



Supplemental Council Agenda Report

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

Prepared by: Kelsey Pettijohn, Acting City Clerk

Approved by: Reva Feldman, City Manager

Date prepared: April 22, 2021

Meeting date: April 26, 2021

Subject: Second Reading and Adoption of Ordinance No. 484

RECOMMENDED ACTION: Conduct second reading, unless waived, and adopt Ordinance No. 484 determining the amendments are exempt from the California Environmental Quality Act (CEQA) and approving Zoning Text Amendment (ZTA) No. 16-005 and Local Coastal Program Amendment (LCPA) No. 16-007 to amend Malibu Municipal Code (MMC) Chapter 17.46 (Wireless Telecommunications Antennas and Facilities), make 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), 17.36.020(C), and amend Local Coastal Program (LCP) Local Implementation Plan (LIP) Sections 2.2 and 3.16, Chapter 13 and Appendix 1 (Table B Permitted Uses) modifying standards and procedures for wireless communications facilities.

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

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2020-2021. This project is part of normal staff operations.

DISCUSSION: After publication of the original staff report some typographical errors were discovered in Ordinance No. 484. Those errors have been corrected in the attached ordinance (Attachment 1). A redline of the corrections is attached as Attachment 2.

ATTACHMENTS:

1. Ordinance No. 484 Revised
2. Ordinance No. 484 Redline

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, 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 ____ day of April 2021.

MIKKE PIERSON, Mayor

ATTEST:

(seal)

Date: _____

APPROVED AS TO FORM:

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

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.

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 qualifying as eligible facilities requests must meet the findings in MMC 17.46.110(B). All other Applications must meet the findings required in Section 17.46.110(A) as specified.
- 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.

3.16.8 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.

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”.

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, 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 ____ day of April 2021.

MIKKE PIERSON, Mayor

ATTEST:

(seal)

Date: _____

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.

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(~~CB~~). All other Applications must meet the findings required in Section 17.46.110(A) as specified.
- 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.

3.16.78 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”.