopping Bags;
 12. Chapter 9.33: Share On-Demand Personal Mobility Devices;
 13. Chapter 9.38: Valet Attendant Safety Requirements;
 14. Chapter 9.40: Ban of On-Site Self-Regenerating Water Softeners and Regulating Previously Installed Self-Regenerating Water Softeners
 15. Chapter 10.18: Oversize Vehicles;
 16. Chapter 12.02: Wireless Facilities in Public Right of Way

17. Chapter 13.04: Storm Water Management and Discharge Control
18. Chapter 13.60: Recycled Water Requirements;
19. Chapter 15.04: Building Code Adopted;
20. Chapter 15.08: Electrical Code Adopted;
21. Chapter 15.12: Plumbing Code Adopted;
22. Chapter 15.16: Mechanical Code Adopted;
23. Title 17: Zoning.

SECTION 3. Environmental Review.

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (CEQA) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles within five working days of the passage and adoption of the Ordinance.

SECTION 4. Effective Date In accordance with California Government Code section 36937, this Ordinance shall become effective on the 30th day following its passage and adoption.

SECTION 5. Pending Applications All applications for wireless facilities in the public rights-of-way or for modifications to existing wireless facilities in the public rights-of-way which were not subject to final action by City prior to the effective date of this Ordinance shall be subject to and comply with all provisions of this Chapter, and any design and placement standards adopted by the City Council by resolution, to the fullest extent permitted by applicable law.

SECTION 6. Severability If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of

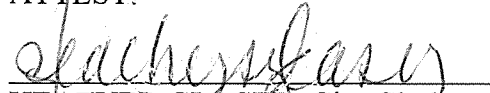
competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 7. The City Clerk shall certify the adoption of this Ordinance and enter it into the book of original ordinances.

PASSED, APPROVED AND ADOPTED this 12th day of January 2021.



MIKKE PIERSON, Mayor

ATTEST:


HEATHER GLASER, City Clerk
(seal)

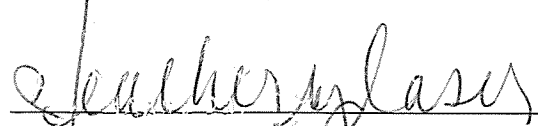
Date: March 11, 2021

APPROVED AS TO FORM:


JOHN COTTI, Interim City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 477 was passed and adopted at the Regular City Council meeting of January 12, 2021, by the following vote:

AYES:	4	Councilmembers:	Farrer, Uhring, Grisanti, Pierson
NOES:	0		
ABSTAIN:	1	Councilmembers:	Silverstein
ABSENT:	0		


HEATHER GLASER, City Clerk
(seal)

ORDINANCE NO. 477U

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MALIBU TO AMEND MALIBU MUNICIPAL CODE TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) TO ADD CHAPTER 12.02, "WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY"; AMENDING CHAPTER 1.10 (ADMINISTRATIVE CITATIONS AND PENALTIES); DECLARING THE URGENCY THEREOF; AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

SECTION 1. Findings

A. The City's public rights-of-way are a valuable resource, and the regulation of wireless installations in the public rights-of-way is necessary to protect and preserve aesthetics in the community;

B. Wireless carriers have submitted applications to install wireless facilities to be located within the public rights-of-way, but more recently carriers have begun to submit much larger numbers of such applications;

C. The City of Malibu is designated as a Very High Fire Hazard Severity Zone. The City was devastated by major fires in 2007 and 2018 due to power pole failures. In each instance the utility structures supported wireless facilities that either initiated or significantly contributed to the ignition. The 2018 Woolsey Fire, which affected Malibu and other parts of Los Angeles County, consumed over 96,000 acres, destroyed at least 1,643 structures, killed three people, and prompted the evacuation of more than 295,000 people. It was one of several fires in California that ignited on the same day. Malibu has still not recovered. The 2007 fire burned 3,836 acres, 36 vehicles and 14 structures, including Castle Kashan and the Malibu Presbyterian Church, and damaged 19 other structures. It is essential that wireless facilities be engineered to prevent fire and withstand fire events as much as possible, and at least in a manner comparable to other commercial facilities with extensive, complicated electronics and wiring and flammable, sometimes hazardous and toxic, materials on site;

D. Cities retain the authority to over decisions regarding the placement, construction, and modification of personal wireless service facilities, subject to those matters where that authority has been limited or removed by state or federal law;

E. The unrestricted installation of personal wireless service facilities is contrary to the City's efforts to stabilize economic and social aspects of neighborhood environments, to satisfy health, safety and aesthetic objectives, to maintain property values by not degrading the visual and economic value of adjoining properties, especially in residential areas, and to promote family environments and a rural residential community character within the City to the maximum extent allowed by law. The City intends to exercise its powers to protect its citizens,

its right to exercise all available power and right over its own property and regulate the use and occupation of that property, and to regulate public right-of-way use to the maximum extent allowed by law, while nonetheless respecting and adhering to the law as it may be and may change as the result of judicial review, potential state or federal statutory changes or valid rule amendments by the FCC.

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

G. Applications for wireless facilities to be located within the City's public right-of-way have been processed under the provisions of Chapter 17 (Zoning) of the City's Municipal Code but those provisions were adopted at a time most wireless facilities were being installed on macro sites on land, not in public rights-of-way. Since the City Council last amended the portions of its Municipal Code related to wireless communication facility installations, significant changes in federal laws that affect local authority over wireless communication facilities deployments in public rights-of-way have occurred, including, but not limited to, the following recent developments:

- On August 2, 2018, the Federal Communications Commission ("FCC") adopted a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, 33 FCC Rcd. 7705 (rel. Aug. 3, 2018) (the "August Order"), that, among other things, contained a declaratory ruling prohibiting express and de facto moratoria for all personal wireless services, telecommunications services and their related facilities under 47 U.S.C. § 253(a) and directed the Wireless Telecommunications Bureau and Wireline Competition Bureau to hear and resolve all complaints on an expedited basis. The declaratory ruling in the August Order was made effective upon release of the August Order which occurred on August 3, 2018; and
- On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, 33 FCC Rcd. 9088 (rel. Sep. 27, 2018) (the "September Order"), which, among many other things, created new shorter "shot clocks" for small wireless facilities (as defined in the September Order), shortened existing "shot clock" regulations to require local public agencies to do more in less time, established a national standard for an effective prohibition related to small wireless facilities and provided that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition. The September Order went into effect in part on January 14, 2019, and in part on April 15, 2019;

- On August 12, 2020, a three-judge panel of the Ninth Circuit Court of Appeals upheld the August Order and significant portions of the September Order, including the shorter shot clocks and remedies for failing to meet a shot clock;
- On October 22, 2020, the Ninth Circuit Court of Appeals denied a petition for *en banc* review of the above-referenced panel's decision;
- On June 9 and October 27, 2020, the FCC adopted Declaratory Orders and Reports and Orders providing clarifications and/or rule changes relating to the short shot clock, deemed granted remedy and qualifying criteria for "eligible facilities requests" which are applications for modifications to existing wireless facilities which must be approved by local authorities according to federal law;

H. In light of the FCC Orders and related court decisions, the City deems it to be necessary and appropriate to enact additional standards and regulations, consistent with federal and state law limitations on that authority;

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

J. If not adequately regulated, the installation of wireless facilities within the public rights-of-way can pose a threat to the public health, safety, and welfare, including disturbance to the public rights-of-way through the installation and maintenance of wireless facilities; traffic and pedestrian safety hazards due to the unsafe location of wireless facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; public right-of-way use conflicts and incompatibilities including excessive height or poles and towers; creation of visual and aesthetic blights and potential safety concerns arising from excessive size, heights, noise, or lack of camouflaging of wireless facilities, including the associated pedestals, meters, equipment and power generators; reduce property values and/or frustrate Malibu's longstanding efforts to have a rustic, residential and welcoming look and feel and a comfortable, safe community, all of which may negatively impact the City and its citizens; and

K. The City deems it necessary and appropriate to enact regulations for wireless telecommunications facilities in the public rights-of-way by urgency ordinance under Government Code Section 36937(b) because the matters herein concern the immediate preservation of the public peace, health or safety of the City's citizens.

SECTION 2. Amendments

A. Title 12 of the Malibu Municipal Code is hereby amended to add a new Chapter 12.02, entitled "Wireless Facilities in Public Rights-of-Way" as follows:

CHAPTER 12.02
WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Section 12.02.010. Purpose.

The purpose of this Chapter is to establish a process for managing, and uniform standards for acting upon, requests for the placement of wireless facilities within the public rights-of-way of the City consistent with the City's obligation to promote the public health, safety, and welfare, to manage the public rights-of-way, and to ensure that the public is not incommoded by the use of the public rights-of-way for the placement of wireless facilities. The City recognizes the role of personal wireless facilities to provide personal wireless service to the residents and businesses within the City. No provision of this Ordinance shall be interpreted in a manner that violates state or federal law.

Section 12.02.020. Definitions.

The abbreviations, phrases, terms and words used in this Chapter will have the following meanings assigned to them unless context indicates otherwise. Undefined phrases, terms or words in this policy will have their ordinary meanings.

The definitions in this policy shall control over conflicting definitions for the same or similar abbreviations, phrases, terms or words as may be defined in the Malibu Municipal Code Chapter 17.02 and Section 17.46.040.

“Application” A formal request, including all required and requested documentation and information, submitted by an applicant to the City for a wireless ROW permit.

“Applicant” A person filing an application for placement or modification of a wireless facility in the public right-of-way.

“Eligible Facilities Request or EFR” shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.

“FCC” The Federal Communications Commission or its lawful successor.

“Municipal Infrastructure” City-owned or controlled property structures, objects, and equipment in the ROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the ROW.

“Permittee” any person or entity granted a wireless ROW permit pursuant to this Chapter.

“Personal Wireless Services” shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

“Personal Wireless Services Facility” means a wireless facility used for the provision of personal wireless services.

“Professional Engineer” (PE) is as defined by Business and Professions Code Section 6701, and shall be interpreted to refer to the specific appropriate engineering branch in issue as defined in Sections 6702 through 6703 and “supervision of the construction of engineering structures” as defined in Section 6703.1.

“Public Right-of-Way, or ROW” means any public street, public way or public place within the City limits, either owned by the City or dedicated to the public for the purpose of travel and which the City has the responsibility to maintain or manage. The term includes all or any part of the entire width of right-of-way, and above and below the same, whether or not such entire area is actually used for travel purposes.

“Small Cell Facility” shall have the same meaning as “small wireless facility” in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):

(1) The facility—

(i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or

(ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or

(iii) does not extend an existing structure on which it are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;

(5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and

(6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).

“Support Structure” Any structure capable of supporting a base station.

“Underground areas” Those areas where there are no electrical facilities or facilities of a local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

“Utility Pole” A structure in the ROW designed to support electric, telephone and similar utility lines. For the avoidance of doubt, any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities is not a utility pole.

“Wireless ROW Permit or WRP” A permit issued pursuant to this Chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the ROW; and the modification of any existing support structure to which the wireless facility is proposed to be attached.

“Wireless Facility, or Facility” The transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s).

“Wireless Infrastructure Provider” A person that owns, controls, operates or manages a wireless facility or portion thereof within the ROW.

“Wireless Regulations” Those regulations adopted pursuant to Section 12.02.050 and implementing the provisions of this Chapter.

“Wireless Service Provider” An entity that provides personal wireless services to end users.

Section 12.02.030. Scope.

A. **In general.** There shall be a type of permit entitled a “Wireless ROW Permit (WRP),” which shall be subject to all of the requirements of this Chapter. Unless exempted, every person who desires to place a wireless facility in the public rights-of-way or modify an existing wireless facility in the public rights-of-way must obtain a wireless ROW permit authorizing the placement or modification in accordance with this Chapter. Except for small cell facilities, facilities qualifying as eligible facilities requests, or any other type of wireless facility expressly allowed in the public right-of-way by state or federal law, no other wireless facilities shall be permitted pursuant to this Chapter.

B. **Exemptions.** This Chapter does not apply to:

- (1) The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.
- (2) Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing functional facilities.

C. **Other applicable requirements.** In addition to the WRP required herein, the placement and operation of a wireless facility in the public rights-of-way requires the persons who will own

or control those facilities to obtain all permits required by Chapter 12.04 (Highway Permits) and other applicable law, and to comply with applicable law, including, but not limited to, applicable law governing radio frequency (RF) emissions and the Americans with Disabilities Act (ADA) and electrical and fire codes. If an applicant meets the requirements of this Chapter and obtains a wireless ROW permit, then the applicant does not need to obtain a site plan review permit or conditional use permit pursuant to Malibu Municipal Code Sections 17.46.020 and 17.46.030.

D. Pre-existing Facilities in the ROW. Any permitted wireless facility already existing in the ROW as of the date of this Chapter's adoption shall remain subject to the standards and conditions of the City Code in effect prior to this Chapter, unless and until a renewal of such facility's then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the City Code under which it was previously reviewed.

E. Public use. Except as otherwise provided by California law, any use of the public right-of-way authorized pursuant to this Chapter will be subordinate to the City's use and use by the public.

Section 12.02.040. Administration.

A. Reviewing Authority. The Planning Director or his/her designee ("Director") is responsible for administering this Chapter. As part of the administration of this Chapter, the Director is responsible for the following:

- (1) Implement standards governing the placement and modification of wireless facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;
- (2) Implement acceptable engineering design and development standards for wireless facilities in the public rights-of-way, taking into account the zoning districts adjacent to the public rights-of-way;
- (3) Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this Chapter;
- (4) Collect, as a condition of the completeness of any application, any fee established by this Chapter;
- (5) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
- (6) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
- (7) Require, as part of, and as a condition of completeness of any application, timely notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;

- (8) Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
- (9) Take such other steps as may be required to timely act upon applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

B. Appeals.

- (1) Any person adversely affected by a decision of the Director pursuant to this Chapter may request an administrative hearing to appeal the Director's decision. In order to request a hearing, the person shall submit to the City Clerk in the manner directed in the Director's decision notice a fully completed request for administrative hearing form along with a full amount of the appeal fee (by way of check or money order). The request for administrative hearing shall be incomplete if it does not include the deposit in the full amount of the appeal fee. The deposit will be retained in a noninterest bearing account until the matter is resolved. The appeal fee shall be refunded to the appellant if their appeal is granted.
- (2) Appeals must be filed within five (5) business days of the mailing of decision notice of the Director, unless a different time period is specified by the Director in such notice. The Director may extend the time period for filing an appeal for due cause but an extension may not be granted where such extension would result in approval of the application by operation of law.
- (3) If a timely and complete request for hearing is not submitted, the Director's decision shall be deemed final.
- (4) If a timely and complete request for hearing is submitted, the City Manager shall appoint to an administrative hearing officer ("Hearing Officer") to conduct the administrative hearing. The Hearing Officer may decide the issues *de novo*. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. The appellant and the applicant shall have the opportunity to present evidence in support of their case.
- (5) Any administrative hearing shall be conducted so that a timely written decision may be issued in accordance with applicable law.
- (6) The hearing officer's decision shall be in writing, shall explain the basis for the decision, and shall be served upon the applicant, and upon the appellant (if different) by first class mail, to the address stated on the request for hearing form. and the written decision of the Hearing Officer will be the final decision of the City effective on the date of mailing.

Section 12.02.050. General Standards for Wireless Facilities in the Public Rights-of-Way.

A. **Generally.** Wireless facilities in the ROW shall meet the minimum requirements set forth in this Ordinance and the wireless regulations, in addition to the requirements of any other applicable law.

B. Regulations. The wireless regulations and decisions on applications for placement of wireless facilities in the ROW shall, at a minimum, ensure that the requirements of this section are satisfied, unless a waiver is granted by the Director or Hearing Officer pursuant to Section 12.02.050(E).

C. Minimum Standards. Wireless facilities shall be installed and modified in a manner that does not incommode the public use of the ROW, in that it minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way, makes facilities stealth by using concealment elements, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights of way; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public or cause personal or economic harm, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the rights of way.

D. Engineering Design and Location Standards. All applicants shall engineer, design and locate the wireless facilities in accordance with the standards and wireless regulations set forth separately through the resolution adopted by the City Council.

E. Waivers. Requests for waivers from any requirement of this Chapter shall be made in writing to the Director. The Director or Hearing Officer may grant a request for waiver only if it is demonstrated through clear and convincing evidence that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored so that the requirements of this Chapter are waived only to the minimum extent required to avoid the prohibition or violation.

Section 12.02.060. Applications.

A. Submission. Unless the wireless regulations provide otherwise, applicant shall submit a paper copy and an electronic copy of any application, amendments, or supplements to an application, or responses to requests for information regarding an application to the Planning Department.

B. Pre-application meeting. Prior to filing an application for a WRP, applicant is encouraged to schedule a voluntary pre-application meeting with the Director to discuss the proposed facility, the requirements of this Chapter, and any potential impacts of the proposed facility. Conducting a voluntary pre-application meeting shall not initiate any applicable "shot clock."

C. Public Notice.

- (1) Within seven (7) calendar days after an application is submitted to the City, the applicant shall: (1) post notice at the proposed project site in a location near to and visible from the ROW and (2) provide the City with evidence that such notice has been posted. The applicant shall maintain and replace the posted notice as necessary during the entire application review process until the Director acts on the application and all appeals have been exhausted. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for at least 180 calendar days. The posted notice shall be at minimum 17 inches wide by 11 inches tall. The posted notice shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, pedestrians or other users in the ROW. The City encourages applicants to consult with the Planning Department on placement locations to avoid any potential hazards.
- (2) Within five (5) business days from the date on which an application is determined to be complete, the Director shall notify in writing of the filing of the application property owners and residents of all property within a one thousand (1,000) foot radius of the proposed project, but in no event fewer than the owners and occupants of ten (10) developed properties. The purpose of the notice is to inform the surrounding property owners and residents of the filing of the application and provide an opportunity for comment on the application prior to the Director's decision. The notice shall describe the request, provide a map showing the specific location of the proposed project, describe the review process and timeframes, indicate how to contact the applicant and case planner assigned to the application, and the City-assigned application identifier.

D. Content. An applicant shall submit an application on the form approved by the Director, which may be updated from time-to-time, but in any event shall require the submission of all required fee(s), documents, information, and any other materials necessary to allow the Director to make required findings and ensure that the proposed facility will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare. If no form has been approved, applications must contain all information listed in any applicable City council resolution and as necessary to show that applicant is entitled to the WRP requested and must specify whether the applicant believes state or federal law requires action on the application within a specified time period.

E. **Fees.** Application fee(s) shall be required to be submitted with any application for a wireless ROW permit and with any request for appeal of a Director's decision. At the time of this Ordinance's adoption, the application and appeal fees are set forth in the Planning Department Fees in the City's Fiscal Year 2020-2021 Citywide Fee Schedule, which may be amended from time to time. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WRP unless paid as a refundable deposit. Simultaneously with an appeal request, an affected resident may submit a request for waiver of appeal fees based on a showing of undue financial burden. If the request for waiver is granted, no fee shall apply. If the request for waiver is denied, the affected resident shall submit payment of the fee within three (3) days after notice of the waiver request has been denied. Failure to timely submit the fee will result in dismissal of the appeal.

F. **Incompleteness.** Applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If an application is incomplete, the Director may notify the applicant in writing, and specifying the material omitted from the application. A failure to notify the applicant of any defect or omission does not relieve the applicant of its burden of proof on the merits and the City reserves the right to deny the application if all necessary information was not provided by the applicant.

G. **Denials Without Prejudice/Extensions.** To promote efficient review and timely decisions, if the applicant fails to tender a substantive response to the Director within 90 calendar days after the Director deems the application incomplete in a written notice to the applicant, the Director may, in the Director's discretion, deny the application without prejudice. However, if the applicant submits a written request to the Director prior to the 90th day that shows good cause to grant an extension, the Director may instead grant a written extension for up to an additional 30 calendar days for the applicant to tender a substantive response.

Section 12.02.070. Findings; Decisions; Consultants.

A. Findings Required for Approval.

- (1) Except for eligible facilities requests, the Director or Hearing Officer, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - (i) The facility is not detrimental to the public health, safety, and welfare;
 - (ii) The facility complies with this Chapter and all applicable design and development standards;
 - (iii) The facility meets applicable requirements and standards of state and federal law;
 - (iv) The application is complete and provides all information required by this Chapter; and
 - (v) The applicant has satisfied the burden of proving full compliance with all procedural and substantive requirements in this Chapter.
- (2) For eligible facilities requests, the Director or Hearing Officer, as the case may be, shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:

- (i) That the application qualifies as an eligible facilities request in that:
 - a. The proposed colocation or modification meets each and every one of the applicable criteria for an eligible facilities request stated in 47 C.F.R. 1.6100(b)(3)-(9), after application of the definitions in 47 C.F.R. 1.6100(b). The director shall make an express finding for each criterion that applies and for any criterion found not to apply the director shall make independent findings justifying the determination that a criterion does not apply;
 - b. The existing facility complies with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in 47 C.F.R. 1.6100(b)(7)(i) through (iv); and
- (ii) That the proposed facility will comply with all generally-applicable laws.

B. Decisions. Decisions on an application by the Director or Hearing Officer shall be in writing and include the reasons for the decision.

C. Independent Consultants. The Director or Hearing Officer, as the case may be, is authorized, in its discretion, to select and retain independent consultant(s) with expertise and appropriate credentials in telecommunications and/or electrical and fire safety in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, engineering analysis, or compliance with FCC radio frequency emissions limits.

Section 12.02.080. Conditions of Approval.

A. Generally. In addition to any supplemental conditions imposed by the Director or Hearing Officer, as the case may be, all permits under this Chapter shall be subject to the conditions in the design standards and standard conditions of approval resolution adopted by the City Council, unless modified by the Director or Hearing Officer.

Section 12.02.090. Breach; Termination of Permit.

A. For breach. A WRP may be revoked for failure to comply with the conditions of the permit or applicable law or if the permittee becomes ineligible for franchise rights under state law or if the permittee's FCC authorization to operate wireless facilities and/or provide wireless service is terminated for any reason. Upon revocation, the wireless facility must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless facility.

B. For installation without a permit. A wireless facility or its modification installed after the effective date of this Ordinance without a WRP (except for those exempted from, or not subject to, this Chapter) must be removed; provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with enforcement of this provision and removal shall be paid by entities who own or control any part of the wireless facility.

C. Violations. In addition to any criminal, civil or other legal remedy established by law that may be pursued to address violations of the Municipal Code, violations of any provision of this chapter or the regulations adopted by this Chapter are subject to the administrative penalty provisions of Chapter 1.10.

Section 12.02.100. Nondiscrimination. In establishing the rights, obligations and conditions set forth in this Chapter, it is the intent of the City to treat each applicant or public right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the ROW.

B. Subsection A of Section 1.10.040 of Chapter 1.10 (Administrative Citations and Penalties) of Title 1 (General Provisions) of the Malibu Municipal Code is hereby amended to read as follows:

- A. In addition to any criminal, civil or other legal remedy established by this code or other law that may be pursued to address violations of the municipal code or the City's Local Coastal Program Local Implementation Plan, violation of the City's Local Coastal Program Local Implementation Plan (or any condition of any permit or license approved pursuant to any provision of the City's Local Coastal Program Local Implementation Plan) to the extent allowed by law, and the violations described in the municipal code titles, chapters and sections listed below are subject to the administrative penalty procedures and other provisions of this chapter:
1. Chapter 5.04: Business Licenses Generally;
 2. Chapter 5.20: Motion Pictures, Television and Photographic Productions;
 3. Chapter 5.46: Prohibition of Price Gouging;
 4. Chapter 8.04: Health Code Adopted;
 5. Chapter 8.12: Fire Code Adopted;
 6. Chapter 8.24: Noise;
 7. Chapter 8.32: Solid Waste and Recyclable Materials;
 8. Chapter 9.08: Offenses Against Property;
 9. Chapter 9.20: Water Conservation;
 10. Chapter 9.24: Ban on Expanded Polystyrene Food Packaging;
 11. Chapter 9.28: Ban on Plastic Shopping Bags;

12. Chapter 9.33: Share On-Demand Personal Mobility Devices;
13. Chapter 9.38: Valet Attendant Safety Requirements;
14. Chapter 9.40: Ban of On-Site Self-Regenerating Water Softeners and Regulating Previously Installed Self-Regenerating Water Softeners
15. Chapter 10.18: Oversize Vehicles;
16. Chapter 12.02: Wireless Facilities in Public Right of Way
17. Chapter 13.04: Storm Water Management and Discharge Control
18. Chapter 13.60: Recycled Water Requirements;
19. Chapter 15.04: Building Code Adopted;
20. Chapter 15.08: Electrical Code Adopted;
21. Chapter 15.12: Plumbing Code Adopted;
22. Chapter 15.16: Mechanical Code Adopted;
23. Title 17: Zoning.

SECTION 3. Environmental Review.

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (CEQA) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles within five working days of the passage and adoption of the Ordinance.

SECTION 4. Urgency Declaration; Effective Date

The City Council finds and declares that the adoption and implementation of this ordinance is necessary for the immediate preservation and protection of the public peace, health and safety as detailed above and as the City and public would suffer potentially irreversible impacts if this

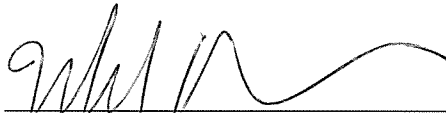
ordinance is not immediately implemented. The Council therefore finds and determines that the immediate preservation of the public peace, health and safety requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

SECTION 5. Pending Applications All applications for wireless facilities in the public rights-of-way or for modifications to existing wireless facilities in the public rights-of-way which were not subject to final action by City prior to the effective date of this Ordinance shall be subject to and comply with all provisions of this Chapter, and any design and placement standards adopted by the City Council by resolution, to the fullest extent permitted by applicable law.

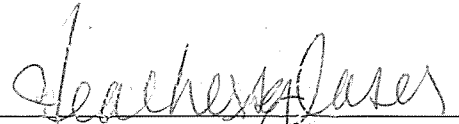
SECTION 6. Severability If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 7. The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 9th day of December 2020.


MIKKE PIERSON, Mayor

ATTEST:


HEATHER GLASER, City Clerk
(seal)

Date: January 21, 2021

APPROVED AS TO FORM:


CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 477U was passed and adopted at the Special City Council meeting of December 9, 2020, by the following vote:

AYES: 5 Councilmembers: Farrer, Mullen, Wagner, Peak, Pierson
NOES: 0
ABSTAIN: 0
ABSENT: 0



HEATHER GLASER, City Clerk
(seal)

ORDINANCE NO. 484

AN ORDINANCE OF THE CITY OF MALIBU AMENDING CHAPTER 17.46 (WIRELESS TELECOMMUNICATIONS ANTENNAS AND FACILITIES) OF THE MALIBU MUNICIPAL CODE AND MAKING CONFORMING AMENDMENTS TO SECTIONS 17.62.040(A)(6), 17.08.040(D), 17.18.030(E), 17.22.040(M), 17.30.030(D), 17.32.030(A), 17.36.030(B), 17.38.030(B), 17.38.030(C), 17.18.020(E), 17.22.020(D), 17.24.020(A), 17.26.020(A), 17.28.020(A), 17.30.020(A), 17.34.020(B), AND 17.36.020(C) (ZONING TEXT AMENDMENT NO. 16-005) AND AMENDING LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN SECTIONS 2.2 AND 3.16, CHAPTER 13 AND APPENDIX 1 (TABLE B PERMITTED USES) (LOCAL COASTAL PROGRAM AMENDMENT NO. 16-007) AMENDING THE WIRELESS FACILITIES REGULATIONS IN THE CITY AND FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

SECTION 1. Recitals.

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

B. The City of Malibu is designated as a Very High Fire Hazard Severity Zone. The City was devastated by major fires in 2007 and 2018 due to power pole failures. In the case of the 2007 fire, wireless communications facilities contributed to the overburdened power pole. The 2018 Woolsey Fire, which affected Malibu and other parts of Los Angeles County, consumed over 96,000 acres, destroyed at least 1,643 structures, killed three people, and prompted the evacuation of more than 295,000 people. It was one of several fires in California that ignited on the same day. Malibu has still not recovered. The 2007 fire burned 3,836 acres, 36 vehicles and 14 structures, including Castle Kashan and the Malibu Presbyterian Church, and damaged 19 other structures. It is essential that wireless communications facilities be engineered to prevent fire and withstand fire events as much as possible, and at least in a manner comparable to other commercial facilities with extensive, complicated electronics and wiring and flammable, sometimes hazardous and toxic, materials on site.

C. Cities retain the authority over decisions regarding the placement, construction, and modification of personal wireless service facilities, subject to those matters where that authority has been limited or removed by state or federal law.

D. The unrestricted installation of personal wireless service facilities is contrary to the City's efforts to stabilize economic and social aspects of neighborhood environments, to satisfy health, safety and aesthetic objectives, to maintain property values by not degrading the visual and economic value of adjoining properties, especially in residential areas, and to promote family environments and a rural residential community character within the City to the maximum extent allowed by law. The City should exercise its powers to protect its citizens and its right to exercise all available power and right over its own property and regulate the use and occupation of that property, while nonetheless respecting and adhering to the law as it may be and may change as the result of judicial review, potential state or federal statutory changes or valid rule amendments by the Federal Communications Commission (FCC).

E. To protect the public safety and welfare, it is necessary and appropriate to provide for certain procedures, standards and regulations relating to the location, placement, engineering, design,

construction and maintenance of wireless communications facilities within the City, and providing for the enforcement of these standards and regulations, consistent with federal and state law limitations on that authority.

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

- On August 2, 2018, the FCC adopted a Third Report & Order and Declaratory Ruling in the rulemaking proceeding titled Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, 33 FCC Rcd. 7705 (rel. Aug. 3, 2018) (the “August Order”), that, among other things, contained a declaratory ruling prohibiting express and de facto moratoria for all personal wireless services, telecommunications services and their related facilities under 47 U.S.C. § 253(a) and directed the Wireless Telecommunications Bureau and Wireline Competition Bureau to hear and resolve all complaints on an expedited basis. The declaratory ruling in the August Order was made effective upon release of the August Order which occurred on August 3, 2018;
- On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, 33 FCC Rcd. 9088 (rel. Sep. 27, 2018) (the “September Order”), which, among many other things, created new shorter “shot clocks” for small wireless facilities (as defined in the September Order), shortened existing “shot clock” regulations to require local public agencies to do more in less time, established a national standard for an effective prohibition related to small wireless facilities and provided that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition. The September Order went into effect in part on January 14, 2019, and in part on April 15, 2019;
- On August 12, 2020, a three-judge panel of the Ninth Circuit Court of Appeals upheld the August Order and significant portions of the September Order, including the shorter shot clocks and remedies for failing to meet a shot clock;
- On October 22, 2020, the Ninth Circuit Court of Appeals denied a petition for *en banc* review of the above-referenced panel’s decision;
- On June 9 and October 27, 2020, the FCC adopted Declaratory Orders and Reports and Orders providing clarifications and/or rule changes relating to the short shot clock, deemed granted remedy and qualifying criteria for “eligible facilities requests” which are applications for modifications to existing wireless communications facilities which must be approved by local authorities according to federal law;
- In April, 2018 and January, 2021 the FCC adopted Declaratory Rulings preempting municipal ordinances in Philadelphia and Chicago that regulated satellite dishes by prohibiting placement of satellite dishes in locations visible to adjacent streets, imposing installer certification and imposing removal requirements, under the over-the-air reception devices (“OTARD”) rule; and
- On January 7, 2021 the FCC adopted a Report and Order amending the OTARD rule to now allow fixed wireless providers to install hub or relay antennas on one property that can provide

service to nearby properties so long as the antenna serves a customer on whose premises it is located.

G. In light of the FCC Orders and related court decisions, the City deems it to be necessary and appropriate to enact additional standards and regulations, consistent with federal and state law limitations on that authority.

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

I. If not adequately regulated, the installation of wireless communications facilities within the City can pose a threat to the public health, safety, and welfare; traffic and pedestrian safety hazards due to the unsafe location and placement of wireless communications facilities; impacts to trees where proximity conflicts may require unnecessary trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; creation of visual and aesthetic blights and potential safety concerns arising from improper design or excessive size, heights, noise, or lack of camouflaging of wireless communications facilities, including the associated pedestals, meters, equipment and power generators; reduce property values and/or frustrate Malibu's longstanding efforts to have a rustic, residential and welcoming look and feel and a comfortable, safe community, all of which may negatively impact the City and its citizens.

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

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

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

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

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

O. On April 12, 2021, the City Council held a duly noticed public hearing on LCPA No. 16-007 and ZTA No. 16-005 regarding the regulation and permitting of wireless communications facilities on

private land in the City, reviewed the materials in the record, the agenda report, public testimony and other information in the record.

SECTION 2. Environmental Review.

Pursuant to Public Resources Code Section 21080.9, the California Environmental Quality Act (CEQA) does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This application is for an amendment to the LCP, which must be certified by the California Coastal Commission (CCC) before it takes effect. LCP Local Implementation Plan (LIP) Section 1.3.1 states that the provisions of the LCP take precedence over any conflict between the LCP and the City's Zoning Ordinance. In order to prevent an inconsistency between the LCP and the City's Zoning Ordinance, if the LCP amendment is approved, the City must also approve the corollary amendment to the Zoning Ordinance. This amendment is necessary for the preparation and adoption of the LCPA and because they are entirely dependent on, related to, and duplicative of, the exempt activity, they are subject to the same CEQA exemption.

This Ordinance is not a project within the meaning of CEQA Guidelines Section 15378, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance was a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds. First, the Ordinance is exempt because the City Council's adoption of the Ordinance would be covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance would not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Ordinance, the wireless provider would have to submit an application for installation of the wireless communications facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct a preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless communications facilities on a particular site, the installation would be exempt from CEQA review in accordance with State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The City Council, therefore, determines that the proposed ordinance is exempt from CEQA.

SECTION 3. Zoning Text Amendment and Findings.

A. The subject ZTA is consistent with the objectives, policies, general land uses and programs specified in the General Plan. The proposed amendment serves to enhance the Malibu General Plan Mission Statement, protect public safety and preserve Malibu's natural and cultural resources. The following General Plan policies and implementation measures would be advanced as part of this Ordinance:

- Policy 1.1.2: The City shall minimize the risk of loss from fire.
- Policy 1.1.3: The City shall reduce the amount of non-essential toxic and hazardous substances.
- Implementation Measure 2: Work with other agencies to ensure effective and efficient fire suppression, prevention and rescue services.

- Implementation Measure 11: Develop guidelines and standards for all new and remodel structures to utilize fire-resistant building materials and designs, and, if feasible, to be sited to minimize fire hazards.
- Implementation Measure 19: Regulate the transport, storage and use of toxic and hazardous materials.

B. The City Council held a public hearing, reviewed the subject ZTA for compliance with the City of Malibu General Plan, MMC and LCP, and finds that the proposed ZTA is consistent with the same and hereby amends the Malibu Municipal Code as set forth in Exhibit A.

SECTION 4. Local Coastal Program Amendment and Findings. Based on evidence in the whole record, the City Council hereby finds that the proposed LCPA meets the requirements of and is in compliance with the policies and requirements of Chapter 3 of the California Coastal Act as follows and hereby amends the LCP local implantation plan as set forth in Exhibit B:

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

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

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

SECTION 5. Effective Date. In accordance with California Government Code section 36937, this Ordinance shall become effective on the 30th day following its passage and adoption, except for the amendment to the Local Coastal Program. The LCPA is subject to certification by the California Coastal Commission and shall become effective after certification.

SECTION 6. Pending Applications. All applications for wireless facilities on land other than public ROW or for modifications to existing wireless facilities in the public rights-of-way which were not subject to final action by City prior to the effective date of this Ordinance shall be subject to and comply with all provisions of this Chapter, and any design and placement standards adopted by the City Council by resolution, to the fullest extent permitted by applicable law.

SECTION 7. Severability. If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection,

Exhibit A

A. Strike the following MMC Sections: 17.62.040(A)(6), 17.08.040(D), 17.18.030(E), 17.22.040(M), 17.30.030(D), 17.32.030(A), 17.36.030(B), 17.38.030(B), 17.38.030(C), 17.18.020(E), 17.22.020(D), 17.24.020(A), 17.26.020(A), 17.28.020(A), 17.30.020(A), 17.34.020(B), 17.36.020(C).

B. MMC Chapter 17.46 is amended as follows:

**CHAPTER 17.46
WIRELESS COMMUNICATIONS FACILITIES**

17.46.010 Purpose and objectives.

A. Purpose. The purpose and intent of this Chapter is to provide a uniform and comprehensive set of standards for the development, siting and installation of wireless communication facilities and antennas, other than those exempt under Section 17.46.020(B). The regulations contained herein are designed to protect and promote the public health, safety and community welfare and the aesthetic quality and value of the City as set forth within the goals, objectives and policies of the general plan, while at the same time providing for managed development of wireless communications infrastructure.

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

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

17.46.020 Scope.

A. There shall be a type of permit entitled a "Wireless Permit (WP)," which shall be subject to all of the requirements of this Chapter. Unless exempted, every person who desires to place or modify a wireless communications facility must obtain a WP authorizing the placement or modification in accordance with this Chapter. The WP shall be obtained in one of the following ways, based on facility type:

1. Type 1: The installation or modification of a facility that qualifies as a small cell facility, or eligible facilities request, or collocation of a non-small cell facility; or
2. Type 2: (a) the installation or modification of all wireless facilities that do not qualify as Type 1; and (b) any WP application that includes a waiver request pursuant to MMC Section 17.46.060(D).

B. Exemptions. Installation of the following antennas and/or appurtenant equipment which comply with all applicable requirements and standards pertaining to radio frequency (RF) emissions are not required to obtain a Wireless Permit:

1. Antennas designed to receive video programming signals from direct broadcast satellite (DBS) services, residential fixed wireless communications, multi-channel multi-point distribution providers (MMD) or television broadcast stations in all zoning districts are exempted, provided that all of the following conditions are met:

a. The antenna will be accessory to an existing use and measures thirty-nine (39) inches (one meter) or less in diameter.

b. The antenna will be installed in a location where it is not readily visible from the public right-of-way.

c. The antenna will not be located within a required setback area, driveway or parking space.

2. Amateur radio antenna (including ham and short wave) provided the antenna does not exceed the maximum base building height for the zoning district in which it is located by more than fifteen (15) feet.

3. Communications facilities exempt from the provisions of this chapter by operation of state or federal law.

4. Wireless communication facilities in the public right-of-way and subject to the requirements of Chapter 12.02.

5. The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.

6. Installation of a “cell on wheels,” “cell on truck” or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing functional facilities.

C. The determination of whether or not a proposed facility meets the requirements for an exemption shall be made by the Planning Director.

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

17.46.030 Administration.

A. Reviewing Authority. For Type 1 applications, the Planning Director or their designee (“Director”) is the reviewing authority responsible for taking action on the application. For Type 2 applications, the Planning Commission is the reviewing authority and will hold a public hearing to take action on the application.

B. Heightened Review. Type 1 applications other than eligible facilities requests proposing installations in the following areas shall automatically be processed as Type 2 applications and subject to heightened review: all Residential, Planned Development, and Mobilehome Zoning Districts.

C. Applications subject to heightened review must meet the findings required in MMC Section 17.46.110(A) and (B). Applications qualifying as eligible facilities requests must meet the findings in MMC 17.46.110(C). All other Applications must meet the findings required in Section 17.46.110(A).

D. As part of the administration of this Chapter and in addition to authority granted pursuant to other provisions of this Title 17, the Director may:

1. Extend or shorten deadlines where necessary to be consistent with state and federal laws and regulations;
2. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued; and
3. Take such other steps as may be required to timely act upon applications for placement of wireless communications facilities, including entering into agreements to mutually extend the time for action on an application.

E. Appeals.

1. Type 1 Applications.

a. Any person adversely affected by a decision of the Director pursuant to this Chapter may request an administrative hearing to appeal the Director's decision. In order to request a hearing, the person shall submit to the City Clerk in the manner directed in the Director's decision notice a fully completed request for administrative hearing form along with a full amount of the appeal fee set by the City Council (by way of check or money order). The request for administrative hearing shall be incomplete if it does not include the appeal fee in the full amount.

b. Appeals must be filed within ten (10) calendar days of the mailing of decision notice of the Director, unless a different time period is specified by the Director in such notice. The Director may extend the time period for filing an appeal for due cause, but an extension may not be granted where such extension would result in approval of the application by operation of law. If a timely and complete request for hearing is not submitted, the Director's decision shall be deemed final.

c. If a timely and complete request for hearing is submitted, the City Manager shall appoint an administrative hearing officer or, if designated by action of the City Council, two members of the Planning Commission and a member of the City Council ("Hearing Officer") to conduct the administrative hearing. The Hearing Officer shall decide the issues de novo. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. The appellant and the applicant shall have the opportunity to present evidence in support of their case.

d. Any administrative hearing shall be conducted so that a timely written decision may be issued in accordance with applicable law.

e. The hearing officer's decision shall be in writing, shall explain the basis for the decision, and shall be served upon the applicant, and upon the appellant (if different) by first class mail, to the address stated on the request for hearing form. and the written decision of the Hearing Officer will be the final decision of the City effective on the date of mailing.

2. Type 2 Applications.

a. Any person adversely affected by a decision of the Planning Commission pursuant to this Chapter may request a public hearing to appeal the Planning Commission's decision to the City Council. In order to request a hearing, the person shall submit to the City Clerk in the manner directed in the Planning Commission's decision notice a fully completed request for a public hearing form along with the full amount of the appeal fee set by the City Council (by way of check or money order). The request for a public hearing shall be incomplete if it does not include the deposit in the full amount of the appeal fee. The deposit will be retained in a noninterest bearing account until the matter is resolved. The appeal fee shall be refunded to the appellant if their appeal is granted.

b. Appeals must be filed within ten (10) calendar days of the mailing of decision notice of the Planning Commission, unless a different time period is specified by the City in such notice. The City may extend the time period for filing an appeal for due cause, but an extension

may not be granted where such extension would result in approval of the application by operation of law.

c. If a timely and complete request for hearing is not submitted, the Planning Commission's decision shall be deemed final.

d. Any public hearing shall be conducted so that a timely written decision may be issued in accordance with applicable law. The City Council's review shall be de novo; it may receive new evidence and is not bound by the previous record.

e. The City Council's decision shall be in writing, shall explain the basis for the decision, and shall be served upon the applicant, and upon the appellant (if different) by first class mail, to the address stated on the request for hearing form. The written decision of the City Council will be the final decision of the City effective on the date of mailing.

17.46.040 Definitions.

"Antenna" means a typically metallic device used for radiating or receiving radio waves.

"Antenna, building mounted sites" means antennas which are located and/or mounted on an existing building's exterior walls.

"Antenna, Roof-Mounted" means an antenna, and its associated support structure, that is attached to a roof of a building or similar structure.

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

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

"Eligible Facilities Request or EFR" shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.

"FCC" is the Federal Communications Commission or its lawful successor.

"Personal Wireless Services" shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

"Personal Wireless Services Facility" means a wireless communications facility used for the provision of personal wireless services.

"Person Adversely Affected" means the applicant, or owners/occupants who reside within a 1,000-foot radius of the project property.

"Public Right-of-Way, or ROW" means any public street, public way or public place within the City limits, either owned by the City or dedicated to the public for the purpose of travel and which the City has the responsibility to maintain or manage. The term includes all or any part of the entire width of right-of-way, and above and below the same, whether or not such entire area is actually used for travel purposes.

"Small Cell Facility" shall have the same meaning as "small wireless facility" in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):

(1) The facility—

(i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or

(ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or

(iii) does not extend an existing structure on which are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

- (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;
- (5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and
- (6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).

“Support Structure” Any structure capable of supporting a base station and/or antenna.

“Stealth facility” (or “stealth facilities”) means a wireless communications facility designed to look like something other than a wireless tower or base station.

“Wireless communications facilities” means the wiring, cables, electronic equipment, transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s).

17.46.050 Health and safety.

A. No wireless communications facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health, safety or welfare. All wireless communications facilities shall be designed by qualified, licensed persons to provide the maximum protection that is technically feasible to prevent electrical and fire hazards. All wireless facilities should be proactively monitored and maintained to continue and, if possible, improve the safety design.

B. No facility or combination of facilities shall produce at any time power densities or exposure levels in any general population area that exceed the applicable FCC standards for radiofrequency (RF) emissions.

17.46.060 General Standards for Wireless Communications Facilities.

A. Generally. Wireless communications facilities shall meet the minimum requirements set forth in this Chapter, in addition to the requirements of any other applicable law, unless a waiver is required to avoid a denial of an application. Waivers shall only be granted on a case-by-case basis, and shall be narrowly-tailored so that the requirements are waived only to the minimum extent required to address the request.

B. Wireless communications facilities shall be installed and modified in a manner that does not interfere with the use of public or private property or the use of the public right-of-way, in that it minimizes risks to public safety, avoids above-ground facilities in underground areas, avoids installation of new support structures or equipment, makes facilities stealth by using concealment elements, and otherwise maintains the integrity and character of the neighborhoods in which the facilities are located and does not impede views; ensures that installations are subject to periodic review to minimize the intrusion on public and private property; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public or cause personal or economic harm, interfere with the primary uses of public or private property or the rights-of-way, or hinder the ability of

the City or other government agencies to improve, modify, relocate, abandon, or vacate facilities or public property.

C. **Engineering, Design, and Location Standards.** The City Council may adopt by resolution the Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless Communications Facilities on Land Other than Public Right-of-Way. All applications shall comply with the engineering, design and location standards for wireless communications facilities set forth in this Ordinance and such Resolution, as amended.

D. **Waivers.** Requests for waivers from any requirement of this Chapter or the standards and wireless regulations set forth in the City Council resolution shall be made in writing to the Director. A waiver may be requested: (1) to avoid a denial of an application that would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations; or (2) for the technical or design reasons specified in the Resolution described in Section 17.46.060(C), as amended. A request for waiver may be granted only if it is demonstrated through clear and convincing evidence that the standard for the waiver has been met. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored so that the requirements of this Chapter or the standards in the City Council resolution are waived only to the minimum extent required to address the request.

17.46.070 Standard conditions of approval.

Each wireless permit approved pursuant to this Chapter shall be subject to the conditions of approval in the Resolution that adopted the Engineering, Design and Location Standards, and Conditions of Approval for Wireless Communications Facility on Land Other than Public Right-of-Way. If no conditions are imposed in the WP or if the application is deemed approved by operation of law, then the standard permit conditions of approval in such Resolution shall apply to that permit.

17.46.080 Minimum application requirements.

A. Applicants shall submit applications on the forms and in the manner approved by the Planning Director. In addition to providing all required fees, all wireless communications facility carriers or providers shall provide the information required by a separate application form published, and updated from time to time, by the City. If no such form is available, then the applicant must submit all documents, information, and any other materials necessary to allow the City to make required findings and ensure that the proposed facility will comply with applicable laws and not endanger the public health, safety, or welfare. The Director may waive certain submittal requirements if prohibited by applicable law or require additional information based on the characteristics of specific projects.

B. **Pre-application meeting.** Prior to filing an application to install or modify a wireless communications facility subject to this Chapter, the applicant is encouraged to schedule a voluntary pre-application meeting with the Planning Department to discuss the proposed facility, the requirements of this Chapter, and any potential impacts of the proposed facility. Conducting a voluntary pre-application meeting shall not initiate any applicable “shot clock.”

C. **Public Notice.** In addition to any other noticing requirements:

1. Within seven (7) calendar days after an application is submitted to the City, the applicant shall: (1) post notice at the proposed project site in a location near to and visible to the public and (2) provide the City with evidence that such notice has been posted. The applicant shall maintain and replace the posted notice as necessary during the entire application review process until the Director or Planning Commission, as applicable, acts on the application and all appeals have been exhausted. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for at least 180 calendar days. The posted notice shall be at minimum 17 inches wide by 11 inches tall. The posted notice shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, or pedestrians. The City encourages applicants to consult with the Planning Department on placement locations to avoid any potential hazards.

2. Within five (5) business days from the date on which an application is determined to be complete, the Director shall notify in writing of the filing of the application property owners and residents of all property within a one thousand (1,000) foot radius of the proposed project, but in no event fewer than the owners and occupants of ten (10) developed properties. The purpose of the notice is to inform the surrounding property owners and residents of the filing of the application and provide an opportunity for comment on the application prior to the approving authority's decision. The notice shall describe the request, provide a map showing the specific location of the proposed project, describe the review process and timeframes, indicate how to contact the applicant and case planner assigned to the application, and the City-assigned application identifier.

D. Fire Department Review. After submittal by the applicant, the applicable application materials shall be transmitted to the Fire Department for its review and any recommended conditions.

17.46.110 Findings for Approval.

A. For all wireless communications facilities subject to Chapter 17.46, other than eligible facilities requests, the approving authority shall approve the proposed project provided it makes the following findings:

1. The facility is not detrimental to the public health, safety, and welfare and will not pose an undue fire risk;
2. The facility complies with Chapter 17.46 and all applicable design and development standards; and
3. The facility complies with state and federal law.

For all Type 2 applications pursuant to Section 17.46.020(A)(2), other than eligible facilities requests, that are proposed to be located in a residential, planned development or mobilehome zoning district, the approving authority shall also make the following finding:

4. The facility could not feasibly be located within any other zoning district in the City.

B. All eligible facilities requests subject to Chapter 17.46 must be approved on the basis of the application and other materials or evidence provided in review thereof provided the approving authority makes the following findings:

1. The proposed colocation or modification meets each and every one of the applicable criteria for an eligible facilities request stated in 47 C.F.R. 1.6100(b)(3)-(9), or any successor provisions, after application of the definitions in 47 C.F.R. 1.6100(b). The approving authority shall make an express finding for each criterion;
2. The proposed facility complies with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment,

provided this limitation only applies to any modification that would not exceed the thresholds identified in 47 C.F.R. 1.6100(b)(7)(i) through (iv), or any successor provisions; and

3. That the proposed facility will comply with all generally applicable laws, including generally applicable building, structural, electrical and safety codes, noise control ordinances, and other laws codifying objective standards reasonably related to health and safety.

17.46.120 Permit review, renewal and revocation procedure.

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

B. At any time, the Planning Director may initiate proceedings to hold a public hearing before Planning Commission to revoke a Wireless Permit issued pursuant to this Chapter. Notice of such a hearing shall be the same as that required for a new WP. Grounds for revocation shall be limited to a finding that (1) the owner or operator has abandoned the facility, (2) the facility is no longer in compliance with either the general requirements or design standards of this title in effect at the time of approval, (3) the facility no longer complies with the conditions of approval and the owner or operator has failed to bring the facility into compliance within ninety (90) days after the Director sends a notice requiring the facility to be brought into compliance, (4) the facility does not comply with applicable FCC or FAA regulations, including those related to RF emissions, (5) the WP was obtained in a fraudulent manner, or (6) if the Director determines that the facility poses a threat to the public health, safety, or welfare or is creating a nuisance.

Exhibit B

LIP Section 2.2 is amended as follows:

2.2. WIRELESS COMMUNICATIONS DEFINITIONS

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

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

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

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

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

ELIGIBLE FACILITIES REQUEST or EFR - shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.

FCC - is the Federal Communications Commission or its lawful successor.

MUNICIPAL INFRASTRUCTURE - City-owned or controlled property structures, objects, and equipment in the ROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the ROW.

PERMITTEE - Any person or entity granted a wireless ROW permit pursuant to this Chapter.

PERSONAL WIRELESS SERVICES - shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

PERSONAL WIRELESS SERVICES FACILITY - A wireless communications facility used for the provision of personal wireless services.

PROFESSIONAL ENGINEER or PE - is as defined by Business and Professions Code Section 6701, and shall be interpreted to refer to the specific appropriate engineering branch in issue as defined in Sections 6702 through 6703 and "supervision of the construction of engineering structures" as defined in Section 6703.1.

PUBLIC RIGHT-OF-WAY, OR ROW - Any public street, public way or public place within the City limits, either owned by the City or dedicated to the public for the purpose of travel and

which the City has the responsibility to maintain or manage. The term includes all or any part of the entire width of right-of-way, and above and below the same, whether or not such entire area is actually used for travel purposes.

SMALL CELL FACILITY - shall have the same meaning as “small wireless facility” in 47 C.F.R. 1.6002(l), or any successor provision (which is a personal wireless services facility that meets the following conditions that, solely for convenience, have been set forth below):

(1) The facility—

(i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or

(ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or

(iii) does not extend an existing structure on which are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;

(5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and

(6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).

SUPPORT STRUCTURE - Any structure capable of supporting a base station and/or antenna.

STEALTH FACILITY - A wireless communications facility designed to look like something other than a wireless tower or base station.

UNDERGROUND AREAS - Those areas where there are no electrical facilities or facilities of a local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

UTILITY POLE - A structure in the ROW designed to support electric, telephone and similar utility lines. For the avoidance of doubt, any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities is not a utility pole.

WIRELESS ROW PERMIT OR WRP - A permit issued pursuant to this Chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular

location within the ROW; and the modification of any existing support structure to which the wireless facility is proposed to be attached.

WIRELESS COMMUNICATIONS FACILITIES - The wiring, cables, electronic equipment, transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s).

LIP Section 3.16 is repealed and replaced with the following:

3.16. WIRELESS COMMUNICATIONS FACILITIES

3.16.1 Purpose and objectives

A. Purpose. The purpose and intent of this Section is to provide a uniform and comprehensive set of standards for the development, siting and installation of wireless communication facilities and antennas, other than those exempt under Section 3.16.2(C). The regulations contained herein are designed to protect and promote the public health, safety and community welfare and the aesthetic quality and value of the City as set forth within the goals, objectives and policies of the general plan, while at the same time providing for managed development of wireless communications infrastructure.

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

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

3.16.2 Wireless Permit

A. Unless exempted, every person who desires to place a wireless communications facility in the public rights-of-way or modify an existing wireless facility in the public rights-of-way must obtain a Wireless ROW Permit (WRP) pursuant to Chapter 12.02 of the Malibu Municipal Code authorizing the placement or modification. Except for small cell facilities, eligible facilities requests, or any other type of wireless facility expressly allowed in the public right-of-way by state or federal law.

1. Exemptions. Installation of the following antennas and/or appurtenant equipment which comply with all applicable requirements and standards pertaining to radio frequency (RF) emissions are not required to obtain a WRP:

- a. The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.
- b. Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing functional facilities.

B. Unless exempted, every person who desires to place or modify a wireless communications facility must obtain a Wireless Permit (WP) authorizing the placement or modification. The WP shall be obtained in one of the following ways, based on facility type:

1. Type 1: The installation or modification of a facility that qualifies as a small cell facility, or eligible facilities request, or collocation of a non-small cell facility; or

2. Type 2: (a) the installation or modification of all wireless facilities that do not qualify as Type 1; and (b) any WP application that includes a waiver request.

3. Exemptions. Installation of the following antennas and/or appurtenant equipment which comply with all applicable requirements and standards pertaining to radio frequency (RF) emissions are not required to obtain a WP:

- a. Antennas designed to receive video programming signals from direct broadcast satellite (DBS) services, residential fixed wireless communications, multi-channel multi-point distribution providers (MMD) or television broadcast stations in all zoning districts are exempted, provided that all of the following conditions are met:
 - i. The antenna will be accessory to an existing use and measures thirty-nine (39) inches (one meter) or less in diameter.
 - ii. The antenna will be installed in a location where it is not readily visible from the public right-of-way.
 - iii. The antenna will not be located within a required setback area, driveway or parking space.
- b. Amateur radio antenna (including ham and short wave) provided the antenna does not exceed the maximum base building height for the zoning district in which it is located by more than fifteen (15) feet.
- c. Communications facilities exempt from the provisions of this Section by operation of state or federal law.
- d. The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.
- e. Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing functional facilities.

C. The determination of whether or not a proposed facility meets the requirements for an exemption shall be made by the Planning Director.

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

E. Public Use. Except as otherwise provided by California law, any use of the public right-of-way authorized pursuant to this chapter will be subordinate to the City's use and use by the public.

3.16.3 Health and safety

A. No wireless communications facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health, safety or welfare. All wireless communications facilities shall be designed by qualified, licensed persons to provide the maximum protection that is technically feasible to prevent electrical and fire hazards. All wireless facilities should be proactively monitored and maintained to continue and, if possible, improve the safety design.

B. No facility or combination of facilities shall produce at any time power densities or exposure levels in any general population area that exceed the applicable FCC standards for radiofrequency (RF) emissions.

3.16.4 General Standards for Wireless Communications Facilities

A. Generally. Wireless communications facilities shall meet the minimum requirements set forth in this Section, in addition to the requirements of any other applicable law, unless (1) a waiver is required. Waivers shall only be granted on a case-by-case basis and shall be narrowly-tailored so that the requirements are waived only to the minimum extent required to address the request.

B. Wireless communications facilities shall be installed and modified in a manner that does not interfere with the use of public or private property or the use of the public right-of-way, in that it minimizes risks to public safety, avoids aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way, makes facilities stealth by using concealment elements, and otherwise maintains the integrity and character of the neighborhoods in which the facilities are located and does not impede views; ensures that installations are subject to periodic review to minimize the intrusion on public rights-of-way and public and private property; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public or cause personal or economic harm, interfere with the primary uses of public or private property or the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate facilities or public property.

C. Engineering, Design, and Location Standards. All applications shall comply with the engineering, design and location standards for wireless communications facilities set forth in this Chapter and the Design and Location Standards and Conditions of Approval for Wireless Communications Facilities in the Public Right-of-Way and Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless Communications Facilities on Land Other than Public Right-of-Way adopted by separate resolutions and as amended.

D. Waivers. Requests for waivers from any requirement of this Section or the standards and wireless regulations set forth in the City Council resolution shall be made in writing to the Director . A waiver may be requested: (1) to avoid a denial of an application that would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations; or (2) for the technical or design reasons specified in the Resolution described in Section 17.46.060(C), as amended. A request for waiver may be granted only if it is demonstrated through clear and convincing evidence that the standard for the waiver has been met. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored so that the requirements of this Section or the standards in the City Council resolution are waived only to the minimum extent required to address the request.

3.16.5 Standard conditions of approval

Each WRP and WF approved pursuant to this Section shall be subject, respectively, to the conditions of approval in the Design and Location Standards and Conditions of Approval for Wireless Communications Facilities in the Public Right-of-Way and Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless Communications Facilities on Land Other than Public Right-of-Way adopted by separate resolutions and as amended. If no conditions are imposed in the WRP or WP if the application is deemed approved by operation of law, then the standard permit conditions of approval in the respective Resolution shall apply to that permit.

3.16.6 Minimum application requirements

A. Applicants shall submit applications on the forms and in the manner approved by the Planning Director. In addition to providing all required fees, all wireless communications facility carriers or providers shall provide the information required by a separate application form published, and updated from time to time, by the City. If no such form is available, then the applicant must submit all documents, information, and any other materials necessary to allow the City to make required findings and ensure that the proposed facility will comply with applicable laws and not endanger the public health, safety, or welfare. The Director may waive certain submittal requirements if prohibited by applicable law or require additional information based on the characteristics of specific projects.

B. Public Notice. In addition to any other noticing requirements:

1. Within seven (7) calendar days after an application is submitted to the City, the applicant shall: (1) post notice at the proposed project site in a location near to and visible to the public and (2) provide the City with evidence that such notice has been posted. The applicant shall maintain and replace the posted notice as necessary during the entire application review process until the Director or Planning Commission, as applicable, acts on the application and all appeals have been exhausted. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for at least 180 calendar days. The posted notice shall be at minimum 17 inches wide by 11 inches tall. The posted notice shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, or pedestrians. The City encourages applicants to consult with the Planning Department on placement locations to avoid any potential hazards.

2. Within five (5) business days from the date on which an application is determined to be complete, the Director shall notify in writing of the filing of the application property owners and residents of all property within a one thousand (1,000) foot radius of the proposed project, but in no event fewer than the owners and occupants of ten (10) developed properties. The purpose of the notice is to inform the surrounding property owners and residents of the filing of the application and provide an opportunity for comment on the application prior to the approving authority's decision. The notice shall describe the request, provide a map showing the specific location of the proposed project, describe the review process and timeframes, indicate how to contact the applicant and case planner assigned to the application, and the City-assigned application identifier.

C. Fire Department Review. After submittal by the applicant, the applicable application materials shall be transmitted to the Fire Department for its review and any recommended conditions.

3.16.7 Permit review, renewal and revocation procedure

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

3.16.7 Findings

A. A Wireless ROW Permit, other than eligible facilities requests, shall be approved on the basis of the application and other materials or evidence presented, provided the approving authority makes the following findings:

1. The facility is not detrimental to the public health, safety, and welfare;
2. The facility complies with Malibu Municipal Code Chapter 12.02 and all applicable design and development standards; and
3. The facility meets applicable requirements and standards of state and federal law.

B. A Wireless Permits, other than eligible facility requests, shall be approved on the basis of the application and other materials or evidence provided in review thereof provided the approving authority makes the following findings:

1. The facility is not detrimental to the public health, safety, and welfare and will not pose an undue fire risk;
2. The facility complies with Chapter 17.46 of the Malibu Municipal Code and all applicable design and development standards; and
3. The facility complies with state and federal law.

For all Type 2 applications pursuant to Section 3.16.2(B)(2), other than eligible facilities requests, that are proposed to be located in residential, planned development or mobilehome zoning district, the approving authority shall also make the following finding:

4. The facility could not feasibly be located within any other zoning district in the City.

C. All Wireless ROW Permits and Wireless Permits that qualify as eligible facilities requests shall be approved on the basis of the application and other materials or evidence provided in review thereof provided the approving authority makes the following findings:

1. The proposed colocation or modification meets each and every one of the applicable criteria for an eligible facilities request stated in 47 C.F.R. 1.6100(b)(3)-(9), after application of the definitions in 47 C.F.R. 1.6100(b). The approving authority shall make an express finding for each criterion;
2. The proposed facility complies with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided this limitation only applies to any modification that would not exceed the thresholds identified in 47 C.F.R. 1.6100(b)(7)(i) through (iv), or any successor provisions; and
3. That the proposed facility will comply with all generally applicable laws, including generally applicable building, structural, electrical and safety codes, noise control ordinances, and other laws codifying objective standards reasonably related to health and safety.

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

- A. Replace LIP Section 13.4.11 to read as follows:

13.4.11 Wireless Communications Facilities and Utility Pole Exemptions:

1. Pursuant to Section 6409 of the federal Spectrum Act (47 U.S.C Section 1455) and its implementing regulations (47 C.F.R. Section 1.6100), as amended, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall be allowed. The terms used in this subsection shall have the meaning ascribed to them in 47 C.F.R. Section 1.6100(b) or any successor provisions.

2. The replacement, minor relocation and modifications (including minor increase in height) of existing utility poles to comply with California Public Utility Code requirements. The exemption does not apply when the project has a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands or public views to the ocean. This exemption does not apply when the height of a replacement utility pole would allow a new facility to be added to the pole, such as the installation of a new wireless communications facility.

- B. Add section 13.4.12 to read as follows (moving the content previously in Section 13.4.11 to this new section, with the addition of the underlined text below):

13.4.11 General Requirements for De Minimis Waiver

- A. General Requirements for De Minimis Waiver.

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

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

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

3. New wireless communications facilities that qualify as small cell facilities that comply with the design standards set forth in the Design and Location Standards for Wireless Communications Facilities in the Public Right-of-Way and Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless Communications Facilities on Land Other than Public Right-of-Way adopted by separate resolutions and as amended.

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

7. Wireless communication facilities other than eligible facility requests or small cell facilities.

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

13.4.9 Exemption for Temporary Event and Structure

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

- G. Amend Appendix 1 TABLE B PERMITTED USES to replace all references to “WTF” with “WP” and “Wireless Telecommunication Facility” with “Wireless Permit”.

provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid, and enforceable.


SECTION 8. The City Clerk shall certify the adoption of this Ordinance.

PASSED, APPROVED AND ADOPTED this 26th day of April 2021.



PAUL GRISANTI, Mayor

ATTEST:



KELSEY PETTIJOHN, Acting City Clerk
(seal)

Date: 5/21/21

APPROVED AS TO FORM:




JOHN COTTI, Interim City Attorney

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

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 484 was passed and adopted at the Regular City Council meeting of April 26, 2021, by the following vote:

AYES:	5	Councilmembers:	Farrer, Silverstein, Uhring, Grisanti, Pierson
NOES:	0		
ABSTAIN:	0		
ABSENT:	0		



KELSEY PETTIJOHN, Acting City Clerk
(seal)

RESOLUTION NO. 20-65

A RESOLUTION OF THE CITY OF MALIBU ADOPTING ENGINEERING, DESIGN AND LOCATION STANDARDS AND CONDITIONS OF APPROVAL FOR WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY AND FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does hereby find, resolve and order as follows:

SECTION 1. Recitals

A. Chapter 12.02 of the Malibu Municipal Code governs the permitting, installation, and regulation of personal wireless services facilities in the City's public right-of-way (ROW);

B. Section 12.02.050(D) provides that "[a]ll applicants shall engineer, design and locate the wireless facilities in accordance with the standards and wireless regulations set forth separately though the resolution adopted by the City Council;"

C. The City's public rights-of-way are a uniquely valuable public resource, closely linked with the City's character, making the regulation of wireless installations in the public rights-of-way necessary to protect and preserve the aesthetics in the community;

D. Being authorized to do so, the City wishes to establish engineering, design and development standards applicable to wireless installations in the public rights-of-way;

E. The City also wishes to set standard conditions of approval applicable to wireless ROW permits; and

F. On December 9, 2020 the City Council conducted a duly noticed public hearing and received testimony from City staff and all interested parties regarding the engineering, design and development standards.

SECTION 2. Purpose The purpose of this document is to (1) establish design and location standards (Standards) for wireless facilities in the public right-of-way (ROW) within the City; and (2) set standard conditions of approval for Wireless ROW Permits (WRPs).

SECTION 3. Definitions For the purposes of these Standards, the definitions set forth in Malibu Municipal Code (MMC) Section 12.02.020 are incorporated by reference into this Resolution and in addition the following definitions apply:

A. "Pole-mounted facility" means a wireless facility that is, or is proposed to be, attached to or contained in a pole.

B. "Stealth facility" (or "stealth facilities") means a wireless facility designed to look like something other than a wireless tower or base station.

SECTION 4. General Standards for all Facilities The following standards shall apply to all wireless facilities in the ROW:

- A. All wireless facilities shall be engineered and designed to minimize the visual impact by means of placement, screening, camouflaging, painting and texturing and to be compatible with existing architectural elements, building materials and other site characteristics. The applicant shall use the smallest and least visible antenna possible to accomplish the facility's objectives. All antennas and support structures shall be painted and/or textured to achieve architectural compatibility with the structures for which they are attached and/or located.
- B. Prohibition of Generators. Permanent generators are prohibited.
- C. General Orders. All installations shall comply with applicable California Public Utilities Commission ("CPUC") General Orders, including, but not limited to General Order 95, and, if stricter, the pole owner's safety standards. None of the engineering or design standards are meant to conflict with or cause a violation of CPUC General Orders. Accordingly, the Standards can be adjusted on a case-by-case basis if it is demonstrated that adjustment is necessary to ensure compliance with CPUC rules on safety.
- D. Electric Service. The permittee shall request that the permittee's electric service provider apply flat-rate billing for any proposed electric service, wireless smart metering or other alternative metering option that would obviate the need for an above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded "smart meter" that shall not exceed the width of the pole; provided, however that such smart meter shall be placed at least ten (10) feet above ground level. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet, but the Director shall not approve a separate ground-mounted electric meter pedestal unless (1) the separate ground-mounted meter pedestal would be placed off the sidewalk and (2) the applicant demonstrates with clear and convincing evidence that all other alternatives for the electric meter are not available. All support equipment located within cabinets, shelters, or similar structures shall be screened from public view to the maximum extent feasible. Undergrounding of support equipment is required wherever practicable.
- E. Security. All equipment and facilities shall be installed in a manner to avoid being an attractive nuisance and to prevent unauthorized access, climbing, and graffiti.

- F. Safety. All wireless facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the public use of the ROW; impede the flow of vehicular or pedestrian traffic; impair the primary use and purpose of poles/signs/traffic signals or other infrastructure; interfere with outdoor dining areas or emergency facilities; or otherwise obstruct the accessibility of the ROW. Further, all wireless facilities and associated equipment shall comply with Americans with Disabilities Act (ADA) requirements.
- G. Fire and Electrical Safety Standards. All wireless facilities shall contain:
1. A power shut off readily accessible to fire service personnel for emergencies;
 2. Surge protection for lightning discharge or other significant electrical disturbances;
 3. Signage as required by the permit conditions, the National Electric Code or the Los Angeles County Fire Department Chief or his or her designee; and
 4. Instructions for first responders to de-energize the equipment.
- H. Noise. Wireless facilities and equipment must comply with the City's noise ordinance in MMC 8.24, or any successor provisions, and be designed to prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.
- I. Lighting. Lighting of antenna structures and their electrical support equipment is prohibited, except as required by any order or regulation of the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA) and except for manually operated emergency lights for use when official operating personnel are on site.
- J. Signs. No facility may display any signage or advertisement unless it is expressly allowed by this paragraph or required by law or a permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the owner's unique site number and a local or toll-free telephone number to contact the facility owner's operations center.
- K. Landscaping. Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. In addition to any landscaping used for concealment or screening purposes, the applicant

shall replace any existing landscaping displaced during construction or installation of the applicant's facility. The applicant's landscaping plan shall be subject to the City's review and approval but shall, at a minimum, match the existing landscaping and foliage surrounding the installation site consistent with MMC Section 17.53.090.

SECTION 5. Location Standards for All Facilities The location standards for all wireless facilities, other than those that qualify as eligible facilities requests, in the ROW are as follows:

- A. Spacing. Wireless facilities located adjacent to any residential zone district, except for those facilities placed on utility poles located along Pacific Coast Highway or other major arterial roadways as depicted in Figure CI-1 of the City's General Plan, shall not be located within six hundred (600) feet of any other wireless facility, unless a finding is made, based on technical evidence acceptable to the Planning Director, as appropriate, showing a clear need for the facility and that no technically feasible alternative site exists. This provision does not apply to wireless facilities located adjacent to any commercial zone district.
- B. Location preference for wireless facilities should be given to the following:
 - 1. Installations along major arterial roadways as depicted in Figure CI-1 of the City's General Plan.
 - 2. Facilities attached to existing utility poles or street lights, or sited adjacent to existing structures not used for human habitation or school grounds or to playgrounds or parks. Whenever possible, facilities shall be located on and/or inside existing structures.
 - 3. Sites that are not highly visible from adjacent roadways and do not obstruct views of impressive scenes off the Pacific Ocean, offshore islands, the Santa Monica Mountains, canyons, valleys, or ravines.
 - 4. Unless otherwise indicated in this title, no wireless facility shall be installed on an exposed ridgeline unless the facility blends with the surrounding existing natural and man-made environment and a finding is made that no other location is technically feasible.
- C. Discouraged Locations/Zones.
 - 1. Wireless facilities that are within 250 feet from the property line of an open space or recreational area.
 - 2. Wireless facilities that are less than five hundred (500) feet from school grounds, playgrounds or parks.

3. Wireless facilities that are less than four hundred fifty (450) feet from any other existing wireless facility within or adjacent to any residential zone district, except for those facilities placed on utility poles located along Pacific Coast Highway or other major arterial roadways as depicted in Figure CI-1 of the City's General Plan.

D. Placements shall not be in front of dwelling units or schools.

SECTION 6. Undergrounding Standards for All Facilities With regard to undergrounding wireless facilities, the following standards apply:

- A. Equipment, including remote radio units (RRUs) that cannot be placed with the antenna in the shroud, must be placed underground, subject to Section 7(B) below. Vaults and pull boxes shall be installed flush to grade.
- B. Ground-mounted equipment is prohibited unless required for technical reasons.
 1. If required, ground-mounted wireless facilities shall be located near existing structures or trees at similar heights for screening purposes. The equipment shall be enclosed in cabinets, sized only for the necessary equipment. Further, if ground mounted, the antennas, equipment, cabinet and support structure shall be painted, textured, landscaped or otherwise camouflaged as much as possible to integrate the structure into the environment. Colors and materials for facilities shall be non-reflective and chosen to minimize visibility. As such, ground-mounted equipment shall be stealth.
 2. The ground-mounted equipment must not obstruct ocean views.
 3. Not more than one ground-mounted antenna shall be permitted on each site.

SECTION 7. Design Standards for all Facilities The general design standards for wireless facilities in the ROW are as follows:

- A. Materials. The materials used shall be non-reflective and non-flammable.
- B. Cabinet doors must be designed to stay securely closed, and openings in all facilities shall be shielded or made the smallest size feasible to protect against fire and wind-blown embers.
- C. The pole, or other support structure, and all equipment shall be designed to withstand forces from seismic events.

- D. All connections between various components of the facility, power lines, and conduit shall be designed in a manner to protect against damage by a natural disaster, a vehicular accident, an act of vandalism or similar external forces.
- E. Stealth. The wireless facility shall be stealth. Stealth elements and techniques should be used to blend the facility with surrounding materials and colors of the support structure and make the facility appear to be something other than a wireless facility. Stealth elements include, but are not limited to, the following:
1. Radio frequency (RF) transparent screening or shrouds;
 2. Matching the color of the existing support structure by painting, coating, or otherwise coloring the wireless facility, equipment, mounting brackets, and cabling;
 3. Placing cables and wires inside the pole or beneath conduit of the smallest size possible;
 4. Minimizing the size of the site;
 5. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site; and
 6. Using paint of durable quality.
- F. Curb Setback Requirements. New or replacement poles shall be a minimum of 18 inches from the face of the curb.
- G. Collocation. The City has a preference for the use of existing infrastructure. Wireless facilities shall be collocated on existing poles or other facilities when possible. No permittee shall restrict access to an existing antenna location if required to collocate by the City and if possible to do so.
- H. Minimum Height. All antennas shall be located such that: (1) any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half feet below the transmitting surface; and (2) no person at ground level will be exposed to an exposure level that is higher than allowed by the FCC's general population exposure rules.
- I. Strand-mounted Facilities. Strand-mounted facilities are encouraged. The facilities must be stealth and of the smallest size that is technically feasible to reduce aesthetic impacts.

SECTION 8. Engineering and Design Standards for Pole-Mounted Facilities In addition to the generally applicable standards set forth above, the design standards for pole-mounted facilities in the ROW are as follows:

A. Facilities on Streetlight Poles.

1. Stealth. The facility shall be engineered, designed, painted, coated, and otherwise made to maintain the look of a streetlight pole rather than a wireless facility, tower, or base station.
2. Antennas and RRUs. Antennas shall be top-mounted in a shroud, and RRUs and other equipment shall be placed underground. If RRUs and equipment cannot be underground, then they shall be placed within the shroud with the antenna. RRUs attached to the side of the pole or ground-mounted are discouraged, but if they are required due to technical reasons, they should use the smallest RRU volume possible and be stacked vertically and close together with minimal distance from the pole.
3. Dimensions. Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume. Pole-top wireless facilities, including shroud, shall be no more than 60 inches in height and 14.5 inches in diameter.
4. Cables and Wiring. All cables and wiring must be within the pole.

B. Facilities on Wood Utility Poles.

1. Stealth. The facility shall be engineered, designed, painted, coated, and otherwise made to maintain the look of a utility pole rather than a wireless facility, tower, or base station.
2. Antennas. The preferred mounting type for wireless facilities on wood utility poles is side-mounting.
 - a. Side-mounted Facilities. Antennas and RRUs shall be mid-pole mounted (i.e., mid-pole mounted) in a shroud. If RRUs are attached to the side of the pole, the facility should use the smallest RRU volume possible, and the RRUs should be stacked vertically and close together with minimal distance from the pole.
 - (1) Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume.
 - (2) Side-mounted wireless facilities shall be of the smallest size technically feasible and shall not

project from the pole more than 30 inches. The diameter of the shroud shall be no greater than the diameter of the pole or 14.5 inches, whichever is less. Side-mounted facilities shall only extend out on one side of the pole.

b. Top-mounted Facilities. Antennas and RRUs shall be top-mounted in a shroud.

(1) Dimensions. Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume.

(a) Pole-top wireless facilities, including shroud, shall be no more than 72 inches in height and 14.5 inches in diameter.

3. Cables and Wiring. All cables and wiring must be within the conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.

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

1. Placement. A replacement pole must be in the same location as the pole that it is replacing or as close to the original location as possible, taking into account pole owner safety-related requirements and all applicable location and placement standards herein.

2. Design. Replacement poles should match the design (e.g., color, dimensions, height, style, and materials) of the existing pole that is being replaced.

3. Cables and Wiring. All cables and wiring on non-wood poles must be within the structure. All cables and wiring on wood poles must be within conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.

4. Stealth. The facility should be stealth, as defined above in Section 4(B).

D. New (Non-Replacement) Poles.

1. Waiver Required. New poles are prohibited, unless a waiver is approved by the City to prevent a prohibition of service.

2. Design. New poles (including antenna) shall have a maximum height of 28 feet and a maximum diameter of 14 inches, and any base enclosure shall not exceed 24 inches in width or height. If existing poles are present in the surrounding area, then the new pole shall be designed to resemble the existing poles in appearance, color, materials, and distribution pattern/spacing.
3. New wooden poles are prohibited, unless required to match existing poles in the area surrounding the proposed installation site.
4. Cables and Wiring. All cables and wiring on non-wood poles must be within the pole. All cables and wiring on wood poles must be within the conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.
5. Antennas and RRUs. Antennas and RRUs shall be contained within the pole and its base or underground.
6. Stealth. The facility must be stealth, as defined above in Section 4(B).

SECTION 9. Exceptions to These Standards

- A. An exception may be granted to one or more of these Standards in the following circumstances:
 1. Pursuant to MMC Section 12.02.050(E), if an applicant demonstrates to the Director or Hearing Officer in writing with clear and convincing evidence that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. All waivers approved pursuant to MMC Section 12.02.050(E) shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored so that the requirements of these Standards are waived only to the minimum extent required to avoid the prohibition or violation.
 2. If an applicant demonstrates to the Director or Hearing Officer with clear and convincing evidence set forth in a feasibility study that compliance with a requirement of the policy would be technically infeasible and the proposed wireless facility complies with the requirements of this policy to the greatest extent technically feasible. For example, an exception to a requirement to conceal antennas in a shroud may be granted if shrouding is shown to be technically infeasible and an alternative concealment such as

a colored film wrap is proposed. As another example, an exception to the volume limitation for antennas in a single shroud may be granted if the applicant can demonstrate that a greater volume is technically required, and that it is using the smallest, technically feasible engineering and design for providing personal wireless services, taking into account the other requirements of these Standards; or

3. If an applicant demonstrates to the Director or Hearing Officer in writing and based on clear and convincing evidence that the particular engineering, design or location proposed involves only minor non-compliance with a requirement of these Standards but such non-compliance either results in no increase in visual harms to the community or provides other benefits. For example, an exception to the antenna or equipment size or volume limitations may be granted when the applicant can demonstrate that because of the proposed location of the wireless facility away from viewsheds of residences or shielded by vegetation or existing infrastructure (such as barriers) in the public ROW, any additional visual and physical impacts of the larger wireless facility would be insignificant. As another example, an exception to the wireless facility location limitations may be granted when the applicant can demonstrate that the placement is less visible from viewsheds of residences or shielded by vegetation or existing infrastructure (such as barriers) in the public right-of-way, or is less physically intrusive (for example, less impactful to tree roots or reduces noise), or the applicant can demonstrate that in a multi-site deployment, the placement would reduce the overall number of sites needed and be no more visible or physically intrusive than placement in accordance with the wireless location criteria. Among other factors, in deciding whether or not to grant an exception, the Director may consider the impact of expansions to the facility that the applicant would be entitled to make as of right if granted.

- B. Factors to be addressed in a feasibility study requesting an exception to undergrounding requirements based on feasibility shall include but are not limited to construction impacts (including duration and extent of excavation and soil disturbance); traffic and pedestrian impacts (including impediments to access during construction and maintenance, or permanent impediments due to the nature of particular equipment); operational challenge (such as water, heat, or maintenance complications affecting network reliability); noise impacts (such as venting and pumping which may be required in some instances); cost impacts; aesthetic considerations; and permanent impacts to the integrity and future capacity of public ROW.

- C. Exceptions must be requested at the time an application is initially submitted for a WRP. The request must include both the specific provision(s) from which exception is sought and the basis of the request, including all supporting evidence on which the applicant relies. Any request for exception after the Director has deemed an application complete constitutes a material change to the proposed wireless facility and shall be considered a new application. A request for exception from one or more requirements does not relieve the applicant from compliance with all other applicable provisions of law or of these Standards.

SECTION 10. Standard Conditions of Approval for Permits Under MMC Chapter 12.02

- A. **Generally.** In addition to any supplemental conditions imposed by the Director of Planning or the Hearing Officer, as the case may be, all permits under MMC Chapter 12.02 shall be subject to the following conditions, unless modified by the approving authority:
1. The permittee, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project or seeks to hold the City liable in whole or in part as a result of the engineering, design, construction or operation of the facility. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
 2. Subsequent submittals for this project shall be in substantial compliance with the plans date-stamped received by the Planning Department on _____. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the agenda report for this project. In the event the project plans conflict with any condition of approval, the condition shall take precedence and revised plans shall be submitted and approved by the Planning Director prior to the Environmental Sustainability Department for plan check.
 3. The permit and rights conferred in this approval shall not be effective until the permittee signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 30 days of this decision or prior to issuance of any wireless ROW, building, electrical or encroachment permit.

4. The applicant shall digitally submit a complete set of plans, including the items required in Condition No. 5 to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.
5. This Notice of Decision (including the signed and notarized Acceptance of Conditions Affidavit) shall be copied in its entirety and placed directly onto a separate plan sheet(s) to be included in the development plans prior to submitting any development permits from the City of Malibu Environmental Sustainability Department and encroachment permit.
6. A WRP shall be valid for a period of ten (10) years from issuance, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such wireless ROW permit shall automatically expire, unless an extension or renewal has been granted. A person holding a WRP must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.
7. The installation and construction authorized by a WRP shall be completed within three (3) years after its approval, or it will expire without further action by the City unless prior to the three (3) years the applicant submit an extension request and the City, in its sole discretion, grants a time extension for due cause. The installation and construction authorized by a wireless ROW permit shall conclude, including any necessary post-installation repairs and/or restoration to the ROW, within thirty (30) days following the day construction commenced. The permittee must provide written notice to City within ten (10) days after completing construction. The expiration date shall be suspended until an appeal and/or litigation regarding the subject permit is resolved.
8. The Planning Director may grant up to four one-year extensions of the timeline, in Condition 7 above, for completing the installation and construction authorized by a WRP, if the Planning Director

finds that the conditions, including but not limited to changes in the wireless ordinance under which the WRP approval was issued, have not significantly changed.

9. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
10. All structures shall conform to the requirements of the Environmental Sustainability Department, City Public Works Department, FCC and Los Angeles County Fire Department requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from the City, shall be secured.
11. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the MMC. An application with all required materials and fees shall be required.

Cultural Resources

12. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required pursuant to MMC Section 17.54.040(D)(4)(b).
13. If human bone is discovered, the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. These procedures require notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Wireless Facility Conditions

14. All antennas shall meet the minimum siting distances to public/uncontrolled areas required for compliance with the FCC regulations and standards governing the environmental effects of radio frequency emissions. Permittee shall keep up-to-date on current information from the FCC in regards to maximum permissible radio frequency exposure levels. In the event that the FCC changes its guidelines for human exposure to radio frequency, permittee shall, within 30 days after any such change, submit to the Planning Director a report prepared by a qualified engineer that demonstrates actual compliance with such changed guidelines. The Director may, at permittee's sole cost, retain an independent consultant to evaluate the compliance report and any potential modifications to the permit necessary to conform to the FCC's guidelines. Failure to submit the compliance report required under this condition, or failure to maintain compliance with the FCC's guidelines for human exposure to radio frequency at all times shall constitute grounds for permit revocation.
15. All antennas shall be located so that any person walking adjacent to the transmitting surface of the antenna will be walking on a grade, which is a minimum of eight and one-half feet below the transmitting surface.
16. All antennas, equipment, and support structures shall be engineered and designed to prevent unauthorized climbing.
17. The wireless facility shall be erected, operated, and maintained in compliance with the general requirements set forth in the Standards.
18. The antenna and electrical support equipment shall, at all times, be operated in a manner that conforms to the applicable federal health and safety standards.
19. Wireless facilities and equipment must comply with the City's noise ordinance in MMC 8.24, or any successor provisions, and prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.
20. The installation of a permanent onsite generator and/or other equipment is prohibited. The Planning Director's approval is required if a generator is to be placed onsite for temporary or permanent use.

21. All pole-mounted equipment associated with the application shall be located no lower than eight feet above grade or ground level on the utility pole.
22. The City or its designee may enter onto the facility area to inspect the facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case, shall notify permittee within 24 hours of doing so.
23. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
24. Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of five million dollars (\$5,000,000) per occurrence for bodily injury and property damage and six million dollars (\$6,000,000) general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of the cancellation or material modification of any applicable insurance policy.
25. Prior to issuance of a wireless encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to the cost of physically removing the facility and all related facilities and equipment on the site, based on the higher of two contractor's quotes for removal that are provided by the permittee. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall

be paid when the security is posted and during each administrative review.

26. Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to a WRP, the permittee shall provide the City with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the public right-of-way or City utility easement to be affected by permittee's facilities.
27. The permission granted by a WRP shall not in any event constitute an easement on or an encumbrance against the ROW. No right, title, or interest (including franchise interest) in the ROW, or any part thereof, shall vest or accrue in permittee by reason of a WRP or the issuance of any other permit or exercise of any privilege given thereby.
28. No possessory interest is created by a WRP. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, permittee acknowledges that City has given to permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a WRP may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this WRP.
29. If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to constructing, attaching, or operating a facility on municipal infrastructure. This permit is not a substitute for such agreement.

30. For all facilities located within the ROW, the permittee shall remove or relocate, at its expense and without expense to the City, any or all of its facilities when such removal or relocation is deemed necessary by the City by reason of any change of grade, alignment, or width of any right-of-way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, right-of-way improvements, or for any other construction, repair, or improvement to the right-of-way.
31. If a facility is not operated for a continuous period of three (3) months, the WRP and any other permit or approval therefore shall be deemed abandoned and terminated automatically, unless before the end of the three (3) month period (i) the Director has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation or the permittee has notified the Director of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Director. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned but will not be effective for the entirety thereof until all users cease use thereof.
32. In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.

Construction

33. Installation hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No installation activities shall be permitted on Sundays and City-designated holidays. The restricted work hours described in this condition do not apply to emergency maintenance necessary to protect health or property. The City of Malibu may issue a Stop Work Order if permittee violates this condition. Construction activities shall be conducted in compliance with, and abide by, all applicable safety codes.

Site Specific Conditions

34. In the event that the electric service provider does not currently offer an alternative metering option, the permittee shall remove the above-grade electric meter when such option becomes available. Prior to removing the above-grade electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
35. The permittee acknowledges that the City specifically includes conditions of approval related to (a) painting, coloring or finishing the equipment to match the pole; (b) undergrounding all equipment to the extent possible; and (c) installing equipment within shrouds, conduits and risers as concealment elements engineered and designed to integrate the wireless facility with the surrounding built and natural environment. Any future modifications to the permittee's wireless facility must maintain or improve all concealment elements.
36. Before the permittee submits any applications for construction, encroachment, excavation or other required permits in connection with this permit, the permittee must incorporate a true and correct copy of this permit, all conditions associated with this permit and any approved photo simulations into the project plans (collectively, the "Approved Plans"). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans as determined by the Director or the Director's designee. Any substantial or material alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Director's prior review and approval,

who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.

37. The permittee shall install and at all times maintain in good condition a “Network Operations Center Information” and “RF Caution” sign on the utility pole no less than three (3) feet below the antenna (measured from the top of the sign) and no less than nine (9) feet above the ground line (measured from the bottom of the sign). Signs required under this condition shall be installed so that a person can clearly see the sign as he or she approaches within three (3) feet of the antenna structure. If any person on or within the public ROW is or may be exposed to emissions that exceed applicable FCC uncontrolled/general population limits at any time the sign shall expressly so state and provide instructions on how persons can avoid any such exposure. The sign shall also include the name(s) of the facility owner(s), equipment owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall not be lighted, unless applicable law, rule or regulation requires lighting. No signs or advertising devices other than required certification, warning, required seals or signage, other signage required by law, this Chapter, any City or applicable state code or the Los Angeles County Fire Department Chief or his or her designee shall be permitted. The sign shall be no larger than two (2) square feet.
38. The permittee shall ensure that all signage complies with FCC Office of Engineering and Technology Bulletin 65, CPUC General Order 95 or American National Standards Institute C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC.
39. In the event that the FCC changes any of radio frequency signage requirements that are applicable to the project site approved herein or ANSI Z535.1, ANSI Z535.2, and ANSI C95.2 standards that are applicable to the project site approved herein are changed, the permittee, within 30 days of each such change, at its own cost and expense, shall replace the signage at the project site to comply with the current standards.

40. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
41. All improvements, including foundations, and appurtenant ground wires, shall be removed from the property and the site restored to its original pre-installation conditions within 90 days of cessation of operation or abandonment of the facility.
42. Build-Out Conditions.
 - a. Permittee shall not commence any excavation, construction, installation or other work on the project site until and unless it demonstrates to the City Public Works Department that the project complies with all generally applicable laws, regulations, codes and other rules related to public health and safety, including without limitation all applicable provisions in California Public Utilities Commission General Order 95 and MMC Chapters 8.12, 8.24 and 15.08.
 - b. To the extent that the pole owner requires greater or more restrictive standards than contained in California Public Utilities Commission General Order 95, those standards shall control.
43. Permittee shall at all times maintain compliance with all applicable federal, State and local laws, regulations, ordinances and other rules, including Americans with Disabilities Act (ADA) requirements.
44. The permittee shall cooperate with all inspections. The City and its designees reserves the right to support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
45. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Department at the time of permit issuance and within one business day of permittee's receipt of City staff's written request.
46. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise

from the construction, operation, maintenance, modification and removal of the facility.

47. The site and the facility must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
48. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.

Prior to Operation

49. The applicant shall request a final Planning Department inspection immediately after the wireless facility has been installed and prior to the commencement of services and final electrical inspection by the City of Malibu Environmental Sustainability Department.
50. Within thirty (30) calendar days following the installation of any wireless facilities, the applicant shall provide to the Planning Department with a field report prepared by a qualified engineer verifying that the unit has been inspected, tested, and is operating in compliance with FCC standards. Specifically, the on-site post-installation radiofrequency (RF) emissions testing must demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety guidelines for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit. Such report and documentation shall include the make and model (or other identifying information) of the unit tested, the date and time of the inspection, a certification that the unit is properly installed and working within applicable FCC limits, and a specific notation of the distance from the transmitter at which the emissions are equal to or less than the uncontrolled/general population limit.
51. The operation of the approved facility shall commence no later than one (1) month after the City completes its post-installation inspection of the facility, any issues with the facility are resolved, and the City receives the RF testing report required in the condition of approval above, or the wireless ROW permit will expire without further action by the City.

Fixed Conditions

52. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.

Eligible Facilities Requests

In addition to all of the other conditions of approval placed on a WRP, all permits for an eligible facilities request under MMC Chapter 12.02 shall be subject to the following additional conditions, unless modified by the approving authority:

53. Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
54. The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
55. The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

Small Cell Facilities

In addition to the other conditions of approval placed on a WRP, all permits for a small cell facility under MMC Chapter 12.02 shall be subject to the following additional condition, unless modified by the approving authority:

56. The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

SECTION 11. Environmental Review

This Resolution is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (CEQA) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Resolution does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Resolution is a "project" within the meaning of State CEQA Guidelines section 15378, the Resolution is exempt from CEQA on multiple grounds. First, the Resolution is exempt CEQA because the City Council's adoption of the Resolution is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Resolution will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Resolution, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Resolution is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land).

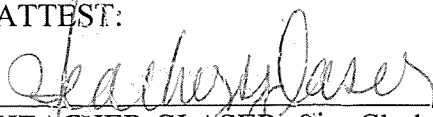
SECTION 12. This Resolution will become effective immediately upon adoption.

SECTION 13. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

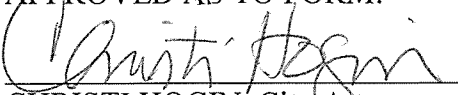
PASSED, APPROVED, and ADOPTED this 9th day of December 2020.


MIKKE PIERSON, Mayor

ATTEST:

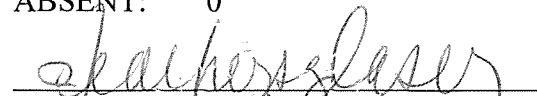

HEATHER GLASER, City Clerk
(seal)

APPROVED AS TO FORM:


CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 20-65 was passed and adopted by the City Council of the City of Malibu at the Special meeting thereof held on the 9th day of December 2020 by the following vote:

AYES: 5 Councilmembers: Farrer, Mullen, Wagner, Peak, Pierson
NOES: 0
ABSTAIN: 0
ABSENT: 0



HEATHER GLASER, City Clerk
(seal)

RESOLUTION NO. 21-17

A RESOLUTION OF THE CITY OF MALIBU ADOPTING ENGINEERING, DESIGN AND LOCATION STANDARDS, CONDITIONS OF APPROVAL AND BASIC APPLICATION REQUIREMENTS FOR WIRELESS COMMUNICATIONS FACILITIES ON LAND OTHER THAN PUBLIC RIGHT-OF-WAY; AND FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does hereby find, resolve and order as follows:

SECTION 1. Recitals

A. Malibu Municipal Code (MMC) Chapter 17.46 governs the permitting, installation, and regulation of wireless communications facilities in the City, other than those in the public right-of-way, which are subject to MMC Chapter 12.02.

B. Section 17.46.060(D) provides that “[a]ll applicants shall engineer, design and locate the wireless communications facilities in accordance with the standards and wireless regulations set forth separately through the resolution adopted by the City Council.”

C. Being authorized to do so, the City wishes to establish engineering, design and development standards applicable to wireless installations.

D. The City also wishes to set standard conditions of approval and basic application requirements applicable to wireless permits.

E. On April 12, 2021 the City Council conducted a duly noticed public hearing and received testimony from City staff and all interested parties regarding the and the standards, conditions and requirements.

SECTION 2. Purpose. The purpose of this document is to (1) establish design and location standards (Standards) for wireless communications facilities on land other than public right-of-way; (2) set standard conditions of approval for Wireless Permits (WPs); and (3) set basic application requirements for WPs.

SECTION 3. Definitions. For the purposes of these Standards, the definitions set forth in Malibu Municipal Code (MMC) Section 17.46.040 are incorporated by reference into this Resolution and in addition the following definitions apply:

- A. “Park” A parcel, parcels of land or a portion of a parcel intended for active public recreation uses. Parks may include sports fields, playgrounds community buildings and unique or specialized activity areas. Land dedicated for open space and trails are not considered parks for the purposes of this Chapter.

- B. “Playground” A portion of land used for and equipped with public facilities for recreation specially by children. A playground includes the sand or rubberized floor around the apparatus.
- C. “Pole-mounted facility” means a wireless communications facility that is, or is proposed to be, attached to or contained in a pole.
- D. “School” any building, campus or sports field which is designed, constructed or used for education, instruction or school sports, whether public or private, in any branch of knowledge.
- E. “Stealth facility” (or “stealth facilities”) means a wireless communications facility designed to look like something other than a wireless tower or base station.

SECTION 4. General Standards for all Facilities The following general requirements apply at all times to all wireless communications facilities located in all zoning districts:

- A. All wireless communications facilities shall be engineered and designed to minimize the visual impact by means of placement, screening, camouflaging, painting and texturing and to be compatible with existing architectural elements, building materials and other site characteristics. The applicant shall use the smallest and least visible antenna possible to accomplish the facility’s objectives. All antennas and support structures shall be painted and/or textured to achieve architectural compatibility with the structures for which they are attached and/or located.
- B. Each facility must comply with any and all applicable provisions of the Malibu Municipal Code, including but not limited to provisions of the California Building Code, California Electric Code, California Plumbing Code, California Mechanical Code, and California Fire Code, and any conditions of approval imposed as part of the approval process.
- C. Each facility must comply with any and all applicable regulations and standards promulgated or imposed by any state or federal agency, including, but not limited to, the Federal Communications Commission (FCC) and the Federal Aviation Administration (FAA). Further, all wireless communications facilities, associated equipment and services shall comply with Americans with Disabilities Act (ADA) requirements.
- D. Fire and Electrical Safety Standards. All wireless communications facilities shall contain:
 - 1. Surge protection for lightning discharge or other significant electrical disturbances; and

2. Signage as required by the permit conditions, the National Electric Code or the Los Angeles County Fire Department Chief or their designee.
- E. The facility must at all times comply with all applicable health requirements and standards pertaining to radio frequency emissions.
- F. All antennas shall meet the minimum siting distances to habitable structures required for compliance with FCC regulations and standards governing the environmental effects of radio frequency emissions.
- G. Noise. Wireless communications facilities and equipment must comply with the City's noise ordinance in MMC Chapter 8.24, or any successor provisions, and be designed to prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.
- H. Signs. No facility may display any signage or advertisement unless it is expressly allowed by this paragraph, necessary for stealth concealment purposes, or required by law or a permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the owner's unique site number and a local or toll-free telephone number to contact the facility owner's operations center.
- I. Landscaping. Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. In addition to any landscaping used for concealment or screening purposes, the applicant shall replace any existing landscaping displaced during construction or installation of the applicant's facility. The applicant's landscaping plan shall be subject to the City's review and approval but shall, at a minimum, match the existing landscaping and foliage surrounding the installation site consistent with MMC Section 17.53.090. The permittee shall ensure that any vegetation allowed to remain in place under the Fire Code, including vegetation provided for screening, is properly maintained and watered.
- J. All electrical support equipment located within cabinets, shelters, or similar structures shall be screened from public view. Roof-mounted electrical support equipment shall be discouraged. Ground-mounted electrical support equipment shall be encouraged. In addition, under grounding of support equipment is required wherever practicable.
- K. All antennas shall be located such that any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half feet below the transmitting surface.

- L. Lighting of antenna structures and their electrical support equipment is prohibited, except as required by any order or regulation of the FCC or the FAA and except for manually operated emergency lights for use when official operating personnel are on site.
- M. A backup power supply must be required for all new wireless communications facilities to the extent allowed by law and in compliance with California Fire Code 1206.2.2.

SECTION 5. Location Standards for All Facilities The location standards for all wireless communications facilities, other than those that qualify as eligible facilities requests, are as follows:

- A. No wireless telecommunication facility shall be located within five hundred (500) feet of any school, playground, or park unless a finding is made, based on technical evidence acceptable to the reviewing authority showing a clear need for the facility and that no technically feasible alternative site exists. Except for facilities installed on the same pole or tower as an existing wireless telecommunication facility, wireless telecommunication facilities located within any residential zone district shall not be located within one thousand (1,000) feet of any other wireless communications facility, except from those facilities placed on utility poles along Pacific Coast Highway, unless a waiver is granted.
- B. All new freestanding wireless communications facilities and monopoles shall be set back a minimum distance of at least one hundred and twenty (120) percent of the height of the facility or monopole from any property line abutting a residentially zoned property. This minimum setback is not subject to the waivers allowed under Section 7 of this Resolution.
- C. Location preference for wireless communications facilities should be given to the following:
 - 1. Property designated non-residential (except for public open space and recreational vehicle park zoning districts), unless otherwise prohibited pursuant to this title.
 - 2. Facilities attached or sited adjacent to existing structures. Whenever possible, facilities shall be located on and/or inside existing structures. Appropriate types of existing structures may include, but are not limited to: buildings, water tanks, telephone poles and utility towers and poles, sign standards, light standards and roadway overpasses.
 - 3. Sites with minimum separation. Sites that are more than five hundred (500) feet from school, playgrounds, and parks.

4. Sites that are not highly visible from adjacent roadways.
5. Unless otherwise indicated in MMC Chapter 17.46 or these Standards, no wireless facility shall be installed on an exposed ridgeline unless the facility blends with the surrounding existing natural and man-made environment and a finding is made that no other location is technically feasible.
6. The City expressly designates residential, public open space and recreational vehicle park zoning districts, parks and schools as the least appropriate possible locations, and the absolute last choices for siting.

SECTION 6. Engineering and Design Standards for all Facilities The general design standards for wireless communications facilities subject to MMC Chapter 17.46 are as follows:

- A. **Basic Requirements.** The proposed wireless facility and its supporting structure (if needed) shall be limited to the minimum size necessary to serve the defined service objectives of the wireless service provider or providers that will be using the facility, except where a larger facility has superior concealment elements.
- B. **Materials.** The materials used shall be non-reflective and non-flammable.
- C. **Cabinet doors and other openings** must be designed to stay securely closed, and openings in all facilities shall be shielded or made the smallest size feasible to protect against fire and wind-blown embers.
- D. **The tower, or other support structure, and all equipment** shall be designed to withstand forces from seismic events. To that end, all wireless facility sites must be built to the applicable standards of Hardening Requirements including but not limited to APCO ANSI 2.106.1–2019, or their replacements. The telecommunications tower, pole or structure when fully loaded with antennas, transmitters, and other equipment and camouflaging shall be designed as determined by the Building Official. All equipment mounting racks and equipment used shall be anchored in such a manner that such a quake will not tip them over, throw the equipment off its shelves, or otherwise act to damage it.
- E. **All connections between various components of the facility, power lines, and conduit** shall be designed in a manner to protect against damage by a natural disaster, a vehicular accident, an act of vandalism or similar external forces.
- F. **Stealth.** The wireless facility shall be stealth. Stealth elements and techniques should be used to blend the facility with surrounding materials

and colors of the support structure and make the facility appear to be something other than a wireless facility. Stealth elements include, but are not limited to, the following:

1. Radio frequency (RF) transparent screening or shrouds;
 2. Matching the color of the existing support structure by painting, coating, or otherwise coloring the wireless facility, equipment, mounting brackets, and cabling;
 3. Placing cables and wires inside the pole or beneath conduit of the smallest size possible;
 4. Minimizing the size of the site;
 5. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site; and
 6. Using paint of durable quality.
 7. Built with weather-resistant materials while permitting weathered treatment for aesthetic reasons and to avoid reflective material.
- G. Minimum Height. All antennas shall be located such that: (1) any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half feet below the transmitting surface; and (2) no person at ground level will be exposed to an exposure level that is higher than allowed by the FCC's general population exposure rules.
- H. Facade-Mounted Equipment. Facade-mounted antennas and equipment shall be architecturally integrated into the building, or other support structure, design and otherwise made as unobtrusive as possible so that the facility does not appear to be a wireless facility. Antennas and equipment should be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Facade-mounted facilities shall generally not extend more than eighteen (18) inches out from and may not project above the building face. Façade-mounted wireless telecommunication facilities shall not exceed twenty-eight (28) feet in height above the ground. However, antenna elements, mounted flush on the facade of an existing structure that exceeds twenty-eight (28) feet, may have a height equal to the height of the building.
- I. Ground-Mounted Equipment. Outdoor ground-mounted equipment associated with base stations shall be avoided whenever feasible. In locations visible or accessible to the public, applicants shall conceal outdoor

ground-mounted equipment, including ancillary power generation equipment, with opaque fences or landscape features that mimic the adjacent structure(s) (including, but not limited to, dumpster corrals and other accessory structures) and by painting, texturing, or otherwise concealing the facility as much as possible. Ground-mounted wireless communications facilities shall be located near existing structures or trees at similar heights for screening purposes where feasible. Not more than one ground-mounted antenna, provided that licensed amateur radio station antennas consistent with MMC 17.46.020(B)(2), shall also be permitted on each site.

- J. **Roof-Mounted Facilities.** Roof-mounted antennas and necessary equipment shall be screened from above if visible from higher elevations. Rooftop-mounted wireless telecommunication facilities shall not exceed twenty-eight (28) feet in height or three (3) feet above the roof parapet from which they are attached, whichever is less restrictive. Associated roof-mounted equipment cabinets shall not extend more than three (3) feet above the roof from which it is attached and shall be set back a minimum of ten (10) feet from the edge of the roof. All roof-mounted equipment cabinets shall be located behind a mechanical screen wall. In the event that a roof parapet wall screens the equipment cabinets, a mechanical screen wall will not be required.
- K. **Freestanding Facilities.** Freestanding facilities requiring a new monopole or other new support structure shall be stealth facilities. Further, they shall be located as close as possible to existing above-ground utilities, such as electrical towers or utility poles (which are not scheduled for removal or under grounding for at least 18 months after the date of application), light poles, trees of comparable heights, and in areas where they will not detract from the appearance of the City.
 - 1. Freestanding wireless telecommunication facilities, including monopoles, shall not exceed twenty-eight (28) feet in height and shall not extend higher than the top of the ridgeline nearest the antenna. The height of a freestanding facility shall be measured from the natural undisturbed ground surface below the center of the base of the tower itself to the tip of the highest antenna or piece of equipment attached thereto.
 - 2. Aside from the antenna itself, no additional equipment may be visible. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the freestanding facility and shall be camouflaged or hidden to the fullest extent feasible without jeopardizing the physical integrity of the facility.

3. Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.
 4. All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background or existing architectural elements so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.
 5. Monopoles shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility.
- L. All wireless telecommunication facilities shall be designed to prevent unauthorized climbing and graffiti.
- M. Fire Safety Standards. All wireless facilities designs shall include:
1. a power shut off, such as by means of rapid entry Knox or similar type systems shall be installed;
 2. surge protection devices capable of mitigating a direct or partial direct lightning discharge; and
 3. surge protection devices capable of mitigating significant electrical disturbances that may enter the facility via conductive cables.
- N. Satellite dish or parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.
- O. Support equipment pads, cabinets, shelters and buildings require architectural, landscape, color, fencing, or other camouflage treatment to minimize visual impacts to the extent deemed necessary by the Planning Director. Landscaping screening should also be provided if irrigation water is available.
- P. No freestanding facility or ancillary support equipment may be located between the face of a building and a public street, bikeway, park or residence.

SECTION 7. Waivers of These Standards.

- A. A waiver of one or more of these Standards may be granted in the following circumstances:
1. Pursuant to MMC Section 17.46.060(D), if an applicant demonstrates to the Planning Commission through clear and convincing evidence that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations;
 2. If an applicant demonstrates to the Planning Commission through clear and convincing evidence set forth in a feasibility study that compliance with a requirement of these Standards would be technically infeasible and the proposed wireless facility complies with the requirements of these Standards to the greatest extent technically feasible. For example, an exception to a requirement to conceal antennas in a shroud may be granted if shrouding is shown to be technically infeasible and an alternative concealment such as a colored film wrap is proposed; or
 3. If an applicant demonstrates to the Planning Commission with clear and convincing evidence that the particular engineering, design or location proposed involves an alternative that better meets the purposes of Chapter 17.46 and only minor non-compliance with a requirement of these design Standards and results in no increase in public visual impact to the community or provides other benefits. For example, an exception to the wireless facility location limitations may be granted when the applicant can demonstrate that the placement is less visible from viewsheds of residences or shielded by vegetation or existing infrastructure (such as barriers), or is less physically intrusive (for example, less impactful to tree roots or reduces noise). Among other factors, in deciding whether or not to grant an exception, the Planning Commission may consider the impact of expansions to the facility that the applicant would be entitled to make as of right if granted.
- B. Waivers may only be requested at the time an application is initially submitted for a discretionary permit. The request must include both the specific provision(s) from which waiver is sought and the basis of the request, including all supporting evidence on which the applicant relies. Any request for waiver after the City has deemed an application complete constitutes a material change to the proposed wireless facility and shall be considered a new application. A request for waiver from one or more

requirements does not relieve the applicant from compliance with all other applicable provisions of law or of MMC Section 17.46.060.

SECTION 8. Standard Conditions of Approval for Permits Under MMC Chapter 17.46.

A. **Generally.** In addition to any supplemental conditions imposed by the Planning Director or Planning Commission, as the case may be, all development permits or conditional use permits granted for wireless communications facilities subject to this Chapter 17.46 shall be subject to the following conditions, unless modified by the approving authority:

1. The permittee shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commission, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project, or to hold the City liable in whole or in part as a result of the engineering, design, construction or operation of the facility. The City shall promptly notify the provider(s) of any such claim, action or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.
2. The permittee shall be strictly liable for interference caused by its facilities with city communications systems. The permittee shall be responsible for costs for determining the source of the interference, all costs associated with eliminating the interference (including but not limited to filtering, installing cavities, installing directional antennas, powering down systems, and engineering analysis), and all costs arising from third party claims against the city attributable to the interference.
3. Subsequent submittals for this project shall be in substantial compliance with the plans date-stamped received by the Planning Department on _____. The project shall comply with all conditions of approval stipulated in the referral sheets attached to the agenda report for this project. In the event the project plans conflict with any condition of approval, the condition shall take precedence and revised plans shall be submitted and approved by the Planning Director prior to the Environmental Sustainability Department for plan check.
4. The permit and rights conferred in this approval shall not be effective until the permittee signs, notarizes and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Department within 30 days of this decision or prior to issuance of

any development, conditional use, building, electrical or encroachment permit.

5. The applicant shall digitally submit a complete set of plans, including the items required in Condition No. 6 to the Planning Department for consistency review and approval prior to plan check and again prior to the issuance of any building or development permits.
6. The Notice of Decision (including the signed and notarized Acceptance of Conditions Affidavit) shall be copied in its entirety and placed directly onto a separate plan sheet(s) to be included in the development plans prior to submitting any development permits from the City of Malibu Environmental Sustainability Department and encroachment permit.
7. A development permit or conditional use permit, as applicable, shall be valid for a period of ten (10) years from issuance, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such development or conditional use permit shall automatically expire, unless an extension or renewal has been granted. A person holding a development permit or conditional use permit must either (1) remove the facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) prior to expiration, submit an application to renew the permit, which application must, among all other requirements, demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.
8. The installation and construction authorized by a permit shall be completed within three (3) years after its approval, or it will expire without further action by the City unless prior to the three (3) years the applicant submit an extension request and the City, in its sole discretion, grants a time extension for due cause. The installation and construction authorized by a permit shall conclude, including any necessary post-installation repairs and/or restoration to the property, within thirty (30) days following the day construction commenced. The permittee must provide written notice to City within ten (10) days after completing construction, and may not begin operations until all City and Fire Department (if applicable) inspections have been completed and the project is found to be

consistent with the permit. The expiration date shall be suspended until an appeal and/or litigation regarding the subject permit is resolved.

9. The Planning Director may grant up to four one-year extensions of the timeline, in Condition 7 above, for completing the installation and construction authorized by a development or condition use permit, if the Planning Director finds that the conditions, including but not limited to changes in the wireless ordinance under which the permit approval was issued, have not significantly changed.
10. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Director upon written request of such interpretation.
11. All structures shall conform to the requirements of the Environmental Sustainability Department, City Public Works Department, FCC and Los Angeles County Fire Department requirements, as applicable. Notwithstanding this review, all required permits, including but not limited to an encroachment permit from the City, shall be secured.
12. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Director, provided such changes achieve substantially the same results and the project is still in compliance with the MMC. An application with all required materials and fees shall be required.

Cultural Resources

13. In the event that potentially important cultural resources are found in the course of geologic testing, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Director can review this information. Where, as a result of this evaluation, the Planning Director determines that the project may have an adverse impact on cultural resources, a Phase II Evaluation of cultural resources shall be required pursuant to MMC Section 17.54.040(D)(4)(b).
14. If human bone is discovered, the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. These procedures require notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native

American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.

Wireless Facility Conditions

15. All antennas shall meet the minimum siting distances to public/uncontrolled areas required for compliance with the FCC regulations and standards governing the environmental effects of radio frequency emissions. Permittee shall keep up-to-date on current information from the FCC in regards to maximum permissible radio frequency exposure levels. In the event that the FCC changes its guidelines for human exposure to radio frequency, permittee shall, within 30 days after any such change, submit to the Planning Director a report prepared by a qualified engineer that demonstrates actual compliance with such changed guidelines. The Director may, at permittee's sole cost, retain an independent consultant to evaluate the compliance report and any potential modifications to the permit necessary to conform to the FCC's guidelines. Failure to submit the compliance report required under this condition, or failure to maintain compliance with the FCC's guidelines for human exposure to radio frequency at all times shall constitute grounds for permit revocation.
16. All antennas shall be located so that any person walking adjacent to the transmitting surface of the antenna will be walking on a grade, which is a minimum of eight and one-half feet below the transmitting surface.
17. All antennas, equipment, and support structures shall be engineered and designed to prevent unauthorized climbing.
18. The wireless facility shall be erected, operated, and maintained in compliance with the general requirements set forth in the Standards and any specific requirements in the permit.
19. The antenna and electrical support equipment shall, at all times, be operated in a manner that conforms to the applicable health and safety standards, including those imposed by MMC Chapter 17.46 and this Resolution.
20. Wireless communications facilities and equipment must comply with the City's noise ordinance in MMC 8.24, or any successor provisions, and prevent noise and sound from being plainly audible at a distance of fifty (50) feet from the facility or within ten (10) feet of any residence.

21. The Planning Director's approval is required if a generator is to be placed onsite for temporary or permanent use.
22. All non-ground-mounted equipment associated with the application shall be located no lower than eight feet above grade or ground level on the monopole or support structure.
23. The City or its designee may enter onto the facility area to inspect the facility upon 48 hours prior notice to the permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property. The City shall make an effort to contact the permittee prior to disabling or removing any facility elements, but in any case, shall notify permittee within 24 hours of doing so.
24. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
25. Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of five million dollars (\$5,000,000) per occurrence for bodily injury and property damage and six million dollars (\$6,000,000) general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. A true and correct copy of the policy of insurance shall constitute proof of insurance required by this Subsection. Permittee shall use its best efforts to provide thirty (30) days' prior notice to the City of to the cancellation or material modification of any applicable insurance policy. Failure to maintain insurance consistent with this Condition shall automatically void the permit, and the permittee shall immediately deenergize and remove the facility from operation. The policy shall not have a pollution or other exclusion which excludes injuries or damages from EMF/RF exposures.
26. Prior to issuance of a City permit or encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the

facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to the cost of physically removing the facility and all related facilities and equipment on the site, based on the higher of two contractor's quotes for removal that are provided by the permittee. The permittee shall reimburse the city for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City Council. Reimbursement shall be paid when the security is posted and during each administrative review.

27. Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the City's structure, improvement, or property. Prior to commencement of any work pursuant to any permit, the permittee shall provide the City with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property to be affected by permittee's facilities.
28. No possessory interest is created by a Wireless Permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, permittee acknowledges that City has given to permittee notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a development or conditional use permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interact taxes or other taxes, fees, and assessments levied against permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this development or conditional use permit.
29. If not already completed, permittee shall enter into the appropriate agreement with the City, as determined by the City, prior to

constructing, attaching, or operating a facility on municipal infrastructure. This permit is not a substitute for such agreement.

30. If a facility is not operated for a continuous period of three (3) months, the Wireless Permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the three (3) month period (i) the Director has determined that the facility has resumed operations, or (ii) the City has received an application to transfer the permit to another service provider. No later than ninety (90) days from the date the facility is determined to have ceased operation, or the permittee has notified the Director of its intent to vacate the site, the permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Director. The permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the City may cause the facility to be removed at permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single facility or support structure, then this provision shall apply to the specific elements or parts thereof that were abandoned but will not be effective for the entirety thereof until all users cease use thereof.
31. In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City otherwise agrees, in its complete discretion, to waive said fees or any part thereof.
32. Interference with city communications systems and other governmental emergency systems is prohibited. Further, no permits issued pursuant to this chapter of the City Code establish any guarantee or warranty that Licensee's facility will be free from interference from city or third-party communication systems.

Construction

33. Installation hours shall be limited to Monday through Friday from 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 5:00 p.m. No installation activities shall be permitted on Sundays and City-

designated holidays. The restricted work hours described in this condition do not apply to emergency maintenance necessary to protect health or property. The City of Malibu may issue a Stop Work Order if permittee violates this condition. Construction activities shall be conducted in compliance with, and abide by, all applicable safety codes and permit conditions.

34. All sites must be designed and build to the standards of ANSI/APCO Public Safety Grade Site Hardening Requirements, also referred to as "APCO ANSI 2.106.1-2019".

Site Specific Conditions

35. In the event that the electric service provider does not currently offer an alternative metering option, the permittee shall remove the above-grade electric meter when such option becomes available. Prior to removing the above-grade electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
36. The permittee acknowledges that the City specifically includes conditions of approval related to (a) painting, coloring or finishing the equipment to match the monopole or support structure; (b) undergrounding all equipment to the extent possible; (c) installing equipment within shrouds, conduits and risers as concealment elements engineered and designed to integrate the wireless facility with the surrounding built and natural environment; and (d) specific structural, seismic, electrical, fire and operating/maintenance requirements. Any future modifications to the permittee's wireless facility must maintain or improve all concealment elements and safety precautions.
37. Before the permittee submits any applications for construction, encroachment, excavation or other required permits in connection with this permit, the permittee must incorporate a true and correct copy of this permit, all conditions associated with this permit and any approved photo simulations into the project plans (collectively, the "Approved Plans"). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans as determined by the Director or the Director's designee. Any substantial or material alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written

request subject to the Director's prior review and approval, who may refer the request to the original approval authority if the Director finds that the requested alteration, modification or other change substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.

38. The permittee shall install and at all times maintain in good condition a "Network Operations Center Information" and "RF Caution" sign on the utility pole no less than three (3) feet below the antenna (measured from the top of the sign) and no less than nine (9) feet above the ground line (measured from the bottom of the sign). Signs required under this condition shall be installed so that a person can clearly see the sign as he or she approaches within three (3) feet of the antenna structure. If any person on or within the property is or may be exposed to emissions that exceed applicable FCC uncontrolled/general population limits at any time the sign shall expressly so state, and provide instructions on how persons can avoid any such exposure. The sign shall also include the name(s) of the facility owner(s), equipment owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall not be lighted, unless applicable law, rule or regulation requires lighting. No signs or advertising devices other than required certification, warning, required seals or signage, other signage required by law, this Chapter, any City or applicable state code or the Los Angeles County Fire Department Chief or his or her designee shall be permitted. The sign shall be no larger than two (2) square feet.
39. The permittee shall ensure that all signage complies with FCC Office of Engineering and Technology Bulletin 65, CPUC General Order 95 or American National Standards Institute C95.2 for color, symbol, and content conventions. All such signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC.
40. In the event that the FCC changes any of radio frequency signage requirements that are applicable to the project site approved herein or ANSI Z535.1, ANSI Z535.2, and ANSI C95.2 standards that are applicable to the project site approved herein are changed, the permittee, within 30 days of each such change, at its own cost and expense, shall replace the signage at the project site to comply with the current standards.

41. The permittee shall maintain the paint, color and finish of the facility in good condition at all times.
42. All improvements, including foundations, and appurtenant ground wires, shall be removed from the property and the site restored to its original pre-installation conditions within 90 days of cessation of operation or abandonment of the facility.
43. Build-Out Conditions.
 - a. Permittee shall not commence any excavation, construction, installation or other work on the project site until and unless it demonstrates to the City Public Works Department that the project complies with these Conditions along with all applicable laws, regulations, codes and other rules related to public health and safety, including without limitation all applicable provisions in California Public Utilities Commission General Order 95 and MMC Chapters 8.12, 8.24 and 15.08.
 - b. To the extent that a pole owner or any provision in the MMC or this resolution require greater or more restrictive standards than California Public Utilities Commission General Order 95, if applicable, those standards shall control.
44. Permittee shall at all times maintain compliance with all applicable federal, State and local laws, regulations, ordinances and other rules, including Americans with Disabilities Act (ADA) requirements.
45. The permittee shall cooperate with all inspections. The City and its designees reserve the right to support, repair, disable or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
46. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Planning Department at the time of permit issuance and within one business day of permittee's receipt of City staff's written request.
47. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise

from the construction, operation, maintenance, modification and removal of the facility.

48. The site and the facility must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
49. Permittee shall promptly remove any graffiti on the wireless facility at permittee's sole expense within 48 hours after notice.

Prior to Operation

50. The applicant shall request a final Planning Department inspection and final building inspection by the City of Malibu Environmental Sustainability Department immediately after the wireless facility has been installed and prior to the commencement of services.
51. Within thirty (30) calendar days following the installation of any wireless communications facilities, the applicant shall provide to the Planning Department with a field report prepared by a qualified engineer verifying that the unit has been inspected, tested, and is operating in compliance with FCC standards. Specifically, the on-site post-installation radiofrequency (RF) emissions testing must demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety guidelines for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit. Such report and documentation shall include the make and model (or other identifying information) of the unit tested, the date and time of the inspection, a certification that the unit is properly installed and working within applicable FCC limits, and a specific notation of the distance from the transmitter at which the emissions are equal to or less than the uncontrolled/general population limit.
52. The operation of the approved facility shall commence no later than one (1) month after the City completes its post-installation inspections of the facility, any issues with the facility are resolved, and the City receives the RF testing report required in the condition of approval above, or the development or conditional use permit will expire without further action by the City.

Fixed Conditions

53. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.

Eligible Facilities Requests

All permits for an eligible facilities requests under MMC Chapter 17.46 shall be subject to the following conditions and all of the other conditions of approval placed on a Wireless Permit, unless modified by the approving authority:

54. Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
55. The City's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
56. The City's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

Small Cell Facilities

In addition to the other conditions of approval placed on a Wireless Permit, all permits for a small cell facility under MMC Chapter 17.46 shall be subject to the following additional condition, unless modified by the approving authority:

57. The City's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

SECTION 9. Basic Application Requirements for Permits Under MMC Chapter 17.46.

- A. Generally. In addition to providing all required fees, all wireless telecommunication facility carriers or providers shall provide the information required by a separate application form published, and updated

from time to time, by the City. If no such form is available, then the applicant must submit all documents, information, and any other materials necessary to allow the City to make required findings and ensure that the proposed facility will comply with applicable laws and not endanger the public health, safety, or welfare. Such information may include:

1. Contact information for:
 - a. Applicant and their representatives
 - b. Owner of proposed wireless communications facility
 - c. If different from facility owner, the identity of the person or entity responsible for operating the proposed wireless facility
 - d. The property owner or owner of the structure on which the proposed wireless facility would be installed
 - e. Names, addresses, telephone numbers, and email addresses of anyone acting on behalf of the applicant with regard to the application;
 - f. The name, address and phone number of all persons that prepared or assisted in preparing the application and any required reports;
 - g. The postal address, parcel number, or utility pole identifier of the property;
 - h. The location of the schools, playgrounds and parks within 500 feet of the project site;
 - i. Local contact person for emergencies
 - j. Assessor's Parcel Number
2. Purpose of new wireless communications facility or amendment
3. Type of Application (Select all that apply)
 - a. Eligible Facilities Request
 - b. Small Cell – Collocation
 - c. Small Cell – New Structure
 - d. Collocation (Non-Small Cell)
 - e. All Other Wireless Communications Facilities
 - f. Permit Renewal
 - g. Waiver
4. Letter of authorization signed by the property owner authorizing the applicant to submit and process the application, including executed copies of any leases, letters of agency, or proof of ownership, of private property involved in the project.
5. Authorizations, and Licenses
6. Provide previous approvals, if applicable, and Certificate of Completion. Site inspection fees may apply if a final inspection was never requested
7. Identify all other required permits and approvals for the subject facility.

8. Electrical and Structural Safety Information. The following engineering documents prepared under the responsible charge of and sealed by a California licensed Professional Engineer must be included in the application:
 - a. A short circuit and coordination study ("SCCS") calculated pursuant to the IEEE 551-2006: Recommended Practice for Calculating AC Short-Circuit Currents in Industrial and Commercial Power Systems or the latest version of that standard. The study must demonstrate the protection devices will ensure the equipment enclosure will not be breached. The SCCS must include analysis of Voltage Transient Surges due to contact of conductors of different voltages;
 - b. A one-line diagram of the electrical system;
 - c. Voltage Drop & Load Flow Study;
 - d. Load Calculation;
 - e. Panel Directories;
 - f. A plot plan showing the location of the mounting structure including address, or structure designation, or GPS location on the front sheet;
 - g. A plot plan showing the location of the service disconnecting means; and
 - h. An elevation drawing of the equipment and the service disconnecting means.
9. Structural Safety Information. The structural/civil engineering documents prepared under the responsible charge of and sealed by a California licensed professional civil engineer.
 - a. Photo simulations, from at least three different angles, showing the pole and streetscape before and after installation. In some cases, more than three different angles may be required;
 - b. The azimuth, size and center-line height location of all proposed and existing antenna(s) on the supporting structure;
 - c. The number, type and model of the antenna(s) that will be used with a copy of the specification sheet;
 - d. The make, model, type and manufacturer of any tower involved and a design plan stating the tower's capacity to accommodate multiple users;
 - e. Site and Construction Plans. Complete and accurate plans, drawn to scale, signed, and sealed by a California-licensed engineer, land surveyor, and/or architect, which include the following items.
 - (1) A site plan and elevation drawings for the facility as existing and as proposed with all height and width measurements explicitly stated.

-
- (2) A site plan describing the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - (3) A depiction, with height and width measurements explicitly stated, of all existing and proposed transmission equipment.
 - (4) A depiction of all existing and proposed utility runs and points of contact.
 - (5) A depiction of the leased or licensed area of the site with all rights-of-way and easements for access and utilities labeled in plan view.
- f. Detailed map with locations of the poles or other property on which equipment is to be located, including specific pole identification number, if applicable, and the areas it will service;
 - g. Description as to why the desired location is superior to other similar locations, from a community perspective, including, but not limited to:
 - (1) Proximity to residential buildings and descriptions of efforts to prevent any blocking of views of impressive scenes; and
 - (2) Written documentation demonstrating a good faith effort to locate the proposed facility in the least intrusive location in accordance with the location requirements of this Resolution.
 - h. A description in writing and a visual rendering demonstrating effective screening of all ground-mounted or roof-mounted equipment of the facility from view.
 - i. Color-coded carrier-generated RF Coverage (propagation) maps, at a scale no smaller than 1 inch (1") to a quarter (1/4) mile with all appropriate legends, showing the coverage for the highest and lowest frequencies to be used by the facility. Frequencies are to be stated numerically, not qualitatively. Provide a represented value in dB of each colors it specifically represents.
 - j. If the project involves, modifies or will use an existing facility or structure, a description of the type of structure (e.g., guyed, self-supporting lattice or monopole), and a report on the physical condition of the facility certified by a professional engineer licensed in the state of California.
 - k. If the application is for a new tower, clear and convincing technical evidence by a carrier or wireless service provider justifying the total height of the proposed facility and the need for such to the exclusion of all reasonable alternatives.

Evidence in the form of propagation studies must include all modeling data and assumptions used to produce the studies at the requested height and should take into consideration the ability to collocate other carriers in the future.

- l. A siting analysis which identifies other feasible locations within or outside the City which could serve the area intended to be served by the facility, unless the applicant provides compelling technical reasons for providing fewer than the minimum.
- m. An affirmation, under penalty of perjury, that the proposed installation will be FCC compliant, in that it will not cause members of the general public to be exposed to RF levels that exceed the emissions levels deemed safe by the FCC. A copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power."
- n. A statement detailing the frequency, modulation and class of service of radio or other transmitting equipment;
- o. A copy of the FCC license applicable for the intended use of the proposed facilities;
- p. A HazMat Business Plan for all new generators, and any storage and/or use of hazardous materials during the project, to include:
 - i. A list of toxic substances that may develop during arcing or fire that may impede fire suppression efforts;
 - ii. A list of hazards that may develop during arcing or fire that may impede fire suppression efforts;
- q. A demolition plan, if applicable.
- r. A written statement of the applicant's willingness to allow other carriers to co-locate on the proposed personal wireless service facility where technically and economically feasible and aesthetically desirable, subject to the qualification that collocation should not occur when public exposures from the resulting higher cumulative sources would exceed FCC limits.

- s. Such other information as the Director shall establish.
- t. A statement signed by a person with legal authority to bind the applicant attesting under penalty of perjury to the accuracy of the information provided in the application. If attester not an authorized employee of the applicant, then the attester must demonstrate that it is an authorized agent of the applicant, with lawful Power of Attorney from the applicant.

SECTION 10. Environmental Review

This Resolution is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (CEQA) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Resolution does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Resolution is a "project" within the meaning of State CEQA Guidelines section 15378, the Resolution is exempt from CEQA on multiple grounds. First, the Resolution is exempt CEQA because the City Council's adoption of the Resolution is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Resolution will not result in the actual installation of any facilities in the City. In order to install a facility in accordance with this Resolution, the wireless provider would have to submit an application for installation of the wireless facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Resolution is interpreted so as to permit installation of wireless communications facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land).

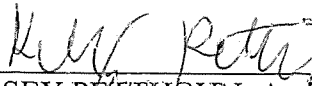
SECTION 11. This Resolution will become effective immediately upon adoption.

SECTION 12. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 12th day of April 2021.


MIKKE PIERSON, Mayor

ATTEST:



KELSEY PETTIJOHN, Acting City Clerk
(seal)

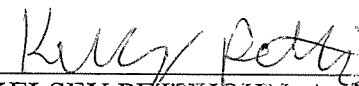
APPROVED AS TO FORM:



JOHN COTTI, Interim City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-17 was passed and adopted by the City Council of the City of Malibu at the Regular meeting thereof held on the 12th day of April 2021 by the following vote:

AYES:	5	Councilmembers:	Farrer, Silverstein, Uhring, Grisanti, Pierson
NOES:	0		
ABSTAIN:	0		
ABSENT:	0		



KELSEY PETTIJOHN, Acting City Clerk
(seal)

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE
89 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001-2801
VOICE (805) 585-1800



February 8, 2024

Richard Mollica, Planning Director
City of Malibu
Planning Department
23825 Stuart Ranch Road
Malibu, CA 90265

RE: City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A
(Wireless Communication Facilities Update)

Dear Mr. Mollica:

On February 7, 2024, the Coastal Commission approved LCP Amendment LCP-4-MAL-21-0048-1-Part A, with suggested modifications. The Commission's resolution of certification is contained in the staff report dated January 25, 2024. The suggested modifications, as approved by the Commission, are attached to this correspondence.

Section 13544 of the Commission's Administrative Regulations requires that after certification the Executive Director of the Commission shall transmit copies of the resolution of certification and any suggested modifications and findings to the governing authority, and any interested persons or agencies. Further, the certification shall not be deemed final and effective until all of the following occur:

- (a) The local government with jurisdiction over the area governed by the Local Coastal Program, by action of its governing body: (1) acknowledges receipt of the Commission's resolution of certification, including any terms or modifications suggested for final certification; (2) accepts and agrees to any such terms and modifications; and (3) agrees to issue coastal development permits for the total area included in the certified Local Coastal Program. Unless the local government takes the action described above the Commission's certification with suggested modifications shall expire six months from the date of Commission's action.
- (b) The Executive Director of the Commission determines in writing that the local government's action and the notification procedures for appealable development require pursuant to Article 17, Section 2 are legally adequate to satisfy any specific requirements set forth in the Commission's certification order.
- (c) The Executive Director reports the determination to the Commission at its next regularly scheduled public meeting as required by the Commission's regulations in order to allow for the amended LCP to be certified in that form (see Section 13544 of the Commission's Administrative Regulations).

- (d) Notice of the certification of the Local Coastal Program Amendment shall be filed with the Secretary of Resources Agency for posting and inspection as provided in Public Resources Code Section 21080.5(d)(2)(v).

Please feel free to contact me should you have any questions regarding this matter. The Commission and staff greatly appreciate the City's cooperation and assistance in this matter.

Authorize on behalf of the California Coastal Commission by:

Dr. Kate Huckelbridge
Executive Director

Deanna Christensen

By: Deanna Christensen
District Supervisor

FINAL APPROVED SUGGESTED MODIFICATIONS
City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

Existing certified text shown in straight type

City proposed changes shown in ~~striketrough~~/underline

CCC Suggested Modifications shown in ~~double striketrough~~ and double-underline

LIP SECTION 2.2:

2.2. WIRELESS ~~TELECOMMUNICATIONS~~ DEFINITIONS

~~ANSI/IEEE STANDARDS—American National Standards Institute. A private organization that develops widely accepted standards for many pieces of modern day equipment.~~

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

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

~~ANTENNA EQUIPMENT—A cabinet, room, or similar structure which houses the electronic facilities used to operate an antenna.~~

~~ANTENNA, GROUND MOUNTED SITES—Antennae which are located and/or mounted on a pole, attached to the ground level and are, otherwise, freestanding. These antennae do not use a building or ancillary structures for mounting purposes.~~

~~ANTENNA HEIGHT—The vertical distance from the existing or proposed grade, whichever is lower, to the top of the antenna or its support structure.~~

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

CO-LOCATION - is (1) mounting or installing an antenna facility on a pre-existing structure; and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. However, as used for Eligible Facilities Requests, "collocation" is limited to the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes ~~the location of two or more wireless communication facilities on a single support structure or otherwise sharing a common location. Co-location shall also include the location of wireless communication facilities with other types of facilities including, but not limited to, water tanks, light standards, out buildings and other utility facilities and structures.~~

EQUIPMENT CABINET - is a ~~cabinet, structure or building used to support equipment associated with~~ physical container used to house smaller, distinct pieces of equipment or devices that are components of a wireless communication facility.

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

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

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

ELIGIBLE FACILITIES REQUEST or EFR - shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, as defined by FCC regulations (47 C.F.R. Section 1.6100), involving:

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

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

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

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

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

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

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

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

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in (i) through (iv).

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

FCC - is the Federal Communications Commission or its lawful successor.

~~FEDERAL COMMUNICATION COMMISSION (FCC) — is a United States government agency responsible for the regulation of interstate and international communications by radio, television, wire, satellite and cable.~~

MUNICIPAL INFRASTRUCTURE - City-owned or controlled property structures, objects, and equipment in the ROW, including, but not limited to, street lights, traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the ROW.

~~PERMITTEE — Any person or entity granted a wireless ROW permit pursuant to this Chapter.~~

~~PERSONAL COMMUNICATION SERVICES (PCS) — Federal Communication Commission (FCC) terminology describing intelligent, digital wireless, personal two-way communication systems. A broad range of telecommunications services that enable people and devices to communicate independent of location. PCS networks and devices operate over a wide range of frequencies assigned and authorized by the FCC.~~

PERSONAL WIRELESS SERVICES - shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

PERSONAL WIRELESS SERVICES FACILITY - A wireless communications facility used for the provision of personal wireless services.

PROFESSIONAL ENGINEER or PE - is as defined by Business and Professions Code Section 6701, and shall be interpreted to refer to the specific appropriate engineering branch in issue as defined in Sections 6702 through 6703 and “supervision of the construction of engineering structures” as defined in Section 6703.1.

PUBLIC RIGHT-OF-WAY, OR ROW - Any public street, public way or public place within the City limits, either owned by the City or dedicated to the public for the purpose of travel and which the City has the responsibility to maintain or manage. The term includes all or any part of the entire width of right-of-way, and above and below the same, whether or not such entire area is actually used for travel purposes.

SMALL CELL FACILITY - shall have the same meaning as “small wireless facility” in 47 C.F.R. 1.6002(l), or any successor provision, (which is a personal wireless services facility that meets the following conditions ~~that, solely for convenience, have been set forth below~~):

(1) The facility—

(i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or

(ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or

(iii) does not extend an existing structure on which it is ~~are~~ located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;

(5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and

(6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).

SUPPORT STRUCTURE - Any structure capable of supporting a base station and/or antenna.

STEALTH FACILITY - A wireless communications facility designed to look like something other than a wireless tower or base station.

UNDERGROUND AREAS - Those areas where there are no electrical facilities or facilities of a local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

UTILITY POLE - A structure in the ROW designed to support electric, telephone and similar utility lines. For the avoidance of doubt, any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities is not a utility pole.

~~WIRELESS ROW PERMIT OR WRP - A permit issued pursuant to this Chapter authorizing the placement or modification of a wireless facility of a design specified in the permit at a particular location within the ROW; and the modification of any existing support structure to which the wireless facility is proposed to be attached.~~

~~WIRELESS TELECOMMUNICATIONS FACILITIES - An installation that sends and/or receives radio frequency signals, including, but not limited to, directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, cabinets, equipment rooms, accessory equipment and other structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand-held radios/telephones and their associated transmitting antennas.~~

WIRELESS COMMUNICATIONS FACILITIES - The wiring, cables, electronic equipment, transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated tower(s), support structure(s), and base station(s).

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

LIP SECTION 3.16:

3.16. WIRELESS ~~TELECOMMUNICATIONS ANTENNA AND~~ FACILITIES

3.16.1 Purpose and Objectives

A. Purpose. The purpose and intent of this Section is to provide a uniform and comprehensive set of standards for the development, siting and installation of wireless communication facilities and antennas, ~~other than those exempt under Section 3.16.2(C).~~ The regulations contained herein are designed to protect and promote the public health, safety and community welfare and the aesthetic quality and value of the City as set forth within the goals, objectives and policies of the ~~General Plan and Local Coastal Program general plan~~, while at the same time providing for managed development of wireless communications infrastructure ~~in accordance with the guidelines and intent of the Telecommunications Act of 1996.~~

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

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

3.16.2 ~~Site Plan Review~~ Wireless Permit Requirements

~~A site plan review permit, pursuant to Section 13.27 of the LCP, shall be obtained prior to erecting a wire- less telecommunications antenna and/or facility in any non-residential zoning district (except for the public open space and recreational vehicle park zoning districts) or in any public right of way regardless of zoning district, if such wireless telecommunications antenna and/or facility complies with the General Requirements set forth in Section 3.16.5 and the Most Restrictive Design Standards set forth in Section 3.16.6. In addition to the site plan review permit, an encroachment permit shall be obtained for all wireless telecommunication antennas and facilities to be located in any public right of way.~~

A. ~~Unless exempted, e~~Every person who desires to place a wireless communications facility in the public rights-of-way or modify an existing wireless facility in the public rights-of-way must obtain a Wireless ROW Permit (WRP) Coastal Development Permit, pursuant to Chapter 12.02 of the Malibu Municipal Code authorizing the placement or modification, unless the requirement for a Coastal Development Permit is exempt or waived pursuant to Section 13.4. Additionally, a Wireless ROW Permit (WRP) is required pursuant to the Malibu Municipal Code where shown in

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

LIP Table B (Permitted Uses). Except for small cell facilities, eligible facilities requests, or any other type of wireless facility expressly allowed in the public right-of-way by state or federal law.

1. Exemptions. Installation of the following antennas and/or appurtenant equipment which comply with all applicable requirements and standards pertaining to radio frequency (RF) emissions are not required to obtain a WRP:

- a. The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.
- b. Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing functional facilities.

B. Unless exempted, Every person who desires to place or modify a wireless communications facility that is not located in the public rights-of-way must obtain a Wireless Permit (WP) Coastal Development Permit, authorizing the placement or modification, unless the requirement for a Coastal Development Permit is exempt or waived pursuant to Section 13.4 and subsection B.3 below. Additionally, a Wireless Permit (WP) is required pursuant to the Malibu Municipal Code where shown in LIP Table B (Permitted Uses). The WP CDP shall be obtained in one of the following ways, based on facility type:

1. Type 1: The installation or modification of a facility that qualifies as a small cell facility, or eligible facilities request, or collocation of a non-small cell facility; or

2. Type 2: (a) the installation or modification of all wireless facilities that do not qualify as Type 1; and (b) any WP application that includes a waiver of development standard request.

3. Exemptions. Installation of the following antennas and/or appurtenant equipment which comply with all applicable requirements and standards pertaining to radio frequency (RF) emissions are not required to obtain a WP Coastal Development Permit:

- a. Antennas designed to receive video programming signals from direct broadcast satellite (DBS) services, residential fixed wireless communications, multi-channel multi-point distribution providers (MMD) or television broadcast stations in all zoning districts are exempted, provided that all of the following conditions are met:
 - i. The antenna will be accessory to an existing use and measures thirty-nine (39) inches (one meter) or less in diameter.
 - ii. The antenna will be installed in a location where it is not readily visible from the public right-of-way.
 - iii. The antenna will not be located within a required setback area, driveway or parking space.
- b. Amateur radio antenna (including ham and short wave) provided the antenna is the minimum height necessary to be effective and does not exceed the maximum base building height for the zoning district in which it is located by more than fifteen (15) feet.
- c. Communications facilities exempt from the provisions of this Section by operation of state or federal law.
- d. The placement or modification of facilities by the City or by any other agency of the state solely for public safety purposes.

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

- e. ~~Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing functional facilities.~~

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

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

E. Public Use. Except as otherwise provided by California law, any use of the public right-of-way authorized pursuant to this chapter will be subordinate to the City's use and use by the public.

F. Coastal Development Permit for a Wireless Telecommunication Facility - Eligible Facilities Requests.

1. Unless exempt from the requirement to obtain a CDP pursuant to LIP Section 13.4 and subsection B.3 above, eligible facilities requests are subject to the granting of a CDP. An application for an eligible facilities request that complies with the standards of this section 3.16.2 (F) shall be approved by the Planning Director and shall not be subject to a public hearing. If the City finds that a proposed eligible facilities request application does not qualify as an eligible facilities request, the application shall be processed as a regular coastal development permit application.

2. The findings required to be made by the Planning Director for an eligible facilities request shall be limited to the following: (a) the proposed development meets each and every one of the applicable criteria in the LCP definition of eligible facilities request (the Planning Director shall make an express finding for each criterion); and (b) that the proposed facility will comply with all generally applicable laws, including generally applicable building, structural, electrical and safety codes, noise control ordinances, and other laws codifying objective standards reasonably related to health and safety. Public notice of the Planning Director decision shall be provided consistent with the timeframes of LIP Section 13.12.

3.16.3 Conditional Use Permit

~~A conditional use permit, pursuant to Chapter 17.66 of the Municipal Code, shall be obtained prior to erecting wireless telecommunication antennas and/or facilities within any rural residential, public open space, or recreational vehicle park zoning districts (unless the antenna and/or facility is to be erected in a public right-of-way and it complies with the General Requirements set forth in Section 3.16.5 and the Most Restrictive Design Standards set forth in Section 3.16.6), or within any other non-residential zoning district if the proposed wireless telecommunications antenna and/or facility does not comply with the Most Restrictive Design Standards set forth in Section 3.16.6. Any wireless telecommunication antennas and/or facilities conditionally approved pursuant to this Section shall comply with the General Requirements set forth in Section 3.16.5.~~

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

~~The conditional use permit shall be reviewed by the City based solely upon the location, design and other criteria of this Chapter, as well as for consistency with the General Plan and the health, safety and welfare of the public.~~

~~3.16.4~~ **3.16.3 Health and safety & Safety Standards/Radio Frequency Emission Exposure**

A. ~~No wireless telecommunications facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health, safety, or welfare. To that end, no facility or combination of facilities shall produce at any time power densities in any inhabited area that exceed the FCC's Maximum Permissible Exposure (MPE) limits for electric and magnetic field strength and power density for transmitters. All wireless communications facilities shall be designed by qualified, licensed persons to provide the maximum protection that is technically feasible to prevent electrical and fire hazards. All wireless facilities should be proactively monitored and maintained to continue and, if possible, improve the safety design.~~

B. ~~Failure to remain in continued compliance with the MPE limits shall be grounds for revocation of the discretionary permit. No facility or combination of facilities shall produce at any time power densities or exposure levels in any general population area that exceed the applicable FCC standards for radiofrequency (RF) emissions.~~

~~3.16.5~~ **General Requirements**

~~The following general requirements apply at all times to all wireless telecommunications facilities located in all zoning districts:~~

A. ~~Each facility must comply with any and all applicable provisions of the Malibu LCP and Municipal Code, including but not limited to provisions of the Uniform Building Code, National Electric Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code, and any conditions of approval imposed as part of the approval process.~~

B. ~~Each facility must comply with any and all applicable regulations and standards promulgated or imposed by any state or federal agency, including, but not limited to, the Federal Communications Commission and the Federal Aviation Administration.~~

C. ~~The facility must at all times comply with all applicable health requirements and standards pertaining to Radio Frequency emissions.~~

D. ~~Interference with City communications systems is prohibited. All proposed facility applications shall include reports, as required by the Los Angeles County Fire Department, to evaluate potential interference. The applicant shall be responsible for any costs incurred by the City, including the costs of retaining consultants, to review and analyze the reports.~~

E. ~~Freestanding wireless telecommunication facilities, including towers, lattice towers, and monopoles, shall not exceed 28 feet in height and shall not extend higher than the top of the ridgeline nearest the antenna. The height of a freestanding facility shall be measured from the~~

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

natural undisturbed ground surface below the center of the base of the tower itself to the tip of the highest antenna or piece of equipment attached thereto.

F. Building-mounted wireless telecommunication facilities shall not exceed 28 feet in height. However, antenna elements, mounted flush on the facade of an existing structure that exceeds 28 feet, may have a height equal to the height of the building. Roof-mounted antennas may extend no more than 3 feet above the roof from which they are attached. Associated roof-mounted equipment cabinets shall not extend more than 5 feet above the roof from which it is attached and shall be setback a minimum of 10 feet from the edge of the roof. All roof-mounted equipment cabinets shall be located behind a mechanical screen wall. In the event that a roof parapet wall screens the equipment cabinets, a mechanical screen wall will not be required.

G. Not more than one (1) ground-mounted antenna site, excluding licensed amateur radio station antennas, shall be permitted on each site.

H. Wireless telecommunication facilities and antennas shall be co-located on existing poles or other facilities when possible. No permittee shall restrict access to an existing antenna location if required to co-locate by the City, and if possible to do so.

I. All electrical support equipment located within cabinets, shelters, or similar structures shall be screened from public view. Roof-mounted electrical support equipment shall be discouraged. Ground-mounted electrical support equipment shall be encouraged. In addition, under grounding of support equipment is required wherever practicable.

J. When possible, wireless telecommunication facilities will be located on existing utility poles provided the antennas do not exceed the height of the utility poles and provided a less-intrusive alternative is not available.

K. All antennas shall meet the minimum siting distances to habitable structures required for compliance with Federal Communications Commission (FCC) regulations and standards governing the environmental effects of radio frequency emissions.

L. All antennas shall be located such that any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half feet below the transmitting surface.

M. Lighting of antenna structures and their electrical support equipment is prohibited, except as required by any order or regulation of the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA) and except for manually operated emergency lights for use when official operating personnel are on site.

N. No wireless telecommunication facility shall be located within five hundred (500) feet of any school ground, playground or park unless a finding is made, based on technical evidence acceptable to the Planning Manager, as appropriate, showing a clear need for the facility and that no technically feasible alternative site exists.

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

O. Except for facilities co-located on the same pole or tower, wireless telecommunication facilities located within any residential zone district, except for those facilities placed on utility poles located along Pacific Coast Highway, shall not be located within six hundred (600) feet of any other wireless telecommunications facility, unless a finding is made, based on technical evidence acceptable to the Planning Manager, as appropriate, showing a clear need for the facility and that no technically feasible alternative site exists. This provision shall not apply to wireless telecommunication facilities located within any commercial zone district.

3.16.4 General Standards for Wireless Communications Facilities

A. Generally. Wireless communications facilities, except qualifying eligible facilities requests, shall meet the minimum requirements set forth in this Section and all applicable provisions of the LCP, in addition to the requirements of any other applicable law, unless (1) a waiver is required. Compliance with one or more of the development standards of this Section may be waived on a case-by-case basis pursuant to subsection 3.16.4(C) below. Waivers shall only be granted on a case-by-case basis and shall be narrowly tailored so that the requirements are waived only to the minimum extent required to address the request.

~~B. Wireless communications facilities shall be installed and modified in a manner that does not interfere with the use of public or private property or the use of the public right-of-way, in that it minimizes risks to public safety, avoids aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way, makes facilities stealth by using concealment elements, and otherwise maintains the integrity and character of the neighborhoods in which the facilities are located and does not impede views; ensures that installations are subject to periodic review to minimize the intrusion on public rights-of-way and public and private property; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public or cause personal or economic harm, interfere with the primary uses of public or private property or the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate facilities or public property.~~

~~CB. Engineering, Design, and Location Standards. All applications shall comply with the following engineering, design and location standards for wireless communications facilities set forth in this Chapter and the Design and Location Standards and Conditions of Approval for Wireless Communications Facilities in the Public Right-of-Way and Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless Communications Facilities on Land Other than Public Right-of-Way adopted by separate resolutions and as amended.~~

1. All Wireless Communications Facilities.

A. All wireless facilities shall be engineered and designed to minimize the visual impact by means of placement, screening, camouflaging, painting and texturing and to be compatible with existing architectural elements, building materials and other site characteristics. The applicant shall use the smallest and least visible antenna possible to accomplish the facility's objectives. All antennas and support structures

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

shall be painted and/or textured to achieve architectural compatibility with the structures for which they are attached and/or located.

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

B. The materials used shall be non-reflective and non-flammable. Cabinet doors must be designed to stay securely closed, and openings in all facilities shall be shielded or made the smallest size feasible to protect against fire and wind-blown embers.

C. The pole, or other support structure, and all equipment shall be designed to withstand forces from seismic events.

D. All connections between various components of the facility, power lines, and conduit shall be designed in a manner to protect against damage by a natural disaster, a vehicular accident, an act of vandalism or similar external forces.

E. Stealth. Wireless facilities shall be stealth. Stealth elements and techniques should be used to blend the facility with surrounding materials and colors of the support structure and make the facility appear to be something other than a wireless facility. Stealth elements include, but are not limited to, the following:

1. Radio frequency (RF) transparent screening or shrouds;
2. Matching the color of the existing support structure by painting, coating, or otherwise coloring the wireless facility, equipment, mounting brackets, and cabling;
3. Placing cables and wires inside the pole or beneath conduit of the smallest size possible;
4. Minimizing the size of the site;
5. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site; and
6. Using paint of durable quality.

F. Co-location. The use of existing infrastructure is preferred. Wireless facilities shall be collocated on existing poles or other facilities when possible. No permittee shall restrict access to an existing antenna location if required to co-locate by the City and if possible to do so.

G. Minimum Height. All antennas shall be located such that: (1) any person walking adjacent to the transmitting surface of the antenna will be walking on a grade that is a minimum of eight and one-half feet below the transmitting surface; and (2) no

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

person at ground level will be exposed to an exposure level that is higher than allowed by the FCC's general population exposure rules.

H. Fire Safety Standards and Process.

1. All wireless facilities designs shall include:

- a. a power shut off, such as by means of rapid entry Knox or similar type systems shall be installed;
- b. surge protection devices capable of mitigating a direct or partial direct lightning discharge; and
- c. surge protection devices capable of mitigating significant electrical disturbances that may enter the facility via conductive cables.

2. After submittal by the applicant, the applicable application materials shall be transmitted to the Fire Department for its review and any recommended conditions.

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

A. Strand-mounted Facilities. Strand-mounted facilities are encouraged. The facilities must be stealth and of the smallest size that is technically feasible to reduce aesthetic impacts.

B. Pole-Mounted Facilities.

1. Facilities on Streetlight Poles

- a. Stealth. The facility shall be engineered, designed, painted, coated, and otherwise made to maintain the look of a streetlight pole rather than a wireless facility, tower, or base station.
- b. Antennas and RRUs. Antennas shall be top-mounted in a shroud, and RRUs and other equipment shall be placed underground. If RRUs and equipment cannot be underground, then they shall be placed within the shroud with the antenna. RRUs attached to the side of the pole or ground-mounted are discouraged, but if they are required due to technical reasons, they should use the smallest RRU volume possible and be stacked vertically and close together with minimal distance from the pole.
- c. Dimensions. Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume. Pole-top wireless facilities, including shroud, shall be no more than 60 inches in height and 14.5 inches in diameter.
- d. Cables and Wiring. All cables and wiring must be within the pole.

2. Facilities on Wood Utility Poles.

- a. Stealth. The facility shall be engineered, designed, painted, coated, and otherwise made to maintain the look of a utility pole rather than a wireless facility, tower, or base station.

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

- b. Antennas. The preferred mounting type for wireless facilities on wood utility poles is side-mounting.
 - i. Side-mounted Facilities. Antennas and RRUs shall be midpole mounted (i.e., mid-pole mounted) in a shroud. If RRUs are attached to the side of the pole, the facility should use the smallest RRU volume possible, and the RRUs should be stacked vertically and close together with minimal distance from the pole.
 - (1) Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume.
 - (2) Side-mounted wireless facilities shall be of the smallest size technically feasible and shall not project from the pole more than 30 inches. The diameter of the shroud shall be no greater than the diameter of the pole or 14.5 inches, whichever is less. Side-mounted facilities shall only extend out on one side of the pole.
 - ii. Top-mounted Facilities. Antennas and RRUs shall be top-mounted in a shroud. Antennas shall be of the smallest possible size, but in no case more than three cubic feet in volume. Pole-top wireless facilities, including shroud, shall be no more than 72 inches in height and 14.5 inches in diameter.
- 3. Cables and Wiring. All cables and wiring must be within the conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.
- C. Replacement Poles. If an applicant proposes or is required to install a replacement pole to accommodate the proposed facility:
 - 1. Placement. A replacement pole must be in the same location as the pole that it is replacing or as close to the original location as possible, taking into account pole owner safety-related requirements and all applicable location and placement standards herein.
 - 2. Design. Replacement poles should match the design (e.g., color, dimensions, height, style, and materials) of the existing pole that is being replaced.
 - 3. Cables and Wiring. All cables and wiring on non-wood poles must be within the structure. All cables and wiring on wood poles must be within conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.
 - 4. Stealth. The facility should be stealth.
- D. New (Non-Replacement) Poles.

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

1. Waiver of Development Standard Required. New poles are prohibited, unless a waiver of development standard is approved by the City pursuant to Section 3.16.4(C) below to prevent a prohibition of service.
2. Design. New poles (including antenna) shall have a maximum height of 28 feet and a maximum diameter of 14 inches, and any base enclosure shall not exceed 24 inches in width or height. If existing poles are present in the surrounding area, then the new pole shall be designed to resemble the existing poles in appearance, color, materials, and distribution pattern/spacing.
3. New wooden poles are prohibited, unless required to match existing poles in the area surrounding the proposed installation site.
4. Cables and Wiring. All cables and wiring on non-wood poles must be within the pole. All cables and wiring on wood poles must be within the conduit on the exterior of the pole. The conduit must be a color that matches the pole and of the smallest size technically feasible.
5. Antennas and RRUs. Antennas and RRUs shall be contained within the pole and its base or underground.
6. Stealth. The facility must be stealth.

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

- A. Facade-Mounted Equipment. Facade-mounted antennas and equipment shall be architecturally integrated into the building, or other support structure, design and otherwise made as unobtrusive as possible so that the facility does not appear to be a wireless facility. Antennas and equipment should be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Facade-mounted facilities shall generally not extend more than eighteen (18) inches out from and may not project above the building face. Facade-mounted wireless telecommunication facilities shall not exceed twenty-eight (28) feet in height above the ground. However, antenna elements, mounted flush on the facade of an existing structure that exceeds twenty-eight (28) feet, may have a height equal to the height of the building.
- B. Ground-Mounted Equipment. Outdoor ground-mounted equipment associated with base stations shall be avoided whenever feasible. In locations visible or accessible to the public, applicants shall conceal outdoor ground-mounted equipment, including ancillary power generation equipment, with opaque fences or landscape features that mimic the adjacent structure(s) (including, but not limited to, dumpster corrals and other accessory structures) and by painting, texturing, or otherwise concealing the facility as much as possible. Ground-mounted wireless communications facilities shall be located near existing structures or trees at similar heights for screening purposes

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

where feasible. Not more than one ground-mounted antenna, provided that licensed amateur radio station antennas shall also be permitted on each site.

- C. Roof-Mounted Facilities. Roof-mounted antennas and necessary equipment shall be screened from above if visible from higher elevations. Rooftop-mounted wireless telecommunication facilities shall not exceed twenty-eight (28) feet in height or three (3) feet above the roof parapet from which they are attached, whichever is less restrictive. Associated roof-mounted equipment cabinets shall not extend more than three (3) feet above the roof from which it is attached and shall be set back a minimum of ten (10) feet from the edge of the roof. All roof-mounted equipment cabinets shall be located behind a mechanical screen wall. In the event that a roof parapet wall screens the equipment cabinets, a mechanical screen wall will not be required.
- D. Freestanding Facilities. Freestanding facilities requiring a new monopole or other new support structure shall be stealth facilities. Further, they shall be located as close as possible to existing above-ground utilities, such as electrical towers or utility poles (which are not scheduled for removal or under grounding for at least 18 months after the date of application), light poles, trees of comparable heights, and in areas where they will not detract from the visual appearance of the area.
1. Freestanding wireless telecommunication facilities, including monopoles, shall not exceed twenty-eight (28) feet in height and shall not extend higher than the top of the ridgeline nearest the antenna. The height of a freestanding facility shall be measured from the natural undisturbed ground surface below the center of the base of the tower itself to the tip of the highest antenna or piece of equipment attached thereto.
 2. Aside from the antenna itself, no additional equipment may be visible. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the freestanding facility and shall be camouflaged or hidden to the fullest extent feasible without jeopardizing the physical integrity of the facility.
 3. Monopole installations shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening.
 4. All antenna components and accessory wireless equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background or existing architectural elements so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.
 5. Monopoles shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility.

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

DC. Waiver of Development Standards. Requests for waivers from any requirement development standard of this Section 13.6.4 or the standards and wireless regulations set forth in the City Council resolution shall be made in writing to the Director as part of the CDP application.

1. A waiver may be requested: (1) (a) to avoid a denial of an application that would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations; or (b) if compliance with a development standard would be technically infeasible; or (c) if the particular engineering, design, or location proposed involves only minor non-compliance with a development standard; or (2) for the technical or design reasons specified in the Resolution described in Section 17.46.060(C), as amended. A request for waiver may be granted only if it is demonstrated through clear and convincing evidence that the standard for the waiver has been met. Waivers shall comply with requirements for processing of coastal development permits and appeals consistent with the LCP.
2. All waivers approved pursuant to this subsection shall only be granted on a case-by-case basis based on substantial evidence if the decision-maker affirmatively finds (as applicable): (a) for a waiver requested under 1(a), that denial based on strict adherence to the standard would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, and the standard is waived only to the minimum extent required to avoid the prohibition or violation; (b) for a waiver requested under 1(b), that compliance with a standard of this Section 13.6.4 would be technically infeasible and the proposed wireless facility complies with the requirements of this Section to the greatest extent technically feasible; (c) for a waiver requested under 1(c), that such non-compliance is minor but either results in no increase in visual harms to the community or provides other benefits, and failure to adhere to the standard in the specific instance will not increase the visibility of the facility and will not decrease public safety, and will not result in greater impact to coastal resources including sensitive habitat, coastal waters, and public access. (1) granted only on a case-by-case basis, and (2) narrowly tailored so that the requirements of this Section or the standards in the City Council resolution are waived only to the minimum extent required to address the request.

3.16.6 Most Restrictive Design Criteria

In addition to all other requirements set forth in this Chapter, all wireless telecommunications facilities shall meet the following design requirements:

A. Façade-mounted antennas and equipment shall be architecturally integrated into the building design and otherwise made as unobtrusive as possible. If possible, antennas should be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Façade-mounted facilities shall generally not extend more than 18 inches out from the building face.

B. Ground-mounted wireless telecommunication facilities shall be located near existing structures or trees at similar heights for screening purposes where feasible.

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

~~C. All wireless telecommunication facilities shall be designed to minimize the visual impact to the greatest extent feasible by means of placement, screening, camouflaging, painting and texturing and to be compatible with existing architectural elements, building materials and other site characteristics. The applicant shall use the smallest and least visible antennas possible to accomplish the coverage objectives.~~

~~D. All antennas and support structures shall be painted and/or textured to achieve architectural compatibility with the structures for which they are attached and/or located. If ground mounted, the antennas and support structure shall be painted, textured, landscaped or otherwise camouflaged as much as possible to integrate the structure into the environment. Colors and materials for facilities shall be non-reflective and chosen to minimize visibility to the greatest extent feasible.~~

~~E. All wireless telecommunication facilities shall be designed to prevent unauthorized climbing.~~

~~F. Roof-mounted antennas and necessary equipment shall be screened from above if visible from higher elevations.~~

~~G. Satellite dish or parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.~~

~~H. Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening.~~

~~I. All monopoles and lattice towers shall be designed to be the minimum functional height and width required to support the proposed antenna installation. Freestanding monopoles in highly visible locations shall incorporate stealth techniques to minimize their prominence.~~

~~J. Support equipment pads, cabinets, shelters and buildings require architectural, landscape, color, fencing, or other camouflage treatment to minimize visual impacts to the extent deemed necessary by the Planning Manager. Landscaping screening should also be provided if irrigation water is available.~~

~~K. No freestanding facility such as a monopole, lattice tower, or similar structure including ancillary support equipment may be located between the face of a building and a public street, bikeway or park.~~

~~L. No wireless telecommunications facility shall emit a noise greater than fifty (50) decibels (dB) as measured from the base of the facility.~~

~~3.16.75 Standard Conditions of Approval~~

~~Each WRP and WF approved pursuant to this Section shall be subject, respectively, to the conditions of approval in the Design and Location Standards and Conditions of Approval for~~

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

~~Wireless Communications Facilities in the Public Right of Way and Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless Communications Facilities on Land Other than Public Right of Way adopted by separate resolutions and as amended. If no conditions are imposed in the WRP or WP, or if the application is deemed approved by operation of law, then the standard permit conditions of approval in the respective Resolution shall apply to that permit. Each wireless telecommunications antenna and/or facility which is approved through either the site plan review process or a conditional use permit shall be subject to the following standard conditions of approval, in addition to any other condition deemed appropriate by the reviewing authority:~~

A. ~~— The wireless telecommunications antenna and/or facility shall be erected, operated, and maintained in compliance with the General Requirements of Section 3.16.5 and, if applicable, with the Most Restrictive Design Standards set forth in Section 3.16.6.~~

B. ~~— Within thirty (30) calendar days following the installation of any wireless telecommunications antenna and/or facility, the applicant shall provide FCC documentation to the Planning Manager that the unit has been inspected and tested in compliance with FCC standards. Such documentation shall include the make and model (or other identifying information) of the unit tested, the date and time of the inspection, and a certification that the unit is properly installed and working within applicable FCC standards.~~

C. ~~— The installation of any wireless telecommunications antenna and/or facility shall be in compliance with all applicable state and local building, electrical, and mechanical codes.~~

D. ~~— Any substantial change in the type of antenna and/or facility installed in a particular location shall require the prior approval of the Planning Manager.~~

E. ~~— The applicant shall pay to the City a Permit Compliance Fee in an amount to be established by resolution of the City Council.~~

F. ~~— Co location of wireless telecommunications antennas and facilities pursuant to Section 3.16.8 shall be required whenever it is feasible to do so.~~

~~3.16.8 Locating Antennas at Existing Sites~~

~~An effort should be made to locate new wireless telecommunications antennas and facilities on existing grandfathered or conforming facilities when feasible.~~

~~3.16.9 Minimum Application Requirements~~

~~3.16.6 Minimum application requirements~~

~~In addition to meeting standard application submittal requirements for discretionary permits, detailed in other sections in this Chapter, all wireless telecommunication~~

~~A. ~~— Applicants shall submit applications on the forms and in the manner approved by the Planning Director. In addition to providing all required fees, all wireless communications facility carriers or providers shall provide the information listed below. As used herein, "Wireless telecommunication facility," "wireless facility," "telecommunication facility," or simply~~~~

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

“facility,” means an installation that sends and/or receives radio frequency signals, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, cabinets, equipment rooms, accessory equipment and other structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand-held radios/telephones and their associated transmitting antennas. ~~The Planning Manager required by a separate application form published, and updated from time to time, by the City. If no such form is available, then the applicant must submit all documents, information, and any other materials necessary to allow the City to make required findings and ensure that the proposed facility will comply with applicable laws and not endanger the public health, safety, or welfare. The Director may waive certain submittal requirements if prohibited by applicable law or require additional information based on the characteristics of specific projects project factors.~~

~~B. Public Notice. In addition to any other noticing requirements:~~

~~1. Within seven (7) calendar days after an application is submitted to the City, the applicant shall: (1) post notice at the proposed project site in a location near to and visible to the public and (2) provide the City with evidence that such notice has been posted. The applicant shall maintain and replace the posted notice as necessary during the entire application review process until the Director or Planning Commission, as applicable, acts on the application and all appeals have been exhausted. The posted notice shall be composed from durable quality and weather-resistant materials that will not deteriorate under normal circumstances for at least 180 calendar days. The posted notice shall be at minimum 17 inches wide by 11 inches tall. The posted notice shall not be placed in any location where it would obstruct travel or visibility for vehicles, bicycles, or pedestrians. The City encourages applicants to consult with the Planning Department on placement locations to avoid any potential hazards.~~

~~2. Within five (5) business days from the date on which an application is determined to be complete, the Director shall notify in writing of the filing of the application property owners and residents of all property within a one thousand (1,000) foot radius of the proposed project, but in no event fewer than the owners and occupants of ten (10) developed properties. The purpose of the notice is to inform the surrounding property owners and residents of the filing of the application and provide an opportunity for comment on the application prior to the approving authority's decision. The notice shall describe the request, provide a map showing the specific location of the proposed project, describe the review process and timeframes, indicate how to contact the applicant and case planner assigned to the application, and the City-assigned application identifier.~~

~~C. Fire Department Review. After submittal by the applicant, the applicable application materials shall be transmitted to the Fire Department for its review and any recommended conditions.~~

~~A. Visual impact demonstration. A visual impact analysis shall be provided showing the maximum silhouette and proposed or required screening. The visual impact analysis shall include photo-simulations and any required photo-overlays, scaled models or architectural renderings necessary to determine visual impact. A map depicting where the photos were taken shall be included.~~

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

B. — Narrative. The applicant shall submit a narrative that addresses each of the following paragraphs and subparagraphs. The narrative shall be organized according to subject headings that match those in the paragraphs and subparagraphs listed below.

1. — Antennas/Equipment. List the number of proposed antennas and base transceiver stations and/or equipment cabinets and any existing facilities on the site. As used herein, "Antenna" means a device used to transmit and/or receive radio or electromagnetic waves between terrestrial and/or orbital-based systems.

2. — Location. Describe the location and type of antenna installations (stand-alone rooftop; rooftop attached to a mechanical penthouse, building facade, or existing utility towers and poles) and location of the base transceiver station(s), equipment cabinets and/or buildings.

3. — Height. List the height of the antenna installation. Carriers must provide documentation that establishes that the proposed facilities have been designed to the minimum height required from a technological standpoint for the proposed site.

4. — Radio frequency. List the radio frequency range in megahertz and list the wattage output of the equipment.

5. — Radio frequency emissions. Provide a report listing the effective radiated power generated by the proposed facility. The report shall identify exposure levels for both controlled and uncontrolled areas where the levels are projected to be highest.

6. — FCC compliance. Provide documentation certifying all applicable licenses or other approvals required by the Federal Communications Commission to provide the services proposed have been obtained.

7. — Maintenance. Describe the anticipated maintenance and monitoring program for the facility.

8. — Noise/acoustical information. Provide noise and acoustical information for equipment such as air conditioning units and back-up generators.

9. — Site selection process. Provide a map and narrative description explaining the site selection process including information about other sites considered and reason for their rejection. This information is necessary to determine whether there will be a significant gap in coverage if the project is not approved or whether alternatives exist for providing coverage.

10. — Geographic service area. Identify the geographic service area for the subject installation, including a map showing the site and the associated "next" cell sites within the network. Describe the distance between cell sites. Describe how this service area fits into and is necessary for the company's service network. Illustrate the geographic area in which the facility could be located showing all other sites that could be used for antenna location. This information is necessary to determine whether there will be a significant gap in coverage if the project is not approved or whether alternatives exist for providing coverage.

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

~~11. — Preferred location sites. Each application shall identify the location preference, listed in Section 3.16.10 that the proposed facility is meeting. If the proposed location is not a preferred location, the applicant shall provide a list (by address and Assessor's Parcel Number) and a map at 1:200 scale of all preferred location sites within the service area; what good faith efforts and measures were taken to secure each other of these preferred location sites; describe why each such site was not technologically, legally or economically feasible and why such efforts were unsuccessful; how and why the proposed site is essential to meet service demands for the geographic service area and the Citywide network. This information is necessary to determine whether there will be a significant gap in coverage if the project is not approved or whether alternatives exist for providing coverage.~~

~~12. — Preferred mounting technique. Each applicant shall identify the antenna mounting preference, listed in Section 3.16.10 the proposed facility is meeting. If the proposed mounting technique is not a preferred technique, the applicant shall provide a list (by address and Assessor's Parcel Number) and a map at 1:200 scale of all such buildings/sites within the service area; what good faith efforts and measures were taken to secure each of these preferred mounting location/sites; describe why each such site was not technologically or legally feasible and why such efforts were unsuccessful; and how and why the proposed site is essential to meet service demands for the geographic service area and the Citywide network.~~

~~13. — Cumulative effects. Identify the location of all the applicant's antennas and backup facilities and location of other wireless telecommunications facilities on and near the property; include the following:~~

~~a. — Height. The height of all existing and proposed wireless telecommunications facilities on the property, shown in relation to the height limit for the zoning district;~~

~~b. — Antennas. The dimension of each existing and proposed antenna, base transceiver station, equipment cabinet and associated building and backup equipment on the property;~~

~~c. — Power rating. The power rating for all existing and proposed backup equipment;~~

~~d. — Total watts. The total number of watts per installation and the total number of watts for all installations on the building (roof or side);~~

~~e. — Facilities within five hundred (500) feet. The number and types of wireless telecommunication facilities within five hundred (500) feet of the proposed site and provide estimates of the cumulative electromagnetic radiation emissions at the proposed site.~~

~~C. — Co-Location Agreement. All wireless telecommunications carriers shall provide a letter stating their willingness to allow other carriers to co-locate on their facilities wherever technically feasible. When determined to be technically feasible and appropriate, the Planning Manager may require unutilized space to be made available for co-location of other wireless telecommunications facilities, including space for entities providing similar, competing services. Co-location is not required in cases where the addition of the new service or facilities would cause quality of service impairment to the existing facility or if it becomes necessary for the host to go off line for a~~

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

significant period of time. As used herein, "Co-location" means an arrangement whereby multiple wireless communication devices share the same structure or site.

~~D. — Planned Facilities. The applicant shall provide a list of planned or anticipated facilities within the City, and their anticipated construction schedules. The Planning Manager may require concurrent processing of planned facilities.~~

~~E. — Independent Consultant. At the discretion of the Planning Manager and as reasonably required, the applicant may be required to provide an authorization waiver to a permit the City to hire an independent, qualified consultant to evaluate any technical aspect of the proposed telecommunications facility, including, but not limited to, compliance with applicable federal emission standards, potential for interference with existing or planned public safety emergency response telecommunications facilities, or analysis of feasibility of alternate sites, screening methods or devices. Any authorization for this purpose shall include an agreement by the applicant to reimburse the City for all reasonable costs associated with the consultation. Any proprietary information disclosed to the City or the consultant is hereby deemed not be a public record, shall remain confidential, and not be disclosed to any third party without the express consent of the applicant.~~

~~F. — Other information. Any other relevant information as required by the Planning Manager.~~

3.16.10 — Preferred Antenna Siting and Mounting Techniques

The following antenna and equipment siting and mounting techniques are preferred:

~~A. — Facade mounted antennas that meet the visual requirements specified in this Chapter.~~

~~B. — Roof mounted antennas that are not visible to the public.~~

~~C. — Existing monopoles or freestanding towers, utilizing stealthing techniques.~~

~~D. — Existing utility poles located within the public right of way.~~

~~E. — Monopoles or freestanding towers that utilize stealthing techniques.~~

3.16.11 — Location

Location preference for wireless communications facilities should be given to:

~~A. — Co-Location Sites. Co-located and multiple-user wireless telecommunications facilities will be required when, in the determination of the Planning Manager, it is technically feasible and appropriate and will minimize overall visual impact to the community.~~

~~B. — Property designated non-residential (except for public open space and recreational vehicle park zoning districts), unless otherwise prohibited pursuant to this Chapter.~~

~~C. — Facilities Attached or Sited Adjacent to Existing Structures. Whenever possible, facilities shall be located on and/or inside existing structures. Appropriate types of existing structures may~~

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

include, but are not limited to: buildings, water tanks, telephone poles and utility towers and poles, sign standards, traffic signals, light standards and roadway overpasses.

D. — Sites that are not highly visible from adjacent roadways.

E. — Sites With Minimum Separation. When co-location is determined to be infeasible by the Planning Manager, sites that are more than five hundred (500) feet from school grounds, playgrounds or parks and which are more than four hundred fifty (450) feet from any other existing wireless facility within any residential zone district, except for those facilities placed on utility poles located along Pacific Coast Highway.

F. — Unless otherwise indicated in this Chapter, no telecommunication facility shall be installed on an exposed ridgeline unless the facility blends with the surrounding existing natural and man-made environment and a finding is made that no other location is technically feasible.

3.16.12 — Indemnity and Liability for Damages

A. — The wireless telecommunications facility provider shall defend, indemnify, and hold harmless the City or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the City, its boards, commission, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The City shall promptly notify the provider(s) of any such claim, action or proceeding if the City bears its own attorney's fees and costs, and the City defends the action in good faith.

B. — Wireless telecommunications facility operators shall be strictly liable for interference caused by their facilities with City communications systems. The operator shall be responsible for costs for determining the source of the interference, all costs associated with eliminating the interference (including but not limited to filtering, installing cavities, installing directional antennas, powering down systems, and engineering analysis), and all costs arising from third party claims against the City attributable to the interference.

3.16.13 — Cessation of Use or Abandonment

All improvements, including foundations and appurtenant ground wires, shall be removed from the property and the site restored to its original pre-installation condition within ninety (90) days of cessation of operation or abandonment of the facility.

3.16.14 7 Permit, Review, Renewal and Revocation Procedure

A. The City finds that the technology associated with telecommunications communications equipment is subject to rapid changes and upgrades as a result of industry competition and customer demands, and anticipate anticipates that telecommunications communications antennas and related equipment with reduced visual impacts will be available from time to time with comparable or improved coverage and capacity capabilities. There may also be advancements and enhancements with regard to design, practice, operations and structural safety. The City city further finds that it is in the interest of the public health, safety, and welfare that telecommunications communications providers be required to replace older facilities with newer

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

equipment of equal or greater capabilities ~~and~~, reduced visual impacts safety enhancements as technological improvements become available. Therefore, any modifications, other than eligible facilities requests, requested to an existing facility ~~for which a permit has been issued pursuant to this Chapter authorizing establishment of a wireless telecommunications facility~~ a WRP or WP permit shall permit the Planning Manager Director to review the carrier's existing facility to determine whether requiring ~~newer equipment or applying new updates to concealment elements and~~ screening techniques that reduce visual impacts is appropriate if technically feasible, and the Planning Director may require such updates as a condition of approval of such modification.

~~B. — At any time, the Planning Manager may initiate proceedings to revoke a permit issued pursuant to this Chapter. Grounds for revocation shall be limited to a finding that the owner or operator has abandoned the facility, the facility is no longer in compliance with either the general requirements or design standards of this Chapter, the conditions of approval and the owner or operator has failed to bring the facility into compliance within ninety (90) days after a notice has been sent by the Planning Manager requiring the facility to be brought into compliance, the facility is no longer in compliance with applicable FCC or FAA regulations, the facility has not been upgraded to reduce or minimize its impact to the extent reasonably permitted by the technology available at the time of any requested modifications, or if the Planning Manager determines that revocation would be in the best interest of the public health, safety, or welfare.~~

3.16.8 Findings

~~A. — A Wireless ROW Permit, other than eligible facilities requests, shall be approved on the basis of the application and other materials or evidence presented, provided the approving authority makes the following findings:~~

- ~~1. — The facility is not detrimental to the public health, safety, and welfare;~~
- ~~2. — The facility complies with Malibu Municipal Code Chapter 12.02 and all applicable design and development standards; and~~
- ~~3. — The facility meets applicable requirements and standards of state and federal law;~~

~~B. — A Wireless Permits, other than eligible facility requests, shall be approved on the basis of the application and other materials or evidence provided in review thereof provided the approving authority makes the following findings:~~

- ~~1. — The facility is not detrimental to the public health, safety, and welfare and will not pose an undue fire risk;~~
- ~~2. — The facility complies with Chapter 17.46 of the Malibu Municipal Code and all applicable design and development standards; and~~
- ~~3. — The facility complies with state and federal law;~~

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

~~For all Type 2 applications pursuant to Section 3.16.2(B)(2), other than eligible facilities requests, that are proposed to be located in residential, planned development or mobilehome zoning district, the approving authority shall also make the following finding:~~

~~4. The facility could not feasibly be located within any other zoning district in the City.~~

~~C. All Wireless ROW Permits and Wireless Permits that qualify as eligible facilities requests shall be approved on the basis of the application and other materials or evidence provided in review thereof provided the approving authority makes the following findings:~~

~~1. The proposed colocation or modification meets each and every one of the applicable criteria for an eligible facilities request stated in 47 C.F.R. 1.6100(b)(3)-(9), after application of the definitions in 47 C.F.R. 1.6100(b). The approving authority shall make an express finding for each criterion:~~

~~2. The proposed facility complies with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided this limitation only applies to any modification that would not exceed the thresholds identified in 47 C.F.R. 1.6100(b)(7)(i) through (iv), or any successor provisions; and~~

~~3. That the proposed facility will comply with all generally applicable laws, including generally applicable building, structural, electrical and safety codes, noise control ordinances, and other laws codifying objective standards reasonably related to health and safety.~~

3.16.15 Exempt Telecommunications Facilities

A. Installation of the following antennas and/or appurtenant equipment which complies with all applicable health requirements and standards pertaining to RF emissions is exempt from the provisions of this Chapter subject to any conditions included below:

1. Antennas designed to receive video programming signals from direct broadcast satellite (DBS) services, residential fixed wireless communications, multi-channel multi-point distribution providers (MMD) or television broadcast stations in all zoning districts are exempted, provided that all of the following conditions are met:

a. The antenna is accessory to an existing use and measures 39 inches (one meter) or less in diameter.

b. The antenna is installed in a location where it is not readily visible from the public right-of-way.

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

~~e. The antenna shall not be located within a required setback area, driveway or parking space.~~

~~2. Amateur radio antenna (including ham and short wave) provided the antenna does not exceed the maximum building height for the zoning district in which it is located by more than 15 feet.~~

~~3. Telecommunications facilities exempt from the provisions of this Chapter by operation of state or federal law.~~

~~B. The determination of whether or not a proposed facility meets the requirements for an exemption is at the discretion of the Planning Manager. The Planning Manager may require that the application be processed as a Site Development Permit or Conditional Use Permit if the requirements of this section cannot be met.~~

LIP SECTION 13.4:

~~13.4.11 Wireless Communications Facilities and Utility Pole Exemptions:~~

~~1. Pursuant to Section 6409 of the federal Spectrum Act (47 U.S.C Section 1455) and its implementing regulations (47 C.F.R. Section 1.6100), as amended, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall be allowed. The terms used in this subsection shall have the meaning ascribed to them in 47 C.F.R. Section 1.6100(b) or any successor provisions.~~

~~2. The replacement, minor relocation and modifications (including minor increase in height) of existing utility poles to comply with California Public Utility Code requirements. The exemption does not apply when the project has a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands or public views to the ocean. This exemption does not apply when the height of a replacement utility pole would allow a new facility to be added to the pole, such as the installation of a new wireless communications facility.~~

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

13.4.1~~12~~ General Requirements for De Minimis Waiver

A. General Requirements for De Minimis Waiver.

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

1. Improvements to an onsite wastewater treatment system (OWTS) serving a structure that was damaged or destroyed as a result of a natural disaster, where the improvements involve installing a new system or upgrading an existing system to an advanced system on the same lot.
2. Minor improvements to existing driveways or access roads that are required by the fire department after a natural disaster, such as minor changes to the width or grade of driveways or access roads. Access improvements that do not meet the findings for a waiver may be processed as an administrative coastal development permit (ACDP) under Section 13.13.1(A) or as a regular coastal development permit.
3. New wireless communications facilities that qualify as small cell facilities ~~that comply with the design standards set forth in the Design and Location Standards for Wireless Communications Facilities in the Public Right of Way and Engineering, Design and Location Standards, Conditions of Approval and Basic Application Requirements for Wireless Communications Facilities on Land Other than Public Right of Way adopted by separate resolutions and as amended.~~
4. The replacement, minor relocation and modifications (including minor increase in height) of existing utility poles to comply with California Public Utility Code requirements when the height of a replacement utility pole would not allow a new facility to be added to the pole, such as the installation of a new wireless communications facility.
5. Temporary wireless communications facilities on wheels to temporarily replace a wireless communications facility that was damaged or destroyed as a result of a natural disaster provided the antennas and poles do not exceed the height of the approved facility and is removed immediately after the damaged or destroyed facility is constructed or in no case more than six months.

B. Findings for and Reporting of De Minimis Waivers.

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

1. That the ~~OWTS or driveway/road improvements~~ development has no potential for adverse effects, either individually or cumulatively, on coastal resources.

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

2. That the ~~OWTS or driveway/road improvements~~ development is consistent with the certified Malibu Local Coastal Program, including the resource protection policies, as applicable.
3. If an OWTS is to be relocated on the lot, that the director, in consultation with the environmental health administrator, has determined the relocation is necessary to better protect coastal resources.
4. If driveway/road improvements are proposed, that: (a) they are in the same general alignment as the existing road; (b) they are not located in environmentally sensitive habitat area (ESHA); (c) they do not remove or encroach within the protected zone of native trees; and (d) they do not adversely impact visual resources.
5. That the development is not in a location where an action on the development would be appealable to the coastal commission (See Chapter 2 – Definitions).

C. Reporting De Minimis Waiver.

1. At the time the application is submitted for filing, the applicant must post, at a conspicuous place as close to the site as possible that is easily accessible by the public and approved by the city, notice, on a form approved by the city, that an application for a de minimis waiver has been submitted to the city. Such notice shall contain a general description of the nature of the proposed development.
2. The planning director shall issue a notice of determination on the application which shall be reported to the planning commission. The notice of determination shall be provided to all known interested parties, including the executive director of the coastal commission, at least ten (10) days prior to the waiver determination being reported to the planning commission.
3. If, after consideration of the waiver and any public objections to it, the planning commission requests that the waiver not be effective, then the applicant shall be advised that a coastal development permit is required for the ~~OWTS or road improvements~~ development. Otherwise, the waiver is effective immediately after the planning commission meeting where the matter is heard.

D. Waiver Expiration.

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

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

SUGGESTED MODIFICATIONS

City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-21-0048-1-A

7. ~~Wireless communication facilities other than eligible facility requests or small cell facilities that do not meet the criteria for an exemption or a de minimis waiver.~~

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

13.4.9 ~~Exemption for~~ Temporary Event ~~and Structure~~

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

APPENDIX 1 TABLE B PERMITTED USES:

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

STAFF/RESIDENTS RECOMMENDATIONS ON WIRELESS ORDINANCES
UPDATES

1. General comments.
 - 1.1. The residents appreciate the amount of thought and work Staff has dedicated to this project, and we are pleased to see it is moving forward in what appears to be a very positive direction.
 - 1.2. The staff proposals will not be available until June 14th, only 10 days before the Council's meeting on the 24th. Four of the 10 days are weekend days, including Fathers' Day. That means there will be only 6 working days to assimilate and analyze this multi-faceted matter, involving three different legislative proposals on overlapping topics. It will be very hard to get prepared and then present a cogent, concise position presentation to the Council under these circumstances. For that reason, we request that the City Manager reconsider the decision to not release the draft in advance of publication of the agenda report.
2. Coastal changes.
 - 2.1. Residents recommend that the City accept the Coastal proposals in full. There are many undesirable provisions in the Coastal proposals, but all things considered the most logical and resource/time conserving option is to accept them and instead focus on ensuring that the separately-applicable and independent MMC wireless ordinances in Chapters 12 and 17 contain more appropriate and protective procedural and substantive terms.
3. MMC Changes.
 - 3.1. MMC Ch. 17/Resolution 21-17 – NROW.
 - 3.1.1. MMC Ch. 17.
 - 3.1.1.1. Residents emphasize that while we can accept the Coastal changes for LIP purposes, the MMC can and should be different and should contain more specific and protective procedural and substantive safeguards.
 - 3.1.1.2. Residents recommend that no changes be made to MMC Ch. 17, maintaining what was accomplished in Ordinance 484.
 - 3.1.2. Resolution 21-17.
 - 3.1.2.1. Residents recommend that Resolution 21-17 be retained, except for changes to Sec. 5.C.6 and a new 5.C.7 to accomplish the so-called "residential fix."
 - 3.2. MMC Ch. 12/Resolution 20-65 – ROW.
 - 3.2.1. MMC Ch. 12.
 - 3.2.1.1. Residents emphasize that while we can accept the Coastal changes for LIP purposes, the MMC can and should be different and should contain more specific and protective procedural and substantive safeguards.
 - 3.2.1.2. Residents recommend that MMC Ch. 12 (ROW) be amended to be consistent, where possible, with Ordinance 484's provisions on like topics.
 - 3.2.2. Resolution 20-65.
 - 3.2.2.1. Residents recommend that Resolution 20-65 be made consistent with Resolution 21-17 provisions, as amended to include the "residential fix."

**NOTICE OF PUBLIC HEARING
CITY OF MALIBU
CITY COUNCIL**

The Malibu City Council will hold a public hearing on **MONDAY, June 24, 2024, at 6:30 p.m.** on the item listed below in the Council Chambers at Malibu City Hall, located at 23825 Stuart Ranch Road, Malibu, CA and via teleconference.

Public comment can be submitted ahead of the public hearing to citycouncil@malibucity.org for inclusion in the public record. To view and participate during the public hearing, please review the meeting agenda posted at MalibuCity.org/AgendaCenter and follow the directions for public participation.

WIRELESS COMMUNICATION FACILITY ORDINANCE UPDATE

Local Coastal Program Amendment No. 16-007 and Zoning Text Amendment No. 16-005 – The City Council will consider California Coastal Commission recommended modifications to the City Council approved Ordinance No. 484 for a comprehensive regulatory system for the placement of wireless communications facilities, including procedures, permitting, and penalties by amending Malibu Municipal Code Title 17, including, but not limited to, Chapter 17.46, and amending Local Coastal Program (LCP) Local Implementation Plan (LIP) Sections 2.2 and 3.16, Chapter 13 and Appendix 1 (Table B, Permitted Uses)

Applicant:	City of Malibu
Location:	Citywide
Case Planner	Richard Mollica, Planning Director rmollica@malibucity.org (310) 456-2489, ext. 346

In accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment (LCPA). This application is for modifications to an LCP amendment which was approved with modifications by the California Coastal Commission. LIP Section 1.3.1 states that the provisions of the LCP take precedence over any conflict between the LCP and the City's Zoning Ordinance. In order to prevent an inconsistency between the LCP and the City's Zoning Ordinance, if the LCPA is approved, the City must also approve the corollary amendment to the Zoning Ordinance. This amendment is necessary for the preparation and adoption of the LCPA and because they are entirely dependent on, related to, and duplicative of, the exempt activity, they are subject to the same CEQA exemption.

The LCPA and Zoning Text Amendment (ZTA) are not a project within the meaning of CEQA Guidelines Section 15378, because they have no potential to result in physical change to the environment, directly or indirectly. The ZTA and LCPA do not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the ZTA and LCPA were a "project" within the meaning of State CEQA Guidelines Section 15378, they are exempt from CEQA. CEQA applies only to projects which have the potential for causing a significant effect on the environment. Pursuant to CEQA Guidelines Section 15061(b)(3), where it can be seen with certainty that there is no possibility is not subject to CEQA. Moreover, in the event that the ZTA and LCPA are interpreted so as to permit installation of wireless communications facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines Section

15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land).

A written staff report will be available at or before the hearing for the project. All persons wishing to address the Council regarding these matters will be afforded an opportunity in accordance with the Council's procedures.

Copies of all related documents can be reviewed by any interested person by appointment at City Hall during regular business hours and on the City's website at <https://www.malibucity.org/WCF>. Oral and written comments may be presented to the City Council on, or before, the date of the meeting.

IF YOU CHALLENGE THE CITY'S ACTION IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY, AT OR PRIOR TO THE PUBLIC HEARING.

Richard Mollica, Planning Director

Publish Date: May 30, 2024