



CITY OF PALO ALTO OFFICE OF THE CITY CLERK

August 24, 2015

The Honorable City Council
Palo Alto, California

SECOND READING: Adoption (with Minor Staff-Initiated Changes Following First Reading) of an Ordinance Deleting Section 18.42.110 of Chapter 18.42 of Title 18 of the Palo Alto Municipal Code and Adding a New Section 18.42.110 Pertaining to the Siting and Permitting of Wireless Communications Facilities; Exempt from California Environmental Quality Act under CEQA Guidelines Section 15061(b) and 15301, 15302 and 15305. (FIRST READING: June 29, 2015, Passed: 8-0, DuBois absent)

This Ordinance was first heard on June 29, 2015, where no changes were made by Council. Following the first reading, AT&T submitted a letter to the City requesting some additional minor changes to the ordinance (Attachment B). Staff and outside telecommunications counsel have reviewed these changes and concur with AT&T that Section 18.42.110(e) of the ordinance should be modified (1) to clarify when the City determines an application is incomplete it should specifically identify which information was missing and (2) to specify the date on which the shot clock commences when the City deems an application should be processed as a Tier 2 or 3 application, rather than a Tier 1. Staff recommends the following modifications be made to Section 18.42.110 (e) of the ordinance:

- (1) City Review of Application Materials. The timeframe for review of an application shall begin to run when the application is submitted, but shall be tolled if the City finds the application incomplete and provides notice of incompleteness that delineates the missing information in writing. Such requests shall be made within 30 days of submission of the application. After submission of additional information, the City will notify the applicant within 10 days of this submission if the additional information failed to complete the application. If the City makes a determination pursuant to Section 18.42.110(e)(2)(i) that an application submitted as a Tier 1 Eligible Facilities Request should be processed as a Tier 2 or Tier 3, then the Tier 2 or Tier 3 Processing Time, as applicable, shall begin to run when the City issues this decision.

These clarifying changes do not impact the substance of the provision and thus do not require an additional first reading of the ordinance. Thus staff recommends that the Council adopt these changes on second reading of the attached ordinance (Attachment A.)

ATTACHMENTS:

- **Attachment:** Attachment A: Wireless Ordinance (PDF)
- Attachment: Attachment B: AT&T Letter on Wireless Ordinance (PDF)

Department Head: Beth Minor, City Clerk

Ordinance No. ____

Ordinance of the Council of the City of Palo Alto

Deleting Section 18.42.110 of Chapter 18.42 of Title 18 of the Palo Alto Municipal Code and Adding a New Section 18.42.110 Pertaining to the Siting and Permitting of Wireless Communications Facilities

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Section 18.42.110 of Chapter 18.42 of Title 18 of the Palo Alto Municipal Code is hereby deleted and a new Section 18.42.110 added to read, as follows:

18.42.110 Wireless Communication Facilities

(a) Purpose and Interpretation

The purpose of this section is two-fold: (A) to implement within the jurisdictional boundaries of the City the applicable zoning, land use and other laws, rules, regulations and policies and procedures applicable to siting applications filed with the City by wireless communications facilities infrastructure owners and operators and Wireless Communications Service providers, which seek to install or attach their facilities at locations in Palo Alto; and (B) to accommodate new wireless technologies and continued improvements to existing wireless communications facilities while minimizing their adverse visual and structural health and safety impacts. Consistent with that purpose, the provisions of this Section are to be construed in a manner that is consistent with (1) the interest of consumers in receiving the benefits of the deployment of ultra-high-speed and -capacity broadband wireless communication facilities technology and innovations and the delivery of ultra-high-speed and -capacity broadband wireless communications facilities services, (2) the interest in safeguarding the environment, preserving historic properties, and addressing aesthetics and other local values, and (3) the interest in promoting the public health, safety and welfare in Palo Alto.

A Wireless Communications Facility is permitted to be sited in Palo Alto subject to applicable requirements imposed by this Chapter, which may include an architectural review process, a conditional use permit application process, or both. These processes are intended to permit Wireless Communications Facilities that blend with their existing surroundings and do not negatively impact the environment, historic properties, or public safety. The procedures prescribed by this Chapter are tailored to the type of Wireless Communication Facility that is sought. Building-mounted wireless communications facilities and Collocation of facilities are preferred and encouraged, subject to all other provisions of this Section.

(b) Definitions

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The following abbreviations, phrases, terms and words shall have the meanings assigned in this Section or, as appropriate, in Section 18.04.030 and Section 1.04.050 of the Palo Alto Municipal Code, as may be amended from time to time, unless the context indicates otherwise. Words that are not defined in this Section or other Chapters or Sections of the Palo Alto Municipal Code shall have the meanings as set forth in Chapter 6 of Title 47 of the United States Code, Part 1 of Title 47 of the Code of Federal Regulations, and, if not defined therein, their common and ordinary meaning.

(1) “Antenna” means a wireless Antenna and its associated equipment. The term includes a macrocell Antenna and a microcell Antenna.

(2) “Associated equipment” means any and all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, shelters, radio transceivers, regular power supply units, and wiring, to which a wireless antenna is attached in order to facilitate mobile broadband service and personal wireless service delivered on mobile broadband devices.

(3) “Base Station” means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation:

(i) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks).

(iii) Any structure other than a tower that, at the time the relevant application is filed with the City under this section, supports or houses equipment described in paragraphs (i)-(ii) above and has been previously reviewed and approved by the City.

(4) “Collocation” means the mounting or installation of Transmission Equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(5) “Eligible Facilities Request” means any request for modification of an existing Tower or Base Station that, within the meaning of the Spectrum Act, does not substantially change the physical dimensions of that Tower or Base Station, and involves (a) the Collocation of new Transmission Equipment, (b) the removal of Transmission Equipment, or (c) the replacement of Transmission Equipment.

(6) “Eligible Support Structure” means any existing Tower or Base Station that exists at the time the application is filed with the City.

(7) “Existing” for a constructed Tower or Base Station, means that the Tower or Base Station has been previously reviewed and approved under the applicable City zoning or siting process, or under another applicable State or local regulatory review process, provided that a Tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is “Existing” for purposes of this definition.

(8) “FCC” means the Federal Communications Commission or successor agency.

(9) “Project” means a WCF to be located in Palo Alto for which a permit is required by the City.

(10) “RF” means radio frequency on the radio spectrum.

(11) “Spectrum Act” means Section 6409(a) of the Middle Class Tax Relief Act and Job Creation Act of 2012, 47 U.S.C. § 1455(a) (providing, in part, “... a State or local government may not deny, and shall approve, any Eligible Facilities Request for a modification of any existing wireless Tower or Base Station that does not substantially change the physical dimensions of such Tower or Base Station.”).

(12) “Substantially Changes” means, in the context of an Eligible Support Structure, a modification of an existing Tower or Base Station where any of the following criteria is met:

- (i) For a Tower not located in the public rights-of-way:
 - (a) The height of the Tower is increased by (I) more than ten (10) percent, or (II) by the height of one additional Antenna array with separation from the nearest existing Antenna not to exceed twenty (20) feet, whichever is greater; or
 - (b) There is added an appurtenance to the body of the Tower that would protrude from the edge of the Tower by (I) more than twenty (20) feet, or (II) more than the width of the Tower at the level of the appurtenance, whichever is greater.
- (ii) For a Tower located in the public rights-of-way and for all Base Stations:
 - (a) The height of the Tower or Base Station is increased by more than ten (10) percent or ten (10) feet, whichever is greater; or
 - (b) There is added an appurtenance to the body of that structure that would protrude from the edge of that structure by more than six (6) feet; or

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- (c) It involves the installation of ground cabinets that are more than ten (10) percent larger in height or overall volume than any other ground cabinets associated with the structure; or
 - (d) It involves the installation of any new equipment cabinets on the ground if there is no pre-existing ground cabinet associated with that structure.
- (iii) For any Eligible Support Structure:
- (a) It involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or
 - (b) There is entailed in the proposed modification any excavation or deployment outside of the current site of the Tower or Base Station; or
 - (c) The proposed modification would cause the concealment/camouflage elements of the Tower or Base Station to be defeated; or
 - (d) The proposed modification would not comply with the conditions associated with the prior siting approval of construction or modification of the Tower or Base Station, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding thresholds in this section.
- (iv) To measure changes in height for the purposes of this section, the baseline is:
- (a) For deployments that are or will be separated horizontally, measured from the original Support Structure;
 - (b) For all others, measured from the dimensions of the Tower or Base Station, inclusive of originally approved appurtenances and any modifications that were approved by the City prior to February 22, 2012.
- (v) To measure changes for the purposes of this section, the baseline is the dimensions that were approved by the City prior to February 22, 2012.

(13) “Tower” means any structure built for the sole or primary purpose of supporting any FCC-licensed or -authorized Antenna, including any structure that is constructed for Wireless Communications Service. This term does not include a Base Station.

(14) “Transmission Equipment” means equipment that facilitates transmission of any FCC-licensed or authorized Wireless Communication Service.

(15) “Wireless Communications Facility” or “WCF” means any Antenna, associated equipment, Base Station, small cell system, Tower, and/or Transmission Equipment located in Palo Alto.

(16) “Wireless Communications Service” means, without limitation, all FCC-licensed back-haul and other fixed wireless services, broadcast, private, and public safety communication services, and unlicensed wireless services.

(c) **Types of WCF Permits Required**

(1) A Tier 1 WCF Permit shall be required for an Eligible Facilities Request, as defined in this Section.

(2) A Tier 2 WCF Permit shall be required for:

(i) Any modification of an Eligible Support Structure, including the Collocation of new equipment, that Substantially Changes the physical dimensions of the Eligible Support Structure on which it is mounted, or

(ii) Any Collocation not eligible for a Tier 1 WCF Permit

(3) A Tier 3 WCF Permit shall be required for the siting of any WCF that is not a Collocation subject to a Tier 1 or 2 WCF Permit.

(d) **WCF Application Requirements**

All applications for a WCF Permit shall include the following items:

(1) Any applicant for a WCF Permit shall participate in an intake meeting with the Planning and Community Environment Department to file an application;

(2) The applicant must specify in writing whether the applicant believes the application is for an Eligible Facilities Request subject to the Spectrum Act, and if so, provide a detailed written explanation as to why the applicant believes that the application qualifies as an Eligible Facilities Request;

(3) The applicant shall complete the City’s standard application form, as may be amended from time to time;

(4) The applicant shall include a completed and signed application checklist available from the City, including all information required by the application checklist;

(5) Payment of the fee prescribed by the Municipal Fee Schedule;

(6) The application must be accompanied by all permit applications with all required application materials for each separate permit required by the City for the proposed WCF, including a building permit, an encroachment permit (if applicable) and an electrical permit (if applicable);

(7) For Tier 2 and 3 WCF Permits, the applicant must host a community meeting at a time and location designed to maximize attendance by persons receiving notice under this subparagraph to provide outreach to the neighborhood around the Project site. The applicant shall give notice of the community meeting to all residents and property owners within 600 feet of the Project site at least 14 days in advance of the community meeting. The applicant shall provide a proof of notice affidavit to the City that contains:

- (i) Proof that the applicant noticed and hosted the community meeting before filing the application;
- (ii) A summary of comments received at the community meeting and what, if any, changes were made to the application as a result of the meeting;

(8) For Tier 3 WCF Permits, the plans shall include a scaled depiction of the maximum permitted increase in the physical dimensions of the proposed Project that would be permitted by the Spectrum Act, using the proposed Project as a baseline; and

(9) Satisfy other such requirements as may be, from time to time, required by the Planning and Community Environment Department Director (“Director”), as publically stated in the application checklist.

(e) **Permit Review (“Shot Clock”) Time Periods**

(1) City Review of Application Materials. The timeframe for review of an application shall begin to run when the application is submitted, but shall be tolled if the City finds the application incomplete and ~~requests~~ provides notice of incompleteness that delineates the missing information in writing that the applicant submit additional information to complete the application. Such requests shall be made within 30 days of submission of the application. After submission of additional information, the City will notify the applicant within 10 days of this submission if the additional information failed to complete the application. If the City makes a determination pursuant to Section 18.42.110(e)(2)(i) that an application submitted as a Tier 1 Eligible Facilities Request should be processed as a Tier 2 or Tier 3, then the Tier 2 or Tier 3 Processing Time, as applicable, shall begin to run when the City issues this decision.

(2) Tier 1 Processing Time. For Tier 1 WCF Permit applications, the City will act on the WCF application, together with any other City permits required for a proposed WCF modification, within 60 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.

- (i) If the City determines that the application does not qualify as a Tier 1 Eligible Facilities Request, the City will notify the applicant of that determination in writing and will process the application as a Tier 2 or Tier 3 WCF Permit application, as applicable.
- (ii) To the extent federal law provides a “deemed granted” remedy for Tier 1 WCF Permit applications not timely acted upon by the City, no such

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application shall be deemed granted until the Applicant provides notice to the City, in writing, that the application has been deemed granted after the time period provided in Section (e)(2) above has expired.

- (iii) Any Tier 1 WCF Permit application that the City grants or that is deemed granted by operation of federal law shall be subject to all requirements of Section 18.42.110(i)(3), (5), (6) and (7) and 18.42.110(j)(1), (2), (3), (4), (5) and (6).

- (3) Tier 2 Processing Time. For Tier 2 WCF Permit applications, the City will act on the application within 90 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.

- (4) Tier 3 Processing Time. For Tier 3 WCF Permit applications, the City will act on the application within 150 days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.

- (5) Denial of Application. If the City denies a WCF application, the City will notify the applicant of the denial in writing of the reasons for the denial.

- (f) **Tier 1 WCF Permit Process and Findings**

- (1) A Tier 1 WCF Permit shall be reviewed by the Director. The Director's decision shall be final and shall not be appealable pursuant to the procedures set forth in Sections 18.77 or 18.78.

- (2) The Director shall grant a Tier 1 WCF Permit provided that the Director finds that the applicant proposes an Eligible Facilities Request;

- (3) The Director shall impose the following conditions on the grant of a Tier 1 WCF Permit:

- (i) The proposed Collocation or modification shall not defeat any existing concealment elements of the Support Structure; and
 - (ii) The proposed WCF shall comply with the Development Standards in Section 18.42.110(i)(3), (5), (6) and (7), and the Conditions of Approval in Section 18.42.110(j).

- (g) **Tier 2 WCF Permit Process and Findings**

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(1) A Tier 2 WCF Permit shall be reviewed by the Director. The Director's decision shall be appealable pursuant to the process for architectural review set forth in Section 18.77.070.

(2) The Director, or Council on appeal, shall grant a Tier 2 WCF Permit provided the proposed WCF complies with the Development Standards in Section 18.42.110(i) and the conditions of approval in Section 18.42.110(j), and all of the architectural review findings in Section 18.76.020(d) can be made.

(3) The Director, or Council on appeal, shall deny a Tier 2 WCF Permit if the above findings cannot be made.

(h) **Tier 3 WCF Permit Process and Findings**

(1) A Tier 3 WCF Permit shall be reviewed by the Director. The Director's decision shall be appealable pursuant to the process for architectural review set forth in Section 18.77.070 and the process for conditional use permits set forth in Section 18.77.060.

(2) The Director or Council on appeal shall grant a Tier 3 WCF Permit provided the proposed WCF complies with the Development Standards in Section 18.42.110(i) and the conditions of approval in Section 18.42.110(j), and all of the architectural review findings in Section 18.76.020(d) and the conditional use permit findings in Section 18.76.010(c) can be made.

(3) The Director, or Council on appeal, shall deny a Tier 3 WCF Permit if the above findings cannot be made.

(i) **Development Standards**

Except as otherwise provided in this Section, a proposed WCF Project shall comply with the following standards:

(1) Shall utilize the smallest footprint possible;

(2) Shall be designed to minimize the overall height, mass, and size of the cabinet and enclosure structure;

(3) Shall be screened from public view;

(4) Shall be architecturally compatible with the existing site;

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(5) Shall be placed at a location that would not require the removal of any required landscaping or would reduce the quantity of landscaping to a level of noncompliance with the Zoning Code;

(6) An Antenna, Base Station, or Tower shall be designed to minimize its visibility from off-site locations and shall be of a “camouflaged” or “stealth” design, including concealment, screening, and other techniques to hide or blend the Antenna, Base Station, or Tower into the surrounding area;

(7) A building-mounted Antenna, Base Station, or Tower shall be architecturally compatible with the existing building on which the Antenna, Base Station, or Tower is attached;

(8) For any Tier 2 or Tier 3 WCF proposed to be attached on an historic structure/site, as designated by Chapter 16.49, historic review shall also be required;

(9) Except as otherwise permitted by the Spectrum Act, a building-mounted WCF may extend fifteen (15) feet beyond the permitted height of the building in the zone district;

(10) Except as otherwise permitted by the Spectrum Act, a tower or other stand-alone Tier 3 WCF Project shall not exceed sixty-five (65) feet in height; and

(11) A tower or other stand-alone Tier 3 WCF may encroach into the interior/street side and rear setback.

(j) **Conditions of Approval**

In addition to any other conditions of approval permitted under federal and state law and this Code that the Director deems appropriate or required under this Code, all WCF Projects approved under this Chapter, whether approved by the Director or deemed granted by operation of law, shall be subject to the following conditions of approval:

- (1) Permit conditions. The grant or approval of a WCF Tier 1 Permit shall be subject to the conditions of approval of the underlying permit, except as may be preempted by the Spectrum Act.
- (2) As-built plans. The applicant shall submit to the Director an as-built set of plans and photographs depicting the entire WCF as modified, including all Transmission Equipment and all utilities, within ninety (90) days after the completion of construction.

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- (3) Applicant shall hire a radio engineer licensed by the State of California to measure the actual radio frequency emission of the WCF and determine if it meets FCC's standards. A report, certified by the engineer, of all calculations, required measurements, and the engineer's findings with respect to compliance with the FCC's radio frequency emission standards shall be submitted to the Planning Division within one year of commencement of operation.
- (4) Indemnification. To the extent permitted by law, the applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City for its actual attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion and at Applicant's expense, elect to defend any such action with attorneys of its own choice.
- (5) Compliance with applicable laws. The applicant shall comply with all applicable provisions of the Code, any permit issued under this Code, and all other applicable federal, state and local laws (including without limitation all building code, electrical code and other public safety requirements). Any failure by the City to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.
- (6) Compliance with approved plans. The proposed Project shall be built in compliance with the approved plans on file with the Planning Division.

(k) **Removal of Abandoned Equipment**

A WCF (Tier 1, Tier 2, or Tier 3) or a component of that WCF that ceases to be in use for more than ninety (90) days shall be removed by the applicant, Wireless Communications Service provider, or property owner within ninety (90) days of the cessation of use of that WCF. A new conditional use permit shall not be issued to an owner or operator of a WCF or a Wireless Communications Service provider until the abandoned WCF or its component is removed.

(l) **Revocation**

NOT YET APPROVED

The Director may revoke any WCF permit if the permit holder fails to comply with any condition of the permit. The Director’s decision to revoke a permit shall be appealable pursuant to the process for architectural review set forth in Section 18.77.070 and the process for conditional use permits set forth in Section 18.77.060.

SECTION 2. Any provision of the Palo Alto Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Council finds that the adoption of this ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to CEQA Guideline sections 15061(b) and 15301, 15302 and 15305 because it simply provides a comprehensive permitting scheme.

SECTION 5. This ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

NOT PARTICIPATING:

ATTEST:

NOT YET APPROVED

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Senior Asst. City Attorney

City Manager

Director of Planning &
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July 15, 2015

BY HAND AND ELECTRONIC MAIL
[city.attorney@cityofpaloalto.org]

Molly S. Stump, City Attorney
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250 Hamilton Ave.
Palo Alto, CA 94301

Dear Ms. Stump:

AT&T appreciates the opportunity to provide the following comments regarding the proposed addition of Section 18.42.110 to Title 18 of the Palo Alto Municipal Code ("Ordinance"), which pertains to the siting and permitting of wireless communications facilities. AT&T did not become aware of the proposed ordinance until June 29, 2015, the day of the first council vote, thus, this is its first opportunity to provide any input regarding this important change.

- Page 4, 18.42.110(b)(12)(iii)(b) - The term "site" is not defined. As with any other terms used in the Ordinance that are also defined in 47 CFR 1.40001(b), the term should have the same definition as in the CFR. 47 C.F.R. 1.40001(b)(6) provides: "Site" – "For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground."
- Page 4, 18.42.110(b)(12)(iv)(b) and (v) – The Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. §1455) was passed by Congress on February 17, 2012 and signed into law by the President on February 22, 2012. The FCC's Report and Order and regulations refer to the date of passage rather than date of enactment as the trigger for the analysis. Approvals issued after February 17, 2012 do not affect the baseline dimensions for determining whether an application proposes a substantial change. The draft Ordinance needs to be changed from February 22, 2012 to February 17, 2012.

- Page 5, 18.42.110(d)(1) - This section requires the applicant to participate in an intake meeting with the Planning and Community Environment Department in order to file an application. Although AT&T will comply with this requirement as a practical matter, the Infrastructure Order¹ and rules are very clear that the relevant shot clock begins when an application is submitted, regardless of any intake meeting or deemed complete requirements in local ordinances.
- Page 5, 18.42.110(d)(6) - This section requires that the application be accompanied by all permit applications for each separate permit required by the city, including a building permit. AT&T agrees with, will comply with, and supports getting all the relevant approvals completed contemporaneously with an EFR determination, but these permits applications are not reasonably related to determining whether an application is an “eligible facilities request” (EFR). To clarify, the city should add a clause to this section indicating that these separate permits will be processed concurrently with any Tier 1 WCF permit and are independent from any EFR determination.
- Page 6, 18.42.110(d)(8) - This section requires that applications for Tier 3 WCF permits include a scaled depiction of the maximum permitted increase in the physical dimensions of the proposed project permitted by 6409(a). This requirement adds additional costs into the application process, and there is case law holding that such information is not substantial evidence upon which the city can base a denial of a new site build. This unnecessary requirement should be removed.
- Page 6, 18.42.110(d)(9) - This section requires the applicant to provide all information required in the "application checklist." Under 47 CFR 1.40001(c)(1), the checklist for Tier 1 WCF applications can only require information reasonably related to determining whether the application is in EFR. AT&T objects to the extent the checklist requires any items beyond what is reasonably related to determining whether the application is in EFR.
- Page 6, 18.42.110(e)(1) - This section concerns the city's review of application materials and any relevant tolling. AT&T recommends that the last clause in the first sentence be revised to add specificity consistent with the Infrastructure Order (strike from the word "request" to the end of the sentence and add "provides a written notice of incomplete that specifies what required information is missing").
- Page 6, 18.42.110(e)(2)(i) - This section indicates that if the city determines that an application does not qualify as a Tier 1 WCF, the city will notify the applicant in writing and will process the application as a Tier 2 or Tier 3 WCF permit application. Per the paragraph 220 of the Infrastructure Order, a 90 day clock

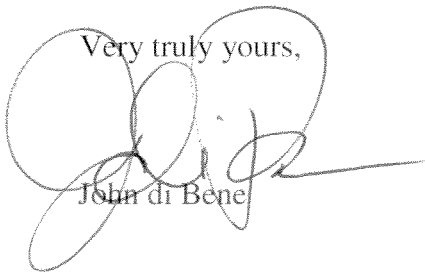
¹ Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, 80 Fed. Reg. 1238 (Apr. 8, 2015) (codified at 47 C.F.R. § 1.40001), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2015-01-08/pdf/2014-28897.pdf>.

would begin upon issuance of the decision that 6409(a) does not apply (note, in practice the non-EFR notification should likely also include a written Notice of Incomplete under the 90-day clock specifying what additional information, if any, is needed under the ordinance for a Tier 2 WCF permit). This is not clear in this section as written.

- Page 7, 18.42.110(e)(2)(iii) and (f)(3)(ii) - These two sections require that any Tier 1 WCF permit comply with certain Development Standards and Conditions of Approval located elsewhere in the Ordinance. These sections require screening from public views, assuring that building mounts are architecturally compatible with the existing building, camouflaged or stealth designs, and completing actual EMF testing and reporting within one year of construction, among other requirements. The city cannot place new conditions on an EFR approval in this manner. Paragraph 200 of the Infrastructure Order indicates that if there were existing conditions of approval (COAs) "regarding fencing, access to the site, drainage, height or width increases that exceed the threshold we adopt above, and other conditions of approval placed on the underlying structure," an EFR would need to comply with those existing conditions. But there is nothing in either the rules or the Infrastructure Order to support these types of new COAs, which go beyond requiring an applicant to comply with generally applicable health and safety codes and are contrary to the underlying policy of 6409(a). These sections should be struck from the Ordinance accordingly.
- Page 7, 18.42.110(j)(3) - This section requires all WCF Projects to complete actual EMF testing and reporting within one year of construction. Requiring physical EMF testing is unnecessary, costly, and preempted by the FCC regulation. To ensure the city has notice that sites within its boundaries are in compliance with relevant FCC exposure limits, AT&T is willing to submit compliance letters biannually.

We look forward to participating in additional dialogue with the city on these proposed changes and appreciate the city's efforts on this important issue.

Very truly yours,



John di Bene