

RESOLUTION NO. 2019-66

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA ADOPTING A CITY COUNCIL POLICY REGULATING SMALL WIRELESS FACILITIES AND OTHER INFRASTRUCTURE DEPLOYMENTS IN THE PUBLIC RIGHTS-OF-WAY

WHEREAS, pursuant to the California Constitution, Article XI, section 7; California Government Code section 37100 and other applicable law, the City of Encinitas City Council may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws;

WHEREAS, California Public Utilities Code § 7901 grants telephone corporations a statewide franchise to deploy telecommunications facilities in the public rights-of-way to the extent the deployment does not incommode the public use of the roads or highways, which the California Supreme Court held in *T-Mobile West LLC v. City and Cnty. of San Francisco*, No. S238001 (Cal. S. Ct. Apr. 4, 2019) that § 7901 preserves local authority to regulate aesthetics;

WHEREAS, Encinitas Municipal Code Chapter 9.70 regulates wireless communications facilities in the City's public rights-of-way, and authorizes the City Council to regulate "small wireless facilities" in the public rights-of-way by City Council resolution but significant changes in federal laws that affect local authority over telecommunications facilities and other related infrastructure deployments in the public rights-of-way have occurred, including, but not limited to, the following:

- 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 "**Moratorium Order**"), that formally prohibited 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; and
- On September 26, 2018, the FCC adopted a Declaratory Ruling and Third Report and Order in the same rulemaking proceeding, --- FCC Rcd. ---, FCC 18-133 (rel. Sep. 27, 2018) (the "**Small Cell Order**"), which, among many other things, creates a new regulatory classification for small wireless facilities, alters existing "shot clock" regulations to require local public agencies to do more in less time, establishes a national standard for an effective prohibition that replaces the existing "significant gap" test adopted by the United States Court of Appeals for the Ninth Circuit and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition;

WHEREAS, the Small Cell Order requires the City to act within 60 or 90 days on applications for small wireless facilities and preempts local regulations over small wireless facilities unless they are (1) reasonable, (2) no more burdensome than those imposed on other infrastructure deployments, (3) objective and (4) published in advance;

WHEREAS, City staff has received inquiries from wireless providers that intend to deploy small wireless facilities in the City's public rights-of-way, but Encinitas Municipal Code

Chapter 9.70 provides design review procedures that are inconsistent with the Small Cell Order as applied to small wireless facilities in the public rights-of-way;

WHEREAS, given federal preemption over the City's regulatory authority to the extent inconsistent with the Small Cell Order, the Moratorium Order's prohibition on the City's ability to adopt a reasonable moratorium ordinance to allow City staff to study these changes and develop appropriate responses, and the significant adverse consequences for noncompliance with these changes in applicable law, the City Council finds that aesthetic and operational regulations adopted through a resolution that supplements Chapter 9.70 of the Encinitas Municipal Code is a necessary and appropriate means to protect the public health, safety and welfare from the potential harm caused by unregulated small wireless facilities and other infrastructure deployments in the public rights-of-way;

WHEREAS, City Council Policy No. C035, attached hereto as **Exhibit "A"** and incorporated herein by this reference, establishes reasonable, uniform and comprehensive standards and procedures for small wireless facilities and other infrastructure deployment in the public rights-of-way, for the construction, installation, collocation, modification, operation, relocation and removal of such facilities within the City of Encinitas' territorial boundaries, consistent with and to the extent permitted under federal and California state law; and

WHEREAS, on August 21, 2019, the City Council held a duly noticed public hearing to consider this Resolution and Policy No. C035, at which the City Council received, reviewed and considered the staff report, written and oral testimony from the public and other information in the record.

NOW, THEREFORE, BE IT RESOLVED, THE CITY OF ENCINITAS CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES AS FOLLOWS:

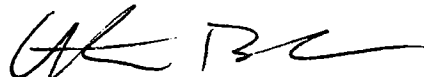
- 1. Findings.** The City Council finds that: (a) the facts set forth in the recitals in this Resolution are true and correct and incorporated by reference; (b) the recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Resolution; (c) the provisions in this Resolution and Policy No. C035 are consistent with the General Plan, Encinitas Municipal Code and applicable federal and state law; and (d) neither this Resolution nor Policy No. C035 will be detrimental to the public interest, health, safety, convenience or welfare.
- 2. Policy No. C035.** The City Council approves and adopts Policy No. C035.
- 3. Environmental Review.** Pursuant to California Environmental Quality Act ("**CEQA**") Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that this Resolution is not a "project" because its adoption is not an activity that has the potential for a direct physical change or reasonably foreseeable indirect physical change in the environment. Even if this Resolution qualified as a "project" subject to CEQA, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Resolution merely amends the Encinitas Municipal Code to authorize the City Council to regulate small wireless facilities and other infrastructure deployments. This Resolution does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new small wireless

facility or other infrastructure deployment, or change to an existing small wireless facility or other infrastructure deployment would be subject to additional environmental review on a case-by- case basis. Accordingly, the City Council finds that this Resolution is not subject to CEQA or, in the alternative, is exempt from CEQA under the general rule.

4. **Severability.** If any section, subsection, paragraph, sentence, clause, phrase or term (each a "**Provision**") in this Resolution or Policy No. C035, or any Provision's application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision's application to other persons or circumstances shall not be affected. The City Council declares that it would have passed this Resolution and Policy No. C035, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.
5. **Effective Date.** This Resolution and Policy No. C035 will become immediately effective upon adoption by the City Council and will remain effective until amended, superseded or repealed by a separate resolution adopted by the City Council.
6. **Publication.** The City Clerk shall cause this Resolution and Policy No. C035 to be published in electronic form on the City of Encinitas website, in physical form for public inspection at City of Encinitas City Hall and at least two other public places within the City of Encinitas and in any other manner required by law.

PASSED, APPROVED and ADOPTED on August 21, 2019, by the following vote:

AYES:	Blakespear, Hinze, Hubbard, Kranz and Mosca
NOES:	None
ABSENT:	None
ABSTAIN:	None



Catherine Blakespear, Mayor
City of Encinitas

ATTEST:

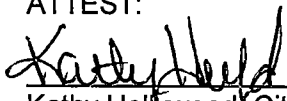

Kathy Hollywood, City Clerk

EXHIBIT "A"

CITY COUNCIL POLICY NO. C035

(Appears behind this coversheet)

**CITY OF ENCINITAS
CITY COUNCIL POLICY
ADMINISTRATIVE MANUAL**

Policy Title: Small Wireless Facilities

Section: City Council

Responsible Department: City Manager's Office

Number: C035

Approved By: City Council

Date Approved: 08/21/19

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SECTION 1. BACKGROUND AND INTRODUCTION

In 1996, Congress adopted the Telecommunications Act to balance the national interest in advanced communications services and infrastructure with legitimate local government authority to enforce zoning and other regulations to manage infrastructure deployments on private property and in the public rights-of-way. Under section 704, which applies to personal wireless service facilities (*i.e.*, cell sites), local governments retain all their traditional zoning authority subject to specifically enumerated limitations.¹ Section 253 preempts local regulations that prohibit or effectively prohibit telecommunication services (*i.e.*, common carrier services) except competitively neutral and nondiscriminatory regulations to manage the public rights-of-way and require fair and reasonable compensation.

Communication technologies have significantly changed since 1996. Whereas cell sites were traditionally deployed on tall towers and rooftops over low frequency bands that travel long distances, cell sites are increasingly installed on streetlights and utility infrastructure on new frequency bands that travel shorter distances. According to the Federal Communications Commission (“FCC”) and the wireless industry, these so-called “small wireless facilities” or “small cells” are essential to the next technological evolution. The industry currently estimates that each national carrier will need to deploy between 30 and 60 small cells, connected by approximately 8 miles of fiber optic cable, per square mile.

On September 27, 2018, the FCC adopted a *Declaratory Ruling and Third Report and Order*, FCC 18-133 (the “*Small Cell Order*”), in connection with two informal rulemaking proceedings entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84. In general, the *Small Cell Order*: (1) restricts the fees and other compensation state and local governments may receive from applicants; (2) requires all aesthetic regulations to be reasonable, no more burdensome than those applied to other infrastructure deployments, objective and published in advance; (3) mandates that local officials negotiate access agreements, review permit applications and conduct any appeals within significantly shorter timeframes; and (4) creates new evidentiary presumptions that make it more difficult for local governments to defend themselves if an action or failure to act is challenged in court. The regulations adopted in the *Small Cell Order* significantly curtail the local authority over wireless and wireline communication facilities reserved to State and local governments under sections 253 and 704 in the Telecommunications Act.

SECTION 2. PURPOSE AND INTENT

- (a) The City of Encinitas (the “City”) intends this Policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City’s territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City’s local values, which include without limitation the aesthetic character of the

¹ Local zoning regulations cannot prohibit or effectively prohibit personal wireless services, unreasonably discriminate among functionally equivalent services or regulate based on environmental impacts from radiofrequency (“RF”) emissions. In addition, local decisions must be made within a reasonable time and any denial requires a written decision based on substantial evidence in the written record.

City, its neighborhoods and community. This Policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City's visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.

- (b) This Policy is intended to establish clear procedures for application intake and completeness review. The City of Encinitas City Council ("City Council") finds that chronically incomplete applications significantly contribute to unreasonable delay and create barriers to infrastructure deployment. Chronically incomplete applications unfairly prejudice other applicants who may be prepared to submit complete applications for infrastructure in the same or substantially the same location. Chronically incomplete applications also unfairly prejudice the City's ability to act on such applications within the "presumptively reasonable" timeframes established by the FCC. The provisions in this Policy afford applicants and City staff opportunities for direct, real-time communication about completeness issues to mitigate incomplete applications prior to submittal. The provisions in this Policy also encourage applicants to timely respond to incomplete notices.
- (c) This Policy is intended to establish regulations, standards and guidelines for all infrastructure deployments unless specifically prohibited by applicable law. For example, the City Council recognizes that certain state safety regulations, like the CPUC's General Order 95, require equipment on joint utility poles to be installed or separated from other equipment in ways that may result in larger or bulkier installations than the City would otherwise prefer. This Policy has been designed to mitigate those potential aesthetic impacts to the extent possible without violating those health and safety regulations. The City Council also recognizes that different infrastructure deployments may be managed through other mechanisms, such as franchise or license agreements. Although such deployments may be exempt from the "ROW administrative design review permit" established in this Policy, the City Council intends that the City official or department that administers such deployment shall apply the same regulations, standards and guidelines to the permit or other approval issued in connection with a request for authorization under such franchise, license or other agreement. The City Council also recognizes that different infrastructure deployments may have different impacts on the public rights-of-way that require different regulations, standards or guidelines to protect public health, safety and welfare. However, to the extent that different regulations, standards or guidelines are applied to small wireless facilities or other infrastructure deployments, the City Council intends that they be no more burdensome than the other when viewed under the totality of the circumstances.
- (d) This Policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency

emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.

SECTION 3. DEFINITIONS

The definitions in this Section 3 shall be applicable to the terms, phrases and words in this Policy. Undefined terms, phrases or words will have the meanings assigned to them in 47 U.S.C. § 153 or, if not defined therein, will have the meaning assigned to them in Encinitas Municipal Code or, if not defined in either therein, will have their ordinary meanings. If any definition assigned to any term, phrase or word in this Section 3 conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

“accessory equipment” means equipment other than antennas used in connection with a small wireless facility or other infrastructure deployment. The term includes “transmission equipment” as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded.

“antenna” means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.

“batched application” means more than one application submitted at the same time.

“collector road” means four-lane undivided roadway, with a typical right-of-way width of 70-84 feet and a curb-to-curb pavement width of approximately 64 feet. A collector road's function is to distribute traffic between local streets and major and prime arterials. Although some collector roads serve as through routes, their primary function is to provide access from surrounding land uses. The term “collector road” as used in this Policy is defined in the Encinitas General Plan, Circulation Element, page C-18.

“collocation” means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term as mounting or installing an antenna facility on a pre-existing structure and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure. For clarification, the FCC defines the term “collocation” in two contexts, one for small wireless facilities in 47 C.F.R. § 1.6002(g) and another for requests pursuant to Section 6409 in 47 C.F.R. § 1.6100(b)(2). This Policy uses the term “collocation” as defined for small wireless facilities unless expressly provided otherwise.

“CPUC” means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.

“decorative pole” means any pole that includes decorative or ornamental features, design elements and/or materials for aesthetic purposes.

“Director” means the Director of Development Services Department or the Director's designee.

“FCC” means the Federal Communications Commission or its duly appointed successor agency.

“FCC Shot Clock” means the presumptively reasonable time frame, accounting for any tolling

or extension, within which the City generally must act on a request for authorization in connection with a personal wireless service facility, as such time frame is defined by the FCC and as may be amended or superseded.

“local street” means streets designed to provide access to individual parcels in the City. Local streets consist of two lanes with a typical right-of-way width of 50-70 feet and a pavement width of 40 feet. The term “local street” as used in this Policy is defined in the Encinitas General Plan, Circulation Element, page C-18.

“major arterial” means a four-lane divided roadway, with a typical right-of-way width of 85-120 feet and a curb-to-curb pavement width of approximately 80 feet. The term “major arterial” as used in this Policy is defined in the Encinitas General Plan, Circulation Element, page C-18.

“ministerial permit” means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City’s jurisdiction. Ministerial permits may include, without limitation, any building permit, construction permit, electrical permit, encroachment permit, excavation permit, right-of-way utility permit, right-of-way construction permit, traffic control permit and/or any similar over-the-counter approval issued by the City’s departments.

“OTARD” means an “over-the-air reception device” and includes all antennas and antenna supports covered by 47 C.F.R. § 1.4000(a)(1), as may be amended or superseded.

“personal wireless services” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

“personal wireless service facilities” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

“persons entitled to notice” means the record owners and legal occupants of all properties within 500 feet from the proposed project site. Notice to the legal occupants shall be deemed given when sent to the property’s physical address.

“prime arterial” means a six-lane divided roadway, with a typical right-of-way width of 120-130 feet and curb-to-curb pavement width of 100-110 feet. The term “prime arterial” as used in this Policy is defined in the Encinitas General Plan, Circulation Element, page C-16.

“prohibited support structure” means any support structure on which the City prohibits the deployment of wireless facilities, except when authorized as a pre-approved design pursuant to this Policy. Prohibited support structures include decorative poles; traffic signal poles, cabinets or related structures; new, nonreplacement wood poles; and any utility pole scheduled for removal within 18 months from the time the Director acts on the ROW application for such pole.

“public right-of-way” or **“public rights-of-way”** means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.

“RF” means radio frequency or electromagnetic waves.

“Section 6409” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of

2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended or superseded.

“shot clock days” means calendar days counted toward the presumptively reasonable time under the applicable FCC Shot Clock. The term “shot clock days” does not include any calendar days on which the FCC Shot Clock is tolled (i.e., “paused”). As an illustration and not a limitation, if an applicant applies on April 1, receives a valid incomplete notice on April 5 and then resubmits on April 20, only four “shot clock days” have elapsed because the time between the incomplete notice and resubmittal are not counted.

“small wireless facility” means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded.

“support structure” means a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded.

“technically infeasible” means a circumstance in which compliance with a specific requirement within this Policy is physically impossible and not merely more difficult or expensive than a noncompliant alternative.

“underground utility district” means any area in the City within which overhead wires, cables, cabinets and associated overhead equipment, appurtenances and other improvements are either (1) prohibited by ordinance, resolution or other applicable law; (2) scheduled to be relocated underground within 18 months from the time an application is submitted; or (3) primarily located underground at the time an application is submitted.

SECTION 4. APPLICABILITY

- (a) **Small Wireless Facilities.** Except as expressly provided otherwise, the provisions in this Policy shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small wireless facilities within the public rights-of-way within the City’s jurisdictional and territorial boundaries.
- (b) **Other Infrastructure Deployments.** To the extent that other infrastructure deployments, including without limitation any deployments that require approval pursuant to Encinitas Municipal Code Chapter 15.04, involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements, the Director or other official responsible to review and approve or deny requests for authorization in connection with such other infrastructure deployment shall apply the provisions in this Policy unless specifically prohibited by applicable law.

SECTION 5. REQUIRED PERMITS AND APPROVALS

- (a) **ROW Administrative Design Review Permit.** A “ROW administrative design review permit”, subject to the Director’s review and approval in accordance with this Policy, shall be required for all small wireless facilities and other infrastructure deployments located in whole or in part within the public rights-of-way.
- (b) **Exemptions.** Notwithstanding anything in this Policy to the contrary, a ROW administrative design review permit shall not be required for:

- (1) wireless facilities or other infrastructure deployments owned and operated by the City for its use;
 - (2) OTARD facilities;
 - (3) requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409; or
 - (4) wireless facilities or other infrastructure deployments covered by a valid franchise, pole license or other encroachment agreement between the applicant and the City.
- (c) **Other Permits and Approvals.** In addition to a ROW administrative design review permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility or other infrastructure deployment must contain a valid ROW administrative design review permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such ROW administrative design review permit may be denied without prejudice. Any ROW administrative design review permit granted under this policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the ROW administrative design review permit requirement under Section 5(b) does not exempt the same wireless facilities or other infrastructure deployments from any other permits or approvals, which includes without limitation any ministerial permits from the City.

SECTION 6. APPLICATION AND REVIEW PROCEDURES

- (a) **Application Requirements for Small Wireless Facilities.** In addition to any other publicly-stated requirements, all ROW administrative design review permit applications for small wireless facilities must include the following information and materials:
- (1) **Application Form.** The applicant shall submit a complete, duly executed ROW administrative design review permit application on the then-current form prepared by the City. The applicant shall state which FCC Shot Clock it asserts will apply to the proposed project and explain the basis for its assertion.
 - (2) **Application Fee.** The applicant shall submit the applicable ROW administrative design review permit application fee adopted by City Council resolution. Batched applications must include the applicable ROW administrative design review permit application fee for each small wireless facility in the batch. If no ROW administrative design review permit application fee has been adopted, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the City for its reasonable costs incurred in connection with the application. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.

- (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all potential support structures within 500 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's preliminary plan for electric and data backhaul utilities, which shall include the anticipated locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, fire codes, electric codes, local street standards and specifications, and public utility regulations and orders.
- (4) **Site Survey.** For any small wireless facility, the applicant shall submit a survey prepared, signed and stamped by a licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 75 feet from the proposed project site and any new improvements, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.
- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the small wireless facility from a vantage point approximately 50 feet from the proposed support structure or location. The photo simulations and vicinity map shall be incorporated into the construction plans submitted with the application. The photo simulations must show all required elements of the facility that will be visible and shall be based on actual site photographs.
- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed facility qualifies as a "small wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis.

As part of the written statement the applicant must also include (i) whether and why the proposed support is a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a ROW administrative design review permit as provided in Section 8(b).

- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies under penalty of perjury that the proposed small wireless facility, both individually and cumulatively with all other emitters that contribute more than 5% to the cumulative emissions in the vicinity (if any), will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the Director. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site. If the applicant submits a batched application, a separate RF report shall be prepared for each facility associated with the batch.
- (8) **Regulatory Authorization.** The applicant shall submit evidence of the applicant’s regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.
- (9) **Pole License Agreement.** For any small wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit an executed Pole License Agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City’s Pole License Agreement except as may be indicated on the form itself. Any unpermitted changes to the City’s Pole License Agreement shall be deemed a basis to deem the application incomplete. Refusal to accept the terms and conditions in the City’s Pole License Agreement shall be an independently sufficient basis to deny the application without prejudice.
- (10) **Property Owner’s Authorization.** The applicant must submit a written authorization from the support structure owner(s) that authorizes the applicant to submit and accept a ROW administrative design review permit in connection with the subject structure.
- (11) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by a licensed engineer for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City’s noise regulations. The acoustic analysis must also include an analysis of the manufacturers’ specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines.

- (12) **Structural Analysis.** The applicant shall submit a report prepared and certified by an engineer (or other qualified personnel acceptable to the City) that evaluates whether the underlying pole or support structure has the structural integrity to support all the proposed equipment and attachments. At a minimum, the analysis must be consistent with all applicable requirements in CPUC General Order 95 (including, but not limited to, load and pole overturning calculations), the National Electric Safety Code, and any safety and construction standards required by law and the utility provider.
- (13) **Environmental Impact Assessment.** The applicant shall submit an environmental impact assessment on the then-current form prepared by the City to determine whether the proposed project is categorically exempt under Article 19 of the CEQA Guidelines, or whether the proposed project will require a Negative Declaration, Mitigated Negative Declaration or an Environmental Impact Report.

(b) **Voluntary Presubmittal Meetings.**

- (1) **Presubmittal Conference.** The City strongly encourages, but does not require, applicants to schedule and attend a presubmittal conference with the Director and other City staff. This voluntary, presubmittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through collaborative, informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project and/or project site, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments implicated by the proposed project; and application completeness issues. Presubmittal conferences are especially encouraged when an applicant seeks to submit one or more batched applications so that the Director may advise the applicant about any staffing or scheduling issues that may hinder the City's ability to meet the presumptively reasonable timeframes under the FCC Shot Clock. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications, plans, maps or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable in their then-current form. The Director will use reasonable efforts to provide the applicant with an appointment within approximately five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the staff and/or consulting time and services rendered in the presubmittal conference.
- (2) **Community Meeting.** The City also strongly encourages, but does not require, applicants to schedule, notice, arrange, and attend a presubmittal community meeting with all interested members of the public. This voluntary, presubmittal public meeting does not cause the FCC Shot Clock to begin and is intended to give applicants the opportunity to hear from members of the public regarding proposed deployment. Applicants are encouraged (but not required) to bring any draft applications, plans, maps, presentations or other materials to facilitate the public's understanding of the applicant's proposal. The City seeks to encourage dialogue that may allow applicants to address areas of concern and may lessen the likelihood of

appeals of the Director's decision to the City Council by any interested person or entity.

- (c) **Submittal Appointments.** All applications must be submitted in person to the City at a pre-scheduled appointment with the Director. Prospective applicants may generally submit one application per appointment, or up to five individual applications per appointment as a batch. Potential applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project as determined by the Director. The Director shall use reasonable efforts to offer an appointment within five working days after the Director receives a written request from a potential applicant. Any purported application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed, whether the City retains, returns or destroys the materials received.
- (d) **Incomplete Applications Deemed Withdrawn.** Any application governed under this Policy shall be automatically deemed withdrawn by the applicant when the applicant fails to submit a substantive response to the Director within 60 calendar days after the Director deems the application incomplete by written notice. As used in this subsection (d), a "substantive response" must include, at a minimum, the complete materials identified as incomplete in the written incomplete notice.
- (e) **Additional Administrative Requirements and Regulations.** The City Council authorizes the Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this policy. The City Council further authorizes the Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments and/or submittals without appointments, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such requirements, materials, rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.
- (f) **Peer and Independent Consultant Review.** The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (a) permit application completeness and/or accuracy; (b) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (c) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (d) whether and to what extent a proposed project will comply with applicable laws; (e) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the City's discretion to review; and (f) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant. Subject to applicable law, in the event that the Director elects to retain an independent consultant in connection with any permit application, the applicant shall be

responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may perform any services, the applicant shall tender to the City a deposit in an amount equal to the estimated cost for the services to be provided, as determined by the Director until the City adopts the initial required deposit by fee schedule. The Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the deposit exceeds the total costs for consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Director or his or her designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The City shall not issue any construction or encroachment permit to any applicant with any unpaid deposit requests or invoices.

SECTION 7. PUBLIC NOTICES

- (a) **Application Submittal Notice.** Within approximately 10 calendar days after an application is received and prior to any approval, conditional approval or denial, the City shall mail public notice to all persons entitled to notice. The notice must contain: (1) a general project description; (2) the applicant's identification and contact information as provided on the application submitted to the City; (3) contact information for the Director for interested parties to submit comments; (4) a statement that the Director will act on the application without a public hearing but that any interested person or entity may appeal the Director's decision directly to the City Council; and (5) if the application is for a small wireless facility, a general statement that the FCC requires the City to take final action on such applications within 60 days for collocations and 90 days for facilities on new support structures.
- (b) **Application Decision Notice.** Within five calendar days after the Director acts on a ROW administrative design review permit application, the Director shall provide written notice to the applicant and all persons entitled to notice. If the Director denies an application (with or without prejudice) for a small wireless facility, the written notice must also contain the reasons for the denial.

SECTION 8. DECISIONS

- (a) **Initial Administrative Decision.** Not more than 29 shot clock days after the application has been deemed complete, the Director shall approve, conditionally approve or deny a complete and duly filed ROW administrative design review permit application without a public hearing.
- (b) **Required Findings for Approval.** The Director may approve or conditionally approve a complete and duly filed application for a ROW administrative design review permit when the Director finds:
 - (1) the proposed project complies with all applicable design and location standards in this Policy;

- (2) the proposed project would be in the most preferred location within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 500 feet would be technically infeasible;
 - (3) the proposed project would not be located on a prohibited support structure identified in this Policy;
 - (4) the proposed project would be on the most preferred support structure within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 500 feet would be technically infeasible;
 - (5) if the proposed project involves a wireless facility, the proposed project fits within the definition for a “small wireless facility” as defined by the FCC;
 - (6) if the proposed project involves a wireless facility, the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
 - (7) all public notices required for the application have been given.
- (c) **Conditional Approvals; Denials Without Prejudice.** Subject to any applicable federal or California laws, nothing in this Policy is intended to limit the Director’s ability to conditionally approve or deny without prejudice any ROW administrative design review permit application as may be necessary or appropriate to ensure compliance with this Policy.
- (d) **Appeals.** Any interested person or entity may appeal the decision by the Director to the City Council; provided, however, that appeals from an approval shall not be permitted when based solely on the environmental effects from RF emissions that are compliant with applicable FCC regulations and guidelines. An appeal notice must be filed within seven calendar days after the date on the Director’s decision notice. The notice must contain a short and plain statement about the basis for the appeal, which may be supplemented after the notice period has expired but before the appeal hearing. The City Council shall hear appeals *de novo* and issue the applicant and any person entitled to notice a written decision within five calendar days after the appeal hearing. If the City Council denies the application on appeal (whether by affirmation or reversal), the written notice shall contain the reasons for the decision.

SECTION 9. CONDITIONS OF APPROVAL

- (a) **Standard Conditions.** Except as may be authorized in subsection (b), all ROW administrative design review permits issued under this Policy shall be automatically subject to the conditions in this subsection (a).
- (1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this

wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

- (2) **Permit Renewal.** The permittee may apply for permit renewal not more than one year before this ROW administrative design review permit expires. The permittee must demonstrate that the subject small wireless facility or other infrastructure deployment complies with all the conditions of approval associated with this ROW administrative design review permit and all applicable provisions in the Encinitas Municipal Code and this Policy that exists at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Encinitas Municipal Code, this Policy or other applicable law. Upon renewal, this ROW administrative design review permit will automatically expire 10 years and one day from its issuance.
- (3) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility or other infrastructure deployment approved or deemed-approved, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the small wireless facility or other infrastructure deployment has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- (4) **Build-Out Period.** This ROW administrative design review permit will automatically expire 12 months from the approval date (the “build-out period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility or other infrastructure deployment, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the small wireless facility or other infrastructure deployment and its use. The permittee may request in writing, and the City may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for a six-month extension. If the build-out period and any extension finally expire, the permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- (5) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this ROW administrative design review permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

- (6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the small wireless facility or other infrastructure deployment or any use or activities in connection with the use authorized in this ROW administrative design review permit, which includes without limitation any laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to an encroachment permit). The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Encinitas Municipal Code, this Policy any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the Encinitas Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.
- (7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Encinitas Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare an emergency within the City. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from a facility violates applicable provisions in the Encinitas Municipal Code, the Director may, in addition to any other actions or remedies authorized by the permit, the Encinitas Municipal Code or other applicable laws, require the permittee to commission a noise study by a qualified professional to evaluate the facility's compliance.
- (8) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

- (9) **Permittee's Contact Information.** Within 10 days from approval request by the City, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the small wireless facility or other infrastructure deployment, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.
- (10) **Indemnification.** The permittee and, if applicable, the property owner upon which the small wireless facility or other infrastructure deployment is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this ROW administrative design review permit, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this ROW administrative design review permit or the small wireless facility or other infrastructure deployment. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this ROW administrative design review permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this ROW administrative design review permit.
- (11) **Performance Bond.** Before the City issues any permits required to commence construction in connection with this permit, the permittee shall post a performance bond from a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility or other infrastructure deployment to a standard

compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility or other infrastructure deployment in accordance with this condition.

- (12) **Permit Revocation.** Any permit granted under this Policy may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before any public hearing to revoke a permit granted under this Policy, the Director must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this Policy may be revoked only by the City Council after a duly notice public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- (13) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the ROW administrative design review permit application, ROW administrative design review permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the ROW administrative design review permit (collectively, "records"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.
- (14) **Abandoned Facilities.** The small wireless facility or other infrastructure deployment authorized under this ROW administrative design review permit shall be deemed abandoned if not operated for any continuous six-month period.

Within 90 days after a small wireless facility or other infrastructure deployment is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility or other infrastructure deployment and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Encinitas Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.

- (15) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the City. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (16) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility or other infrastructure deployment; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.
- (17) **Future Undergrounding Programs.** Notwithstanding any term remaining on any ROW administrative design review permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility or other infrastructure deployment is located, the permittee must also underground its equipment, except the antennas and any approved electric meter, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small wireless facilities and other infrastructure deployments installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as

may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.

- (18) **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (19) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (A) change any street grade, width or location; (B) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (C) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this ROW administrative design review permit. If the Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility or other infrastructure deployment within a reasonable time after the Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility or other infrastructure deployment without prior notice to permittee when the Director determines that City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.
- (20) **Truthful and Accurate Statements.** The permittee acknowledges that the City's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the City in connection with the ROW administrative design review permit or the small wireless facility or other infrastructure approved under the ROW administrative design review permit, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
- (21) **Affirmation of Radio Frequency Standards Compliance.** The permittee acknowledges and agrees that the permittee shall submit: (1) an affirmation, under penalty of perjury, that the proposed installation will be FCC compliant,

because it will not cause members of the general public to be exposed to RF levels that exceed the maximum permission exposure levels deemed safe by the FCC; (2) a copy of the fully completed FCC form "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance: Appendix A" titled "Optional Checklist for Determination of Whether a Facility is Categorically Excluded" for each frequency band of RF emissions to be transmitted from the proposed facility upon the approval of the application. All planned radio frequency emissions on all frequency bands must be shown on the Appendix A form(s) attached to the application. All planned radio frequency emissions are to be entered on each Appendix A form only in wattage units of "effective radiated power".

- (b) **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any ROW administrative design review permit as the Director deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection (a) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment need for compliance with the Encinitas Municipal Code, this policy, generally applicable health and safety requirements and/or any other applicable laws. To the extent required by applicable FCC regulations, the Director shall take care to ensure that any different conditions applied to small wireless facilities are no more burdensome than those applied to other infrastructure deployments.

SECTION 10. LOCATION STANDARDS

- (a) **Location Preferences.** To better assist applicants and decision makers understand and respond to the community's aesthetic preferences and values, this subsection sets out listed preferences for locations to be used in connection with small wireless facilities in an ordered hierarchy. Applications that involve lesser-preferred locations may be approved so long as the applicant demonstrates by clear and convincing evidence in the written record that either (1) no more preferred locations or structures exist within 500 feet from the proposed site; or (2) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible; and (3) for locations within residential zones, any location within a nonresidential zones within 500 feet from the proposed site would be technically infeasible. The City prefers small cells in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:

- (1) locations within industrial zones, commercial zones, business parks or office professional zones on or along prime arterials;
- (2) locations within industrial zones, commercial zones, business parks or office professional zones on or along major arterials;
- (3) locations within industrial zones, commercial zones, business parks or office professional zones on or along collector roads;
- (4) locations within industrial zones, commercial zones, business parks or office professional zones on or along local streets;
- (5) locations within residential zones on or along prime arterials;

- (6) locations within residential zones on or along major arterials;
 - (7) locations within residential zones on or along collector roads;
 - (8) locations within residential zones on or along local streets;
 - (9) any location within 500 feet from an existing small cell;
 - (10) any location within 500 feet from any structure approved for a residential use.
- (b) **Encroachments Over Private Property.** No small cell antennas, accessory equipment or other improvements may encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
- (c) **No Interference with Other Uses.** Small cells and any associated antennas, accessory equipment or improvements shall not be located in any place or manner that would physically interfere with or impede access to any: (1) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (2) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (3) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (4) fire hydrant or water valve; (5) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (6) access to any fire escape.
- (d) **Replacement Pole Location.** All replacement poles must: (1) be located as close to the removed pole as possible; (2) be aligned with the other existing poles along the public rights-of-way; and (3) be compliant with all applicable standards and specifications by the identified or required by the Director.
- (e) **Additional Placement Requirements.** In addition to all other requirements in this Policy, small wireless facilities, other infrastructure deployments and all related equipment and improvements shall:
- (1) be placed as close as possible to the property line between two parcels that abuts the public rights-of-way;
 - (2) not be placed directly in front of any door or window;
 - (3) not be placed within any sight distance triangles at any intersections;
 - (4) not be placed in any location that obstructs view lines for traveling vehicles, bicycles and pedestrian;
 - (5) not be placed in any location that obstructs views of any traffic signs or signals;
 - (6) not be placed in any location that obstructs illumination patterns for existing streetlights;

- (7) be placed at least 15 feet away from any driveway or established pedestrian pathway between a residential structure and the public rights-of-way;
- (8) be placed at least 50 feet away from any driveways for police/sheriff's stations, fire stations or other emergency responder facilities.

SECTION 11. DESIGN STANDARDS

- (a) **Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in flat, nonreflective hues that match the underlying support structure or blend with the surrounding environment. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the Director's prior approval.
- (b) **Noise.** Small cells and all associated antennas, accessory equipment and other improvements must comply with all applicable noise control standards and regulations in the Encinitas Municipal Code Chapter 9.32 and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable zone.
- (c) **Lights.** All street lights and street light fixtures must be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way in a manner consistent with any other standards and specifications by the as identified or required by the Director. All antennas, accessory equipment and other improvements with indicator or status lights must be installed in locations and within enclosures that eliminate illumination impacts visible from publicly accessible areas.
- (d) **Trees and Landscaping.** Small wireless facilities and other infrastructure deployments shall not be installed (in whole or in part) within any tree drip line. Small wireless facilities and other infrastructure deployments may not displace any existing tree or landscape features unless: (A) such displaced tree or landscaping is replaced with native and/or drought-resistant trees, plants or other landscape features approved by the Director and (B) the applicant submits and adheres to a landscape maintenance plan. Only International Society of Arboriculture certified workers under a licensed arborist's supervision shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless approved by the Director. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (e) **Signs and Advertisements.** All small wireless facilities and other infrastructure deployments that involve RF transmitters must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities and other infrastructure deployments may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
- (f) **Site Security Measures.** Small wireless facilities and other infrastructure deployments may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Director shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be

constructed from or coated with graffiti-resistant materials. Cabinets and equipment shroud must be kept secured to prevent unauthorized access.

- (g) **Compliance with Health and Safety Regulations.** All small wireless facilities and other infrastructure deployments shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*).
- (h) **Antennas.** The provisions in this subsection (h) are generally applicable to all antennas.
 - (1) **Shrouding.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a single shroud or radome. For pole-top antennas, the shroud shall not exceed 2.5 times the median pole diameter and must taper down to pole. For side-arm antennas, the shroud must cover the cross arm and any cables, jumpers, wires or other connectors between the vertical riser and the antenna.



Figure 1: Antenna concealed within a single shroud (or radome) with a tapered cable shroud between the antenna and pole-top

- (2) **Antenna Volume.** Each individual antenna associated with a single small cell shall not exceed three cubic feet. The cumulative volume for all antennas on a single small cell shall not exceed: (A) three cubic feet in residential areas; or (B) six cubic feet in nonresidential areas.
- (3) **Overall Height.** No antenna may extend more than five feet above the support structure, plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations.
- (4) **Horizontal Projection.** Side-mounted antennas, where permitted, shall not project: (A) more than 24 inches from the support structure; (B) over any roadway for vehicular travel; or (C) over any abutting private property. If applicable laws require a side-mounted antenna to project more than 24 inches from the support structure, the projection shall be no greater than required for compliance with such laws.



Figure 2: Pole-top antenna on a wood utility pole

- (i) **Accessory Equipment Volume.** The cumulative volume for all accessory equipment for a single small wireless facility or other infrastructure deployment shall not exceed: (A) seven cubic feet to the extent feasible, but in no event greater than nine cubic feet in residential areas, or (B) 12 cubic feet in nonresidential areas. The volume limits in this subsection do not apply to any undergrounded accessory equipment.

(j) **Undergrounded Accessory Equipment.**

- (1) **Where Required.** Accessory equipment (other than any electric meter (where permitted) and an emergency disconnect switch) shall be placed underground when proposed in any (A) underground utility district or (B) any location where the Director finds substantial evidence that the additional above-ground accessory equipment would incommode the public's uses in the public rights-of-way. Notwithstanding the preceding sentence, the Director may grant an exception when the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible.
- (2) **Vaults.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover and properly secured to prevent unauthorized access. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Vault lids shall not exhibit logos or commercial advertisements.



Figure 3: Flush-to-grade underground equipment vault

(k) **Pole-Mounted Accessory Equipment.** The provisions in this subsection (k) are applicable to all pole-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.

(1) **Preferred Concealment Techniques.** Applicants should propose to place any pole-mounted accessory equipment in the least conspicuous position under the circumstances presented by the proposed pole and location. Pole-mounted accessory equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations.

(2) **Minimum Vertical Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least 10 feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than 10 feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.



Figure 4: Pole-mounted accessory equipment shroud on a wood utility pole

- (3) **Horizontal Projection.** Pole-mounted accessory equipment shall not project: (i) more than 18 inches from the pole surface; (ii) over any roadway for vehicular travel; or (iii) over any abutting private property. All pole-mounted accessory equipment shall be mounted flush to the pole surface. If applicable laws preclude flush-mounted equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for compliance with such laws and concealed by opaque material (such as cabinet “flaps” or “wings”).



Figure 5: Shrouded, side-mounted antenna on wood utility pole to comply with CPUC horizontal separation requirements



Figure 6: Flush-mounted radio shroud

- (4) **Orientation.** Unless placed behind a street sign or some other concealment that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting properties. If orientation toward the street is not feasible, then the proper orientation will most likely be away from oncoming traffic. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.



Figure 7: Accessory equipment concealed behind banners

- (l) **Ground-Mounted or Base-Mounted Accessory Equipment.** The provisions in this subsection (l) are applicable to all ground-mounted and base-mounted accessory equipment in connection with small wireless facilities and other infrastructure deployments.



Figure 8: Base-mounted accessory equipment

- (1) **Ground-Mounted Concealment.** On collector roads and local roads, the City prefers ground-mounted accessory equipment to be concealed as follows: (A) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; and (B) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks. On arterial roads outside underground utility districts, proposed ground-mounted accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets.



Figure 9: Ground-mounted accessory equipment concealed as a mailbox

- (2) **Public Safety Visibility.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, no individual ground-mounted accessory equipment cabinet may exceed four feet in height or four feet in width. Ground-mounted and base-mounted equipment cabinets shall not have any horizontal flat surfaces greater than 1.5 square inches to prevent litter or other objects left on such surfaces.

- (m) **Utilities.** The provisions in this subsection (m) are applicable to all utilities and other related improvements that serve small wireless facilities and other infrastructure deployments.
- (1) **Overhead Lines.** The Director shall not approve any new overhead utility lines in underground utility districts. In areas with existing overhead lines, new communication lines shall be “overlashed” with existing communication lines. No new overhead utility service drops shall be permitted to traverse any roadway used for vehicular transit.
 - (2) **Vertical Cable Risers.** All cables, wires and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, such as with wood utility poles, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying pole.
 - (3) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
 - (4) **Electric Meters.** Small cells and other infrastructure deployments shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter that shall not exceed the width of the pole. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet, but the Director shall not approve a separate ground-mounted electric meter pedestal.
 - (5) **Existing Conduit or Circuits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing conduits and/or electric circuits whenever available and technically feasible. Access to any conduit and/or circuits owned by the City shall be subject to the Director’s prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the City’s infrastructure, prevent interference with the City’s municipal functions and public health and safety.

SECTION 12. PREAPPROVED DESIGNS

- (a) **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the City, the City Council authorizes the Director to designate one or more preapproved designs for small wireless facilities and other infrastructure deployments. This Section 12 sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications.
- (b) **Adoption.** The Director may, in the Director’s discretion, establish a preapproved design when the Director finds that a proposed preapproved design exceeds the design standards in this Policy. The Director shall post a public notice posted at Encinitas City Hall, with the City Clerk and in a newspaper of general circulation within the City. The

notice must generally describe the preapproved design, include a photograph or photo simulation, specify whether the preapproved design would be limited or restricted in any zones and contain a reference to the appeal procedure. Unless appealed pursuant to the Encinitas Municipal Code, the preapproved design shall become effective 15 days from the notice required in this subsection. A decision by the Director not to adopt a proposed preapproved design or the Director's failure to act on a request for a proposed preapproved design is not appealable.

- (c) **Repeal.** The Director may repeal any preapproved design by written notice posted at Encinitas City Hall. The repeal shall be immediately effective. The Director's repeal, refusal to repeal or failure to act on a request to repeal a preapproved design is not appealable.
- (d) **Modified Review Process.** In nonresidential zones, applications for a preapproved design shall not be subject to the notice requirements in Section 7(a) or any potential appeals under Section 8(d). In residential zones, applications for a preapproved design shall remain subject to the notice requirements in Section 7 and any potential appeals under Section 8(d).
- (e) **Modified Findings.** When an applicant submits a complete application for a preapproved design, the Director shall presume that the findings for approval in Sections 8(b)(1) and 8(b)(5) are satisfied and shall evaluate the application for compliance with the findings for approval in Sections 8(b)(2), 8(b)(3), 8(b)(4), 8(b)(6) and 8(b)(7).
- (f) **Nondiscrimination.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the Director adopt such preapproved design or not. The Director's decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the preapproved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the preapproved design with like materials, finishes and overall quality shall be acceptable as a preapproved design.